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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.

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WHEN: March 10; at 9 am.
WHERE: Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
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WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404–331–2170.

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

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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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; AIMS Reporting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends 7 CFR Part 210, the regulations governing the National School Lunch Program, to require each State agency to annually report the results of the Assessment, Improvement and Monitoring System (AIMS) to the Food and Nutrition Service (FNS). The Department is publishing this final rule to improve accountability in the National School Lunch Program by collecting consistent national information on program status.

EFFECTIVE DATE: March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; (703) 756–3620.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and has been classified not major. This rule will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for program participants, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

The program is listed in the Catalog of Federal Domestic Assistance under No. 10.553 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983)

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the additional reporting requirements contained in § 210.18(f)(8), § 210.18(l) and § 210.20(a)(6) of this final rule have been submitted to the Office of Management and Budget (OMB) for approval. The OMB control number assigned to the current AIMS recordkeeping requirements is 0584–0006.

Background

Proposed Rule

On September 30, 1985, the Department published a proposed rule in the **Federal Register** (50 FR 39707) to:

(1) Establish a reporting requirement for State agencies to annually report a summary of their AIMS reviews/audits to FNS.

(2) Add the verification of eligibility requirement to the AIMS performance standards and require State agencies to evaluate verification efforts during AIMS reviews/audits.

(3) Expand the current verification recordkeeping requirements by also requiring that verification schedules and verification results be maintained by school food authorities.

(4) Establish a reporting requirement for a sample of approximately one-third of all school food authorities to report a summary of their verification results through State agencies to FNS.

Overview of Comments Received

The proposed rule provided a 60-day comment period during which the Department received 48 comments from State agency and school food authority personnel and professional organizations. The Department would like to thank commenters for the careful consideration given to the proposed rule.

This final rule implements only item (1) above, the requirement that State agencies annually report a summary of their AIMS reviews/audits to FNS. Those elements of the proposed rule regarding verification monitoring, recordkeeping and reporting are not addressed in this final rule. Those portions of the proposed rule were the subject of substantial public comment and concern. Consequently, the Department is continuing to assess the merits of commenters' recommendations and has postponed publication of the final rule regarding verification. The Department's publication of such a final rule will be dependent on further analysis of the verification of eligibility process and consideration of all comments received on the proposed rule. In addition, the Department currently has underway a nationwide study of income verification. The results of this study, as they become available, may be utilized in the development of any additional final rulemaking based on the September 30, 1985 proposed rule.

The remainder of this preamble, therefore, will address only the portion of the proposed rule which concerned AIMS reporting. A description of commenters concerns about verification issues will be reserved until the final rule on that subject is published.

AIMS Reporting

Section 210.14(g)(2) of the proposed rule specified that State agencies would annually, by March 1, report to FNS the results of AIMS reviews/audits on a form designated by FNS. The first report was proposed to be due on March 1, 1987.

Approximately eight commenters objected to any requirement that State agencies report the results of AIMS reviews/audits to FNS annually. Those commenters believed that the data to be collected is unneeded, inconsistent and would interfere with the relationships between State agencies and school food authorities. The Department disagrees with these commenters. The AIMS results to be collected represent a fundamental measurement of program performance, since AIMS examines only areas considered to be critical. The Department believes that these results will provide a valuable profile of program status. However, the Department also recognizes that varying program conditions and AIMS priorities

within each State may make direct State to State comparisons difficult. Consequently, the Department will exercise caution in the analysis of AIMS results. Finally, the Department wishes to point out that the AIMS results to be gathered are aggregate results by State agency and will not detail findings for individual school food authorities. Therefore, the Department does not believe that the AIMS reporting requirement contained in this final rule will interfere with traditional relationships between State agencies and school food authorities.

Approximately 12 commenters, while not objecting to the collection of AIMS results, suggested that AIMS results need not be annually reported but could be obtained during management evaluations of State agencies performed by FNSROs. The Department wishes to note that the management evaluation process is not intended to be a data collection effort but rather an examination of State agency program management. Further, in recent years, management evaluations have not been conducted annually in all State agencies. Therefore, the Department believes that an annual reporting requirement represents the most efficient and consistent method of data collection.

Approximately 11 commenters objected to AIMS reporting as unduly burdensome in light of the Department's proposed rule, published on September 17, 1985 (50 FR 37667), which suggested using a portion of the State Administrative Expense (SAE) funds for State commodity processing activities. In response to objections received concerning that proposed rule, the Department determined that no such redistribution of SAE funds was appropriate at this time. The proposal was rescinded in a final rule published in the **Federal Register** on September 24, 1986 (51 FR 33861). Therefore, the Department believes that the annual reporting burden required by this final rule is not disproportionate to the funding available and should not result in significant increases in State agency workloads.

One commenter suggested that the reporting date be changed from March 1 to June 30 of each year. The AIMS reporting date was selected based on the requirement that second AIMS reviews be completed by December 31 of the school year following that in which the first AIMS review was conducted. Therefore, the Department believes the March 1 deadline affords State agencies sufficient time to include in the annual report results obtained during second reviews.

Two commenters requested clarification of the period of time to be covered by each annual AIMS report. AIMS requires that all school food authorities be reviewed once every four years. In addition, State agencies must perform a second review of all large school food authorities and 25 percent of the small school food authorities which were found to exceed the error tolerance for one or more performance standards. Second reviews must be completed by December 31 of the school year following the school year of the first AIMS review. Therefore, the complete AIMS review process may extend from the beginning of one school year until December of the following school year, a total of 18 months. The AIMS reviews/audits to be included in each March 1 report are all first AIMS reviews/audits conducted in the preceding school year and any consequent second reviews conducted either in the preceding school year or by December 31 of the current school year. The regulatory language of this final rule has been modified to reflect this clarification.

Implementation

Several commenters suggested that the first required report of AIMS results be delayed to give State agencies more time to develop recordkeeping systems. The Department concurs with commenters' concerns and has modified this rule to require that the first AIMS report from State agencies must be submitted by March 1, 1989. Further, the Department will work with State agencies to resolve any implementation problems experienced due to the new FNS form to be used to gather AIMS results.

Regulatory Provisions

On September 30, 1986 the Department published a revision of 7 CFR Part 210 in the **Federal Register** (51 FR 34864) which substantially reorganized the regulations governing the National School Lunch Program. The regulatory provisions of this final rule have therefore been made consistent with the revised organization of 7 CFR Part 210.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 2–12, 60 Stat. 230, as amended; Sec. 10, 80 Stat. 889, as amended; 84 Stat. 270, (42 U.S.C. 1751—1760, 1779), unless otherwise noted.

2. Section 210.18 is amended by:

a. Removing the word "and" from the end of paragraph (f)(6) and adding it to the end of (f)(7); and adding a new paragraph (f)(8).

b. Paragraph (l) is revised and a new paragraph (m) is added.

The amendments and additions read as follows:

§ 210.18 Monitoring responsibilities.

* * * * *

(f) * * *

(8) Beginning March 1, 1989, submit annual reports of the results of such State developed monitoring system reviews to FNSRO on a form designated by FNS.

* * * * *

(l) *AIMS reporting.* Each State agency shall report to FNSRO:

(1) The name of any school food authority which exceeds an error tolerance level on a second AIMS review and the type and extent of the regulatory violations; and

(2) Beginning March 1, 1989, the results of AIMS reviews/audits by March 1, of each school year, on a form designated by FNS. In such annual reports, the State agency shall include the results of all AIMS reviews/audits conducted in the preceding school year and any consequent second AIMS reviews performed in the preceding school year or by December 31 of the current school year.

(m) *AIMS recordkeeping.* Each State agency shall keep records which document the details of all AIMS reviews or audits and demonstrate the degree of compliance with AIMS performance standards. AIMS records shall be kept on file by the State agency for a minimum of 3 years after the date of the exit conference or after the year in which problems have been resolved, whichever is later. When necessary, the records must include a corrective action plan as described in this section. Additionally, the State agency must have on file:

(1) Criteria for selecting schools on first and second reviews, if the selection is not random;

(2) Its system for selecting small school food authorities for second reviews; and;

(3) Documentation demonstrating compliance with the statistical sampling requirements specified in § 210.18(i)

3. Section 210.20 is amended by:

(a) Removing the "and" at the end of paragraph (a)(5);

(b) Redesignating paragraph (a)(6) as paragraph (a)(7) and adding a new paragraph (a)(6); and

(c) Removing the references to § 210.18(l) from § 210.20(b)(7) and (8) and inserting, in their place, the reference § 210.20(m).

New § 210.20(a)(6) reads as follows:

§ 210.20 Reporting and recordkeeping.

(a) * * *

(6) Results of AIMS reviews/audits as required under § 210.18(l); and

* * * * *

Dated: February 17, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87-3881 Filed 2-25-87; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 917, 932, 959, 971, and 979

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order 932 for the 1987 fiscal year, and for Marketing Orders 959, 971 and 979 for the respective 1986-87 fiscal year for each order. Marketing Order 917 expenses are increased for the 1986-87 fiscal year. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1986-July 31, 1987 (§§ 959.227 and 971.226); October 1, 1986-September 30, 1987 (§ 979.209); January 1, 1987-December 31, 1987 (§ 932.221); March 1, 1986-February 28, 1987 (§ 917.244).

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 608 handlers of California pears, plums, and peaches, 7 handlers of California olives, 40 handlers of Texas onions, 4 handlers of Texas lettuce, and 35 handlers of Texas melons who will be subject to regulation under these marketing orders during the course of the respective season for each specified commodity. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural services firms are defined as those whose gross annual receipts are less then $3,500,000. The majority of handlers are believed to be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budgets are formulated and discussed in public meetings, thus all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is a derived figure. It is merely applying a rate per unit of the commodity (e.g. per pound, ton box, carton, etc.), to the estimated production in order to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts and expenses are incurred on a continuous basis, therefore budget and assessment rate approval must be expedited in order that the committee will have funds to pay their expenses.

While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handlers which do not impose significant economic impact on the small entities involved.

Based on the foregoing, the Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public rulemaking procedure with respect to this action and that good cause exists for not postponing the effect date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 917, 932, 959, 971 and 979

Marketing agreements and orders

1. The authority citation for 7 CFR Part 917, 932, 959, 971 and 979 continues to read as follows:

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

2. New §§ 932.221, 959.227, 971.226, 979.209 are added and § 917.244 is amended to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be publishd in the Code of Federal Regulations):

PART 932—OLIVES GROWN IN CALIFORNIA

§ 932.221 Expenses and assessment rate.

Expenses of $1,862,400 by the California Olive Committee are authorized for the fiscal year January 1, 1987 through December 31, 1987. The rate of assessment for that period shall be established as $20.03 per ton. Unexpended funds may be carried over as a reserve.

PART 959—ONIONS GROWN IN SOUTH TEXAS

§ 959.227 Expenses and assessment rate.

Expenses of $283,227 by the South Texas Onion Committee are authorized, and an assessment rate of $0.04 per 50-pound container or equivalent quantity is established for the fiscal period ending July 31, 1987. Unexpended funds may be carried over as a reserve.

PART 971—LETTUCE GROWN IN SOUTH TEXAS

§ 971.226 Expenses and assessment rate.

Expenses of $44,415 by the South Texas Lettuce Committee are authorized for the fiscal period ending July 31, 1987. During this fiscal period, an assessment rate of $0.04 per carton of lettuce is established. Unexpended funds may be carried over as a reserve.

PART 979—MELONS GROWN IN SOUTH TEXAS

§ 979.209 Expenses and assessment rate.

Expenses of $197,696 by the South Texas Melon Committee are authorized, and an assessment rate of $0.02 per carton of melons is established for the fiscal period ending September 30, 1987.

In accordance with the provisions of § 979.42, late payment charges of one and one-half percent per month shall be charged on the unpaid balance for each past due account. An account is past due 30 days after the billing date. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

§ 917.244 [Amended]

Section 917.244 is amended by changing $1,704,964 to $1,799,926.

Dated: February 17, 1987.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 87-3954 Filed 2-25-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Immigration and Naturalization Service relating to alien workers seeking temporary classification under sections 101(a)(15)(H)(i) and section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101. The amendments are intended to clarify and conform Service policy to the intent of Congress as it relates to these classes of nonimmigrants and to facilitate the entry into the United States of certain nonimmigrants needed by international businesses and other organizations.

EFFECTIVE DATE: March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Flora T. Richardson, Sr., Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, NW, Washington, DC 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: On May 21, 1986, at 51 FR 18591 the Immigration and Naturalization Service published a Notice of Proposed Rulemaking, proposing to amend the Service's regulations at 8 CFR 214.2(h) and 214.2(l) to clarify Service policy. Interested parties were invited to submit written comments on the proposed amendments by July 21, 1986. The comment period was extended to July 31, 1986, to give commenters additional time.

Comments on Proposed Regulations

The Service received 49 comments from attorneys, businesses, health organizations, employer/employee groups, entertainment organizations, and several state officials. All of the comments were reviewed and considered in developing this final rulemaking. Many commenters commended the Service on its efforts to resolve important issues in the H-1 and L classifications, to offer detail and guidance, and to simplify procedures, especially as they relate to the blanket petition program. Some of the commenters were critical of various amendments which they believe would not facilitate admission of foreign workers needed by businesses and other organizations. A number of the commenters offered suggestions or improvements, many of which have been adopted in this final rulemaking. Several commenters asked specific questions or made recommendations which will be more appropriately addressed in our Operations Instructions. The discussion that follows groups the comments into major problem areas raised, provides the Service's position on the issues, and indicates the revisions adopted as a final rule, based on the public's concerns.

Definition of Manager and Executive—§ 214.2(l)(1)(ii) (B) and (C)

The Service had proposed to modify the definitions of manager and executive to require that virtually all of the employee's time must be spent in performing managerial or executive duties. This would have required a demonstration that a beneficiary will be, for virtually all of his or her time, directing the management of an organization or a customarily recognized division of an organization. Any other duties performed would have had to be incidental to those as a manager or as an executive. In addition, in order to qualify for L classification, managers would have had to be supervising and controlling the work of supervisory, managerial, or professional employees, and executives would have had to be supervising and controlling the work of others acting in executive or managerial capacities.

Twenty-seven commenters strongly objected to the revised definitions of manager and executive. They viewed the definitions as so restrictive that very few, if any, managers and executives would qualify for L classification because of the requirement that they spend virtually all of their time directing and supervising. They stated that the definitions are unrealistic, discriminatory, and contrary to Congressional intent because, in their view:

- Many managers and executives do not spend virtually all or even a majority of their time directing and supervising, even in a large organization;
- The definitions would discriminate against medium to small businesses which are not structured with supervisory tiers and may lack the required number of employees; and
- The definitions would deter large and small business investment in the United States since managers and executives coming to the United States to open new offices could not qualify under the revised definitions.

Twenty-two of the commenters believed that it is sufficient to require that the alien's substantial or primary responsibilities be managerial or executive in nature. They explained that managers and executives perform countless other corporate duties, such as customer and public relations, lobbying, and negotiating contracts on more than an incidental basis. In addition, managers and executives usually devote considerable time to areas of their individual expertise, such as engineering, marketing, or research. While their managerial functions are significant, they cannot be untangled from the exercise of their professional skills. Some commenters also observed that the definitions exclude from consideration those key managers and executives who manage a function within an organization without necessarily having any personnel duties or extensive staff reporting to them.

To corroborate their views, some commenters cited a 1980 report by a division of the American Management Association (AMA) which, they said, established that on the average, only 47% of a manager's working time is spent on managerial activities; vice presidents spend 49% of their time managing; and presidents allocated 60% of their time to management activities. Some also contended that the Service's proposed definitions of manager and executive are contrary to Department of Labor (DOL) definitions. They believed that if Service regulations are to be workable, they must be consistent with the cooperating agency's definitions. DOL's *Technical Assistance Guide* requires that, to qualify as a manager for the purpose of labor certification under Schedule A, Group IV, the alien must direct the work of other employees, while to qualify as an executive, the alien must customarily and regularly perform executive functions.

The public comments revealed that the proposed revisions to the definition of manager and executive created more concern than any of the other proposed revisions to the L regulations. It was the Service's intention to include in the duties of a manager or executive activities that are normally done by persons in these positions, such as customer and public relations and lobbying and contracting.

However, the Service agrees that a strict and literal reading of these definitions could make a number of legitimate managers and executives not qualify for L classification. An executive or managerial capacity requires a certain level of authority and an appropriate mix of job duties. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. Supervisors who plan, schedule, and supervise the day-to-day work of nonprofessional employees are not employed in an executive or managerial capacity, even though they may be referred to as managers in their particular organization. In addition, individuals who primarily perform the tasks necessary to produce the product(s) or provide the service(s) of an organization are not employed in an executive or managerial capacity.

Eligibility requires that the duties of a position be primarily of an *executive or managerial nature*. The test is basic, to ensure that a person not only has requisite authority, but that a majority of his or her duties relate to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company, such as doing sales work or operating machines, or supervising those that do. This does not mean that the executive or manager cannot regularly apply his or her technical expertise to a particular problem.

The Service does not believe that its concept of managerial and executive capacity conflicts with DOL's *Technical Assistance Guide*. Since DOL requires an alien to be eligible for L classification under the Service's regulations before he or she can qualify for Schedule A, Group IV, the Service's definitions must of necessity provide more detailed guidance than those of DOL.

The Service will also recognize that an executive may manage a function within an organization. It must be clearly demonstrated, however, that the function is not directly performed by the executive. If the function itself is performed by the intended executive, the Service views the position as a staff officer or specialist, not as an executive. In general, classification in a specialized knowledge capacity is more appropriate for individuals who control and perform a function within an organization, but do not have subordinate staff except perhaps a personal staff.

The standards included in the proposed regulations were intended to clarify the Service's interpretation of the statute and current regulations, not to make a change in policy. To correct the misimpressions conveyed by the wording of the proposed definitions, the Service has modified those definitions to require that the employee "primarily," instead of "for virtually all of his or her time," perform managerial or executive duties. The Service has also modified the supervisory requirements and deleted the requirement that other duties performed must be incidental to those of a manager or executive. It has been clarified that the definitions do not include an employee who spends a substantial amount of time performing the tasks necessary to produce the product(s) or to provide the service(s) of the organization.

Ten commenters, nine of which were from the State of Florida, were concerned about the effect of regulation changes on small businesses. They believed that the definitions of manager and executive clearly discriminate against small businesses which are being formed in the thousands in the U.S. by nonresident aliens. They argued that altering the regulations so that small and medium sized companies, as well as start-up operations, are precluded from using L visas was not the intent of Congress. The definitions would, in their view, adversely effect United States policy to actively promote foreign investment and trade in order to strengthen our economy, balance trade, and offset deficits.

The revisions adopted in the final rule should resolve concerns that the definitions will discriminate against small or medium-sized businesses. It is clear that a large organization is not required for the manager or executive to qualify for L classification. The Service supports international business and legitimate foreign investment in the United States. It is Service policy to encourage creation of jobs for United States workers and, with these revisions to regulations for L classification, the Service is attempting to facilitate the movement of international personnel and to clarify and simplify requirements for classification and admission.

If a small or medium-sized business supports a position wherein the duties are primarily executive or managerial, it can qualify under the L category. However, neither the title of a position nor the ownership of a business are, by themselves, indicators of managerial or executive capacity. One commenter stated that every business has at least one manager. This may be true in the general sense; however, section 101(a)(15)(L) does not include every type of manager, such as self-employed persons who perform the management activities involved in practicing their profession or trade. For example, a physician may incorporate his or her practice for business purposes. The physician is not a manager as contemplated under section 101(a)(15)(L), but a person who primarily practices his or her professional skills as a physician.

In administering the Act, the Service must concern itself with abuse or the potential for abuse of any visa category by persons seeking to enter the United States for purposes not intended by Congress. The L classification was not created for self-employed persons to enter the United States to continue self-employment, unless they are otherwise qualified for L classification. The legislative history (House Report 91–851, U.S. Code Cong. and Ad. News 2751–2755 (1970)) of section 101(a)(15)(L) indicates that Congress established that provision to help eliminate problems faced by international companies having offices abroad in transferring key personnel freely within the organization. The legislative history states:

Evidence submitted to the committee established that the number of

temporary admissions under the proposed "L" category will not be large. The class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated and monitored by the Immigration and Naturalization Service. Provision has been made in section 3 of the bill for the filing of a petition with the Attorney General by the employer.

Consideration of the petition will involve verification of the prior employment of the individual for a continuous period of atleast one year abroad by a company affiliated with the parent, subsidiary, or branch located in the United States and verification that the subject of the petition is in a managerial, executive, or specialized knowledge capacity and is the subject of a transfer to the United States. The applicant would not be issued a nonimmigrant visa or admitted to the United States unless he established that he intended to remain in this country temporarily. The committee is convinced that no international company would jeopardize or endanger its future need for a corporate executive rotation by attempting to misuse or abuse such procedure as a vehicle for immigration.

It is clear from the above quotation from the legislative history that self-employed persons who are immigratinq to the United States are not eligible for L classification. Congress has provided several other nonimmigrant classifications which permit such persons (who often characterize themselves as "investors") to come to the United States to oversee their investments, including the B–1 (temporary visitor for business), E (treaty trader or investor), and the H (temporary worker) classifications.

A self-employed person who wishes to immigrate to the U.S. but does not qualify under the categories Congress has set forth will frequently attempt to qualify under the L category by setting up a corporation in the United States, giving himself an executive title (e.g., "president") and continuing his self-employment in the U.S., often with a minimal "investment," with no foreign operations abroad and no intent to return abroad. Such a person, if granted "L" status as an executive or manager can, after one year, qualify for blanket labor certification under DOL's Schedule A, Group IV, and hence for a third or sixth preference classification, even though he could not qualify or would have difficulty qualifying directly for a preference classification. We do not believe that Congress intended the L classification to be used in this manner, and the regulations are intended to control this abuse.

Eight commenters believed that the regulations will deter large and small business investment in the U.S. because foreign companies will be unable to transfer key personnel to start-up operations if the transferees cannot qualify under the managerial or executive definition. They explained that business entities just starting up seldom have a large staff, but a manager is clearly needed to set up the business and hire local employees. In addition, small investors frequently find it necessary to become involved in operational activities. They believed that the rule would require that the new office from the time of its inception begin operations with numerous employees and a multilevel organization. One commenter observed that many new companies require a period longer than one year to reach the "doing business" standard, and believed there should be an opportunity for the director to exercise discretion in allowing a continuation of the petition to give a new company more time to develop its business.

After reviewing the public comments, the Service recognized that the proposed definitions of manager and executive created an anomaly with respect to the opening of new offices in the United States. The Service will correct this in the final regulations by modifying the filing requirement for new offices to provide for L classification of persons who are coming to the United States to open a new office as managers or executives under certain conditions. The beneficiary may be classified as a manager or executive during the one year required to reach the "doing business" standard if it can be expected, after review of relevant factors relating to the new office and the parent organization, that the new office will, within one year, support a managerial or executive position. The factors to be considered include amount of investment, intended personnel structure, product or service to be provided, physical premises, and viability of the foreign operation. It is expected that a manager or executive who is required to open a new business or office may be more actively involved in day-to-day operations during the initial phases of the business, but must also have authority and plans to hire staff and have wide latitude in making decisions about the goals and management of the organization.

The Service believes that one year is sufficient for any legitimate business to reach the "doing business" standard. Because of the wide variety of circumstances, the Service will not at this time further define "doing business"; the director will determine, in his discretion, whether the new office is "doing business" when an extension of the petition is adjudicated. The regulations will be modified to require the filing, after one year, of an extension of the petition with supporting documentation evidencing compliance with the "doing business" standard where the petition involved the opening of a new office.

Definition of Specialized Knowledge—§ 214.2(l)(1)(ii)(D)

The Service had proposed to revise the definition of specialized knowledge to require that the knowledge be unique, narrowly held in the organization, and involve a key process or function which enhances the organization's operation and competitiveness in the market. The Service, in a number of precedent decisions, has discussed the various requirements for specialized knowledge, e.g., (*Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (R.C. 1978); *Matter of Penner*, I.D. 2865 (Com. 1982); *Matter of Colley*, I.D. 2881 (Com. 1981)). The proposed definition incorporated standards for determining specialized knowledge that are set forth in these decisions.

Fifteen commenters objected to the proposed definition of specialized knowledge and preferred to see the current definition retained. They stated that requirements that knowledge be unique and narrowly held in the organization are too rigid and very few personnel would qualify, which is contrary to Congressional intent. Most believed that the present regulatory language is more than adequate to properly restrict use of this category. Several commenters argued that as long as the company can show that the knowledge is proprietary and not readily available in the U.S. workplace, it is not relevant whether the knowledge is widely held by the petitioner's company abroad. Also, even if the knowledge is not unique, it may not be readily available in the U.S. market. One commenter explained the uniqueness of an employee's knowledge does not necessarily provide the company with knowledge that is essential to its ongoing operations.

It was the Service's intention to provide clearer standards for determining specialized knowledge. Although commenters would prefer to retain the definition in current regulations, the Service believes that a revision is appropriate to better

articulate case law. The definition set forth in the summary to the proposed rule will be modified in part. It will not require that the knowledge be unique or narrowly held. As suggested by commenters, the Service has reinstated the standard that knowledge which is not readily available in the United States labor market should be considered in determining specialized knowledge.

Definition of a Qualifying Organization § 214.2(l)(1)(ii)(D)

The Service proposed that a qualifying organization under section 101(a)(15)(L) would be required to do business in the United States and one other country for the duration of the intracompany transferee's stay in the United States.

Several commenters stated that nothing in the statute requires the organization to continue to do business in at least one other country. In addition, they contended that the rule departs significantly from current case law since the requirement contradicts *Matter of Chartier*, 16 I&N Dec. 284 (BIA 1977), and *Matter of Thompson*, ID 2889 (Com., August 1981), and attempts to accomplish what five years ago the Service said only Congress has the power to do. However, one commenter agreed that the petitioner should demonstrate its ongoing international nature and, if the corporation ceases to be eligible, that the employee(s) should be required to return to their country and further, be prohibited from seeking reclassification under other provisions of the Act. Several commenters also questioned whether sole proprietorships and partnerships are considered qualifying organizations.

The Service continues to believe that Congress did not intend the L category to accommodate the complete relocation of foreign businesses to the United States. Throughout the legislative history of section 101(a)(15)(L), Congress refers to "international companies" and provided the means for such companies to temporarily rotate their foreign personnel to the United States.

The Service's position is that the requirement to continue to do business in the U.S. and at least one other country for the duration of the L's stay does not conflict with *Chartier*. That case involved a United States company with an employee stationed abroad. The employee was not employed by a subsidiary or other legal entity of the U.S. employer, but reported directly to the parent company in the United States. The U.S. company was an international corporation with a subsidiary in Belgium. The facts of this case are consistent with L classification, and the Service has not attempted to alter the situation where a U.S. company can have employees abroad unattached to a foreign entity and qualify to transfer such employees to the United States under the L classification. However, the reverse of this situation is not appropriate. A foreign employer must have or be in the process of establishing a legal entity in the United States which will be doing business as an employer in order to transfer an employee under section 101(a)(15)(L). *Matter of Thompson* was an inappropriate application of the holdings of *Chartier*. *Thompson* involved the total transfer of the foreign business to the United States with no foreign operations remaining to which the employee could be transferred at the end of his temporary stay. The Service recognizes this error and corrects it in these regulations. The final regulations will require a qualifying organization to demonstrate its ongoing international nature and the existence of foreign operations to which the employee can reasonably be expected to be transferred at the end of his/her authorized stay in the United States.

The definition of a qualifying organization reflects the Service's interpretation of the type of organization which we believe Congress intended to be included under section 101(a)(15)(L). It does not preclude a proprietorship or partnership as long as the required ownership and control exist. In requiring that the organization continue to do business in the U.S. and abroad, the definition adopted in the final rule will overturn *Matter of Thompson*, which the Service now believes was an inappropriate precedent decision.

These regulations provide for revocation of an L petition if the organization ceases to be eligible under section 101(a)(15)(L). Beneficiaries of such petitions will be required to leave the United States unless the beneficiary obtains other authorization from the Service to work in the United States. The Service cannot deny the beneficiary the opportunity to seek other authorization to work when the petitioner ceases to be eligible.

Definition of Doing Business— § 214.2(l)(1)(ii)(H)

The proposed definition of "doing business" required the regular, systematic, and continuous provision of goods and/or services by a qualifying organization. One commenter was concerned that the definition of doing business would mean that representatives and liaison offices established in the U.S. to promote the business of foreign corporations through research and providing consultation to U.S. customers and trading companies would no longer qualify for L visas if adhered to literally. The commenter requested that liaison or representative offices be either exempted from the definition or stated to be doing business.

The Service recognizes that company representatives and liaison offices provide services in the United States, even if the services are to a company outside the United States. Such services are included in the doing business definition and aliens who perform such services may qualify for L classification, if they are otherwise qualified under section 101(a)(15)(L).

Definitions of Parent, Subsidiary, and Affiliate—§ 214.2(l)(1)(ii) (I), (K), and (L)

The Service proposed definitions of parent, subsidiary, and affiliate to reflect the Service's interpretation and application of these terms under section 101(a)(15)(L).

Seven commenters made specific points or gave recommendations for modifying the Service's interpretation of these terms. They were:

—The Service's concept of the correct corporate relationship for L purposes is narrower than the statutory language requires. An appropriate standard is the existence of a legitimate business interest and economic ties between the two entities.

—In *Johnson-Laird, Inc. v. INS*, 537 F. Supp. (D. Ore. 1981), a U.S. district court held that Congress intended that the legal form of a petitioning company may not be dispositive of whether it qualifies as a legal entity for L purposes. Factors such as the type of organization favored in a foreign country should have no bearing on immigration proceedings. The court held that the term "legal entity" included all bona fide forms of business organization.

—The definition of a parent would exclude a parent corporation owned by another parent corporation. Any corporation which owns several subsidiaries is usually considered a parent, but may itself have an ultimate parent.

—The definition of subsidiary should be revised to indicate that a parent may directly or indirectly own and control an entity that qualifies as a subsidiary. In addition, the word "equity" should be deleted from the description of a 50–50 joint venture since it has no legal significance.

—The definition of affiliate should be amended to include companies that are integrally related through a combination of factors, such as share ownership,

business and economic ties, or common management in lieu of total control.

—The definition of affiliate would disqualify entities when control of the two entities is divided between two or more individuals or other entities.

—The use of contractual joint ventures is increasing in international business transactions. If companies which create joint venture partnerships are denied the use of the L category, an increasingly smaller number of international businesses will benefit from it.

Congress did not define the terms "employer, affiliate, or subsidiary" used in section 101(a)(15)(L). However, since the L category was created, Service policy has been based on the common or general meaning and usage of those terms, which imply "control" by virtue of ownership. The Service's definitions of qualifying business relationships reflect the ownership and control required. The commenters' recommendation that the L category encompass relationships between entities where control is lacking, but there are legitimate business interests and economic ties between the entities, is far too broad and goes beyond congressional intent in enacting the L provision. This could cover virtually any kind of business association between companies. Such relationships could be based on factors, such as ownership of a small amount of stock in another company without control, exchange of products or services, and membership of the directors of one company on another company's board of directors. Adoption of this recommendation would be contrary to Congress' view that transfers would be made within the same international organization.

The Service appreciates the technical improvements to the definitions that were offered by some commenters. The final rule adopts a number of these suggestions:

—The definition of parent has been revised to mean a firm, corporation, or other legal entity which has subsidiaries. This will include recognized subsidiaries that are themselves parents, but are owned and controlled by an ultimate parent.

—The definition of subsidiary has been revised to provide for direct or indirect ownership and control of the entity consistent with the revised definition of parent. The word "equity" has been deleted from the description of a 50–50 joint venture. For a 50–50 joint venture, it is only necessary for the two business entities which form the joint venture to provide evidence of equal ownership of its assets and equal control of the entity. However, the Service cannot construe the definition of subsidiary to include contractual joint ventures because the requisite ownership and control of a legal entity would not be present in such arrangements.

—The definition of affiliate has been revised to mean one of two subsidiaries owned and controlled by the same parent or individual or one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Time Spent in the United States Cannot Count Towards Eligibility for L Classification—§ 214.2(l)(1)(ii)(A)

The Service clarified in the proposed rule that periods spent in the United States in lawful status for a branch of the same employer or a parent, subsidiary, or affiliate thereof are not interruptive of the one year of continuous employment abroad, but such periods do not count towards fulfillment of that requirement.

Four commenters believed that refusal to count any of the time spent in the U.S. towards the one year of employment abroad requirement for L eligibility is unduly harsh. They contended that the Service has to date, recognized a different interpretation which it now seeks to change without justification and cited Operations Instructions at 248.4 and *Matter of Continental Grain*, 14 I&N Dec. 140 (D.D. 1972), as allowing time in the U.S. to count towards the one year abroad. By failing to permit any of the lawful employment in the U.S. to accrue eligibility for the one-year requirement, they believed that start-up operations may be needlessly injured. Also, they believed the proposed change will prove detrimental for recently hired employees who visit the U.S. for training or business visits.

One commenter indicated that the statute makes no reference to the requirement that the one year of continuous employment take place abroad. The commenter suggested that a better rule would be to establish a maximum amount of time during the preceding year that an employee could spend in the U.S. without having the time deducted from his qualifying year, such as six months.

Contrary to the interpretation of commenters, *Matter of Continental Grain* only stands for the proposition that authorized periods of stay in the U.S. on behalf of the foreign employer do not interrupt the one year of continuous employment abroad. That case involved a beneficiary whose actual total period of employment abroad was for a little over one year prior to entering the U.S. as an H–3 trainee. After receiving training in the U.S. for 28 months, the beneficiary returned to the same overseas employer for another seven months prior to filing for L classification.

The Service agrees that this requirement conflicts with OI 248.4. which states that periods spent in the U.S. count toward fulfillment of the one-year requirement. That O.I. provision is an incorrect interpretation and will be revised to conform to these regulations. The Service's position that time spent in the United States does not count towards the one year of employment abroad that is required for L classification has received judicial approval (*Karmali* v. *INS*, 707 F. 2d 408 (9 Cir. 1983)).

The final rule retains the requirement that periods spent in the United States in lawful status for the same employer or a parent, branch, subsidiary, or affiliate thereof, are not interruptive of the one year of continuous employment abroad, but such periods do not count toward fulfillment of that requirement.

Blanket L Petition Procedures—§ 214.2(l)(4) and (5)

The Service proposed to modify the blanket L petition program to make it more useful to businesses. The revisions expanded the criteria which petitioners must meet to file a blanket petition; reduced documentation requirements; provided for indefinite validity of blanket petitions after the initial three-year approval period; expanded the classes of eligible beneficiaries to include specialized knowledge professionals; and delegated to consular officers of the Department of State authority to determine eligibility of individual beneficiaries who are outside the United States seeking L classification under blanket petitions and who require a visa to enter the United States.

Nine corporations and a number of attorneys praised the Service for its efforts to make the blanket petition procedure more available and convenient for businesses. They especially appreciated the inclusion of specialized knowledge professionals under the blanket program and the provision for indefinite validity. Although the commenters welcomed the changes to the blanket program and believed that they would facilitate entry of international personnel, most of the commenters had concerns about specific provisions. The major areas of concern related to the criteria which petitioners must meet to file a blanket petition,

filing of individual petitions, adjudication of eligibility by consular officers, standards for specialized knowledge professionals, and reporting requirements. Individual commenters raised other points which the Service will address separately from these issues.

The Service proposed requirements which a petitioner must meet to file a blanket petition that have the effect of limiting participants in the program to medium to large businesses which provide goods or services for profit. At the same time, the qualifying criteria would increase the number of businesses which can meet the requirements to file a blanket petition.

One nonprofit organization stated that exclusion of large, nonprofit, international organizations from eligibility is arbitrary and unnecessary. The commenter felt that a criterion for eligibility could be to limit blanket L visas to those organizations which meet certain budgetary standards or have certain structural characteristics. Another commenter felt that the first three qualifying criteria for filing a blanket petition are unnecessary in light of the last criterion, and they only serve to disqualify many companies who are beginning to do business in the United States. In addition, that commenter felt that to require the entities to engage in commercial trade or services is too restrictive and would bar organizations engaged in manufacturing, mining, farming, fishing, etc. The commenter believed that the rule should permit any kind of legitimate organization to seek blanket L approval. One commenter also stated that there is no justification for raising the qualifying beneficiary threshold from five to ten.

The Service was intentionally selective in establishing criteria for qualifying to file a blanket petition. This procedure is meant to serve only relatively large, established companies having multi-layered structures and numerous subsidiaries. Such companies would usually have an established program for rotating personnel and, in general, are the types of companies for which the L provision in the statute was created.

Nonprofit organizations were excluded from the blanket petition procedure because the Service has found from operating experience that the relationship between the organizations frequently constitutes a type of relationship which is not qualifying under section 101(a)(15)(L). The Service wishes to retain the ability to look at the relationship in each individual case.

The Service believes that all of the criteria required to file a blanket petition are essential safeguards which the Service needs to limit the blanket procedure to certain types of petitioners, particularly where the Service will, after three years, extend the validity of the petition indefinitely. The Service would be especially reluctant to extend blanket petition privileges to companies which are just beginning to do business in the United States and have no track record of using the L classification. The criteria for filing a blanket petition do not bar any particular industry, as long as the qualifying organizations are providing goods and services for profit.

The reason for raising the qualifying beneficiary threshold from five to ten is that specialized knowledge professionals are now included under blanket petitions as qualifying beneficiaries. International businesses have made representations to the Service that 75% of the foreign nationals transferred to the United States possess specialized knowledge. Under the modified blanket program, petitioners may count specialized knowledge professionals, managers, and executives to meet the qualifying beneficiary threshold.

The Service had proposed to require the petitioner with an approved blanket petition to use the blanket procedure for qualifying beneficiaries. Only if the consular officer denied the beneficiary L classification would the petitioner be able to file an individual petition with the Service for another determination of the beneficiary's eligibility. This would have enabled the Service to more closely monitor the petitioner's use of the L category. It would also have avoided the possibility of conflicting determinations if the petitioner chose to simultaneously use the individual and blanket procedure for the same alien.

Nine commenters recommended that regulations should be changed to state that an individual petition may be filed by the petitioner or any of its related entities if the petitioner is uncertain whether the beneficiary is eligible for L classification under the blanket petition. Some commenters felt that large employers may not be willing to forfeit the right to have the Service make initial determinations in difficult cases because of the time required to obtain a consular determination, in addition to a service determination on an individual petition. One commenter requested that where an individual petition is made necessary by a denial of an L visa by a consular officer, the employee should start with a clean slate, and the regulations should specifically prohibit officers from considering the prior denial.

The Service has considered the commenters' objections to this requirement and decided that the control desired by the Service can be achieved in a less time-consuming manner. The regulations have been modified at § 214.2(l)(4)(iii) to allow the petitioner and other qualifying organizations to file an individual petition in lieu of using the blanket procedure. However, the qualifying organizations may not seek L classification for the same allien under both procedures at the same time. In addition, whenever a petitioner which has blanket L approval files an individual petition to seek L classification for a manager, executive, or specialized knowledge professional, the petitioner will be required to advise the Service that it has blanket L approval and certify that the beneficiary has not and will not apply to a consular officer for L classification under the approved blanket petition.

The commenter's suggestion that Service officers should be prohibited from considering the prior denial by a consular officer when an individual petition is made necessary by that denial cannot be accepted by the Service. Although the Service will make its own objective determination on the individual petition, the reasons for the consular officer's denial are relevant in reviewing the facts of the case. Commenters' concerns that denials by a consular officer will make it very difficult for a subsequently filed individual petition to be approved are unwarranted. The Service uses specific criteria for adjudicating L petitions. If the petitioner and beneficiary meet those criteria, the petition will be approved.

A number of commenters felt that consular offices are generally unschooled in L-1 substantive law and lack the expertise developed over the years by the Service in making fine-line distinctions. Several commenters also opposed having Canadian beneficiaries of blanket petitions seek L classification and obtain visas from consular officers. Some commenters felt that ceding of authority to consular officers to determine L-1 eligibility under blanket petitions has the potential for inconclusive and conflicting determinations. They recommended administrative appeal of consular denials to the Administrative Appeals Unit.

One commenter believed that the requirement for consular determinations is entirely needless in view of the

safeguards that have been imposed on approval of blanket petitions. Considering that only certain kinds of petitioners may qualify for blanket petition approval, the commenter felt that there is every reason to have confidence in the certification of the petitioner without consular determinations. The commenter believes that employer certifications should be accepted similar to certifications issued by approved schools for F–1 students and program sponsors for J–1 participants.

Another commenter stated that the Department of State (DOS) has openly acknowledged its disagreement with the Service over the definition of specialized knowledge which, according to the commenter, DOS construes more liberally. The commenter felt that this leaves employers with a lack of certainty regarding their ability to maintain transferees in the U.S. once they are admitted or to even have them admitted once a visa is issued. Development of a consistent definition which reflects business realities was recommended by the commenter.

The arrangement to have consular officers make determinations of eligibility for beneficiaries seeking L classification under approved blanket petitions was negotiated between the Service and the Department of State. That agency and the Service believe that consular officers have sufficient knowledge to make correct determinations of L eligibility. In addition, the Service has developed detailed Operations Instructions for L visa classification to be used by Service officers and consular officers in making these determinations. As with any new procedure, there may be start-up problems, but the Service intends to maintain a close working relationship with DOS to insure that the blanket program operates efficiently and effectively; that consular officers develop the necessary expertise; and that interpretations of policy, including definitions of the employment capacities under the L category, are consistent for the Service and Department of State.

The Service believes that beneficiaries of blanket petitions who do not require a visa, including Canadian nationals, must have an advance determination of blanket L eligibility by a Service or consular officer in order to avoid inspection problems at a port of entry. From the Service's perspective, the determinations to be made under the revised blanket program are too time-consuming and complex to be made at a port of entry. In view of the objections of commenters and the Service's desire to minimize the administrative changes which the Department of State would have to make to accommodate visa issuance for blanket L beneficiaries who previously did not require a visa, the regulations have been modified to have determinations of eligibility made by Service officers. When the alien is a visa-exempt nonimmigrant seeking L classification under a blanket petition, the Certificate of Eligibility shall be filed with the Service office at which the blanket petition was filed for adjudication.

In accordance with section 104(a) of the Act, decisions of consular officers abroad relating to the granting or refusal of visas are final. They are not appealable to an administrative body in the United States. Even though the Service delegated its authority to determine eligibility of aliens abroad for L classification under blanket petitions to consular officers, the Service cannot assume administrative jurisdiction over decisions made by consular officers. After a denial by a consular officer, the regulations allow the filing of an individual petition. An adverse decision by the Service on the individual petition may be appealed to the Administrative Appeals Unit.

The commenter's statement that consular determinations of eligibility are needless and his recommendation that the petitioner's certification of eligibility should be accepted cannot be considered under the statute. Section 214(c) of the Immigration and Nationality Act states that the question of importing any alien as a nonimmigrant under section 101(a)(15)(H) or (L) in any specific case or cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. In view of this statutory requirement, the Attorney General's authority under the L nonimmigrant category can be delegated only to another government agency. The Service could not allow the petitioning employer to determine eligibility of the alien for L classification.

The commenter's statement that there is disagreement between the Service and Department of State over the definition of specialized knowledge is incorrect. Specialized knowledge is a concept under the L classification which is administered by the Service. The commenter appears to be equating "specialized knowledge" with "essential skills or special knowledge," which are concepts under the E visa classification. The E classification is administered primarily by the Department of State, and requirements for E classification are not necessarily parallel to those for L classification. The Department of State is in agreement with and intends to use the Service's definition of specialized knowledge for L classification.

Several commenters believed that the concept of specialized knowledge professional carries the double burden of the restrictive definition of specialized knowledge and the lack of definition for profession. One commenter felt that blanket petitions should not be limited to specialized knowledge professionals; while most are professionals, there is an occasional need for others, such as technicians. Another commenter requested that the regulations include the definition of "professional" and include the fact that professional status may be acquired through training and experience as well as through acquisition of a formal degree.

This rule includes modifications to the definition of specialized knowledge to resolve the concerns of commenters. The definition of profession and criteria for who qualifies as a professional will be clarified in our revisions to H regulations. The definition and criteria will later be incorporated by reference into these regulations. At this time, the Service will limit eligibility under the blanket procedure to managers, executives, and specialized knowledge professionals. Specialized knowledge is a difficult concept that requires fine-line distinctions to be made between what is specialized and what is general knowledge and expertise in a field. Professionals under the blanket program may also qualify for H–1 classification to work for the petitioning employer. The incorrect classification of an H–1 professional as an L–1 specialized knowledge professional causes the Service less concern than the incorrect classification of a nonprofessional under the L category, when that individual should be subject to H–2 labor certification requirements. For this reason, the Service is unwilling to include nonprofessionals who have specialized knowledge under the blanket petition procedures.

Several businesses and attorneys were concerned about reporting requirements under the blanket program. The Service had proposed to require that the petitioner, at the end of each three-year period following the petition's approval date, provide the Service with a report on the aliens admitted during the preceding three years. The commenters opposed this requirement and explained that

transferees are generally sought by a local office. Often there is not a centralized office with sufficient information to monitor the visa process. They believed that it is unrealistic to expect that many employers will have the ability to comply with the record-keeping requirements. The commenters suggested that the Service use a specially endorsed I-94 to track Blanket L transferees and the petitioner's use of the blanket petition. One commenter believed that employers may opt to seek extensions of the blanket petition at three-year intervals in lieu of extensive record keeping.

The Service has resolved the concerns of commenters by eliminating the requirement for a report on admissions every three years. The Service will require a report on admissions during the three-year initial approval period of a blanket petition as part of the documentation required to accompany a request for indefinite validity. Thereafter, the Service will track the petitioner's use of the blanket petition through centralization of blanket petitions at Regional Service Centers and the retention at Regional Service Centers of copies of certificates of eligibility that have been collected at ports of entry.

The option to seek extensions of blanket petitions every three years in lieu of extensive recordkeeping will not be possible under the blanket procedure. If a petitioner decides not to seek indefinite validity of a blanket petition, eligibility to use the blanket procedure will be revoked until another three years have expired. The regulations will be amended to reflect this requirement. The Service does not intend to grant new approvals of blanket petitions every three years or fail to look at the petitioner's record of transfers made under the blanket procedure.

Commenters were concerned about several other general requirements under the blanket program. One commenter thought the regulations should be amended to allow an alien to be reassigned to any organization listed in the approved petition in the same or a higher position without referral to the Service. If the alien will be demoted, the petitioner would complete a new Certificate of Eligibility and send it to the Service for approval. Another commenter recommended elimination of the provision allowing transfers between entities.

The Service will continue to allow transfers between qualifying organizations if the beneficiary's job duties are basically the same. If the beneficiary will be performing different job duties, it must be determined whether the beneficiary will be employed in a managerial or executive capacity or whether the beneficiary is a specialized knowledge professional. This determination can only be made by the Service or a consular officer.

Another commenter stated that the requirement that blanket petitions include or be amended to include all entities which plan to transfer aliens under the blanket procedure is burdensome to the Service and the petitioner because of the never ending termination and creation of affiliations. The commenter recommended that petitioners with high credibility should be exempted from this requirement.

Although it may be burdensome for employers with approved blanket petitions to amend the petition to include new entities to which they wish to transfer aliens, it is necessary for the Service to determine if the entities are qualifying organizations. This determination is not a responsibility which the Service can delegate to petitioners, regardless of their credibility.

The recommendation of another commenter that the regulations should allow filing of blanket petitions where the petitioner has any recognized office in the United States has been adopted. However, in order to properly administer the blanket L procedure, the Service must deal with a single representative of petitioner. The petitioner's designated office in the United States will serve as the Service's contact point for all information needed to adjudicate and monitor the blanket petition; will file amendments to the blanket petition as necessary; and will account for certificates of eligibility issued by qualifying organizations.

Temporariness—a Five/Six-year Limit on a Temporary Stay and Restriction on Admission—§ 214.2(h)(9)(ii) and § 214.2(l)(12)

The Service had proposed to adopt a generous but specific limit on what is regarded as temporary for the H-1 and L categories. The beneficiary of an H-1 or L petition would be admitted to the United States initially for a period of up to three years. An extension of stay could be authorized for a period not to exceed two years. After five years, an extension of stay not to exceed one year could be granted under extraordinary circumstances after certification to the Administrative Appeals Unit. A new petition for the same alien would not be approved unless the alien departed voluntarily and resided outside the United States for one year.

Commenters did not oppose the five/six-year limit on a temporary stay in general; however, some believed that certain H-1 and L beneficiaries should be exempted from the five/six-year limit and the requirement to reside abroad for one year after a five/six-year stay in the United States. Exemptions were requested for nurses and physical therapists, commuter aliens and businessmen intermittently in the United States, orchestra conductors and other entertainers, university teachers and researchers' and medical residents.

The Service recognizes that there are H-1 and L visa holders who work in the United States intermittently, part-time, or for short or seasonal periods. They do not remain more or less continually in the United States. To accommodate such circumstances, the regulations have been amended to provide exceptions to the five/six-year limit and the requirement that the alien reside abroad for one year after a five/six-year authorized stay in the U.S.

These limitations will not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations will not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. Each period of stay must be based on a new petition or clear and convincing proof that the alien meets one of the requirements for the exception. Clear and convincing proof shall consist of evidence, such as arrival and departure records, copies of tax returns, and records of employment in the United States and abroad. Although these exceptions will not accommodate all of the exemptions requested by commenters, the Service believes that this is a fair and equitable way to administer exceptions to the limitations. The discussion below of the exemptions requested explains the Service's position on each.

Five commenters stated that the five/six-year limit makes sense, but should be enacted with an exemption for registered nurses and physical therapists where the individual hospital certifies a continuing shortage of such workers, and an extension denial would be detrimental to the particular institution. The commenters contended that adoption of this rule will:

—Contribute to the growing shortage of these professionals and result in hospital industry stagnation;

—Cause a major exodus of trained nurses from some hospitals, leaving hospitals unable to obtain timely replacements and endangering their

ability to provide adequate health care to their local community; and
—Cause patient costs to increase because hospitals will be forced to hire nurses and physical therapists from outside pools at hourly rates double the hourly rates of temporary foreign nurses and physical therapists.

One commenter was concerned about hospitals staffed with Filipino nurses, whose country has been on the oversubscribed immigrant visa list. Another suggested a six-month restriction on admission of nurses and physical therapists.

The Service has observed that the shortage of nurses and physical therapists has been a persistent problem over the years due, in part, to low wages and undesirable working conditions. It is increasingly evident that the medical facilities have an indefinite need for nursing services provided by H–1 nurses. Although the H–1 alien may come to the United States to work in a permanent job, the alien must be coming for a temporary period with the intention to return abroad. If the employer intends to use the alien's services indefinitely, it is appropriate to seek a visa classification which allows the alien to immigrate to the United States under the numerical preference system. In most cases, an alien seeking to obtain permanent residence in the United States can do so during the five or six-year period allowed for a temporary stay.

The medical facilities appear to be concerned about the five/six-year limit because nurses from the Philippines may not be able to adjust status within the five/six-year period. We do not believe that Congress intended the nonimmigrant classifications to be used for the purpose of immigrating prematurely or to be used for continuous employment in the United States for indefinite periods of time. In view of this, the Service does not intend to exempt nurses and physical therapists from the five/six-year limit or the requirement to reside abroad for one year, unless they qualify under the exception provided for in these regulations.

The medical facilities and the H–1 nurses and physical therapists are aware that an alien's stay in the United States as a nonimmigrant is for a temporary period. It is necessary for the medical facilities to plan their recruitment and position assignments of foreign nurses and physical therapists with this condition in mind.

Six commenters believed that the five/six-year limit on a temporary stay and the requirement to reside abroad for one year run counter to the common situation of part-time H's and L's who divide their time in varying proportions between the United States and abroad. They explained that the L–1 classification has been used extensively by Canadians who operate on both sides of the border and such should be allowed to continue. The commenters felt that there ought not to be a maximum time limit on the number of extensions granted to H's and L's who spend a minority of their time in the U.S., but need H or L visas to carry out their employment activities.

The Service believes that the exception provided in these regulations will accommodate situations where Ls and H–1s work in the United States for a few months each year, or occasionally come to the United States for short periods to oversee business operations or divide their time between the United States and abroad in varying proportions. Occasional visits to the United States for business purposes may also be appropriate for B–1 classification, except that the alien cannot receive a salary or other remuneration from the U.S. entity.

Regarding aliens who "commute" across U.S. borders and work full-time in the United States on a permanent basis, it is more appropriate for such aliens to seek permanent resident and commuter status. The Service views such an arrangement as permanent employment in the United States, even though the alien resides abroad. The five/six-year limit and requirement to reside abroad would apply if the alien seeks H–1 or L status.

Four commenters stated that the limit on renewal of H–1 visas for symphony conductors and the requirement that the alien remain out of the country for one year would serve no useful purpose and would have an adverse impact on the future and growth of American orchestras. The commenters explained that conductors and performing artists do not engage in work requiring them to be in the United States on a permanent basis. Even though they come to the United States on a repetitive basis, orchestras engage them on a seasonal basis. They requested that the final rule clearly exempt performing artists.

The Service has noted that aliens in the entertainment industry traditionally come to the United States for short or seasonal periods. Such aliens, including orchestra conductors, will qualify for the exception and will not be affected by the limits unless they reside and work in the United States continuously for a five/six-year period.

Four representatives of universities were concerned about the effect of the limitations on foreign faculty and researchers who come to the United States for certain periods of each year—sometimes for a month or one semester, to teach a course or to work on an ongoing research project. The commenters explained that universities have generally submitted H–1 petitions for these individuals on a one-year basis to provide maximum flexibility for the institution and the alien. They believe that shared visiting faculty should be exempted from the five/six-year limit as long as their time is divided between the United States and abroad on a fairly equal basis and their intent remains temporary.

The exception provided by the Service will apply to foreign faculty and researchers who come to the United States for short periods of time each year. If educational institutions choose to file petitions for continuous one-year periods or for the maximum allowable period, they must provide proof that the aliens qualify for an exception.

Three university representatives explained that foreign graduates of American medical schools engage in residency programs, inclusive of specialty and subspecialty training, that span six or seven years. They recommended that medical residents should be able to maintain H–1 status through completion of their residency programs. The Service sees no compelling reason to exempt medical residents from the five/six-year limit for the H–1 classification. Medical residents who are participating in residency programs may also seek a J–1 visa classification. Regarding such J–1 classification, the regulations of the United States Information Agency at 22 CFR 514.23(a)(1)(iv) provide that an alien who is a graduate of a medical school pursuing graduate medical education or training in the United States is limited to the time typically required to complete such program and is limited to a maximum of seven years unless exceptional circumstances are present.

In view of this, medical residents who are in residency programs which exceed the five/six-year limit imposed on H–1 classification may instead seek J–1 classification.

Several commenters had general concerns about the five/six-year limit and requirement to reside abroad. One commenter stated that the requirement that the alien reside outside the U.S. for one year after spending five years in the U.S. creates a new ground of exclusion which can only be prescribed by Congress.

The Service does not agree that a new ground of exclusion has been created by requiring the alien to reside outside the United States for one year after spending five/six years in the United States before a new petition will be approved. Section 214(a) of the Act provides that the admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe. The Service, acting for the Attorney General, is prescribing a condition under which temporary worker petitions for H–1s and Ls will be approved. The rationale behind the requirement is that an alien who seeks to remain in the United States continuously or to reenter in a work-authorized capacity a short time after spending a five/six-year period of time in the United States is viewed by the Service as having a permanent intent to remain in the United States, and thus, should be classified as an immigrant, rather than a nonimmigrant. Because of the unavailability of preference visa numbers, many aliens seek to use the H–1 and L categories principally to enter and remain permanently in the United States while they wait for a preference visa number to become available. The H–1 and L nonimmigrant categories may not be used for this purpose. By residing outside the United States for one year after spending five/six years in the United States, the alien will have demonstrated to the Service that he or she has the temporary intent required for H–1 or L classification.

A commenter stated that it is unclear whether an H or L alien who has spent five/six years in the United States and then leaves can reenter in a different visa category without having to reside outside the United States for one year.

The Service intends that after a five/six-year period of stay, the alien cannot reenter the United States in the H or L visa classifications unless he or she has resided and been physically present outside the United States for one year. Brief trips to the United States for business or pleasure will not be interruptive of, but do not count towards the one-year requirement. The regulations have been modified to make this clear.

Two commenters suggested that Service officers should have discretionary authority to approve extensions for individuals who already have the maximum number of years or are close to it. Another commenter believed that the warning of the five/six-year limit is very short and recommended that a limited grandfather clause be included in the regulations.

The Service's interim policy regarding the five/six-year limit had been in effect since September 23, 1985. The Service believes that petitioners and aliens have had sufficient warning of the five/six-year limit on a temporary stay in the H–1 and L classifications. Therefore, these final regulations do not give directors discretionary authority to approve extensions beyond the five/six-year limit, nor do they include a grandfather clause for aliens who have already been in the United States for five years or longer.

Two commenters noted that the wording of the limitations provision should be changed to authorize five/six years irrespective of the number of petitions filed because some aliens could receive fewer than five years under the proposed wording. The Service agrees with the commenters' recommendation and has modified the regulations to permit a five/six-year period of stay irrespective of the number of petitions filed or changes of employers.

Extension of Stay Procedures for L–1 Beneficiaries—§ 214.2(l)(15)

The Service proposed to eliminate the requirement to file a petition extension to extend the stay of an L beneficiary. The regulations require only the filing of an application for extension of stay by the beneficiary, along with supporting documents. Approval of the alien's extension of stay will cause the Service to automatically extend the petition for the same period.

Although commenters were pleased with this change in procedures, they felt that provision should be made for administrative appeal of a denial of extension of stay.

The Service does not provide appellate review of an alien's application for extension of stay. A decision to grant or deny the application is discretionary. Due process does not require the Service to provide appellate review of the discretionary denial of an application for a benefit conferred on a nonimmigrant. Due process requires only a fair and impartial review of the nonimmigrant's application. The Service provides such a review by the officer who reviews the application. When novel or unusually complex issues are presented, the application receives supervisory-level review.

An alien who believes that his or her application has been arbitrarily or erroneously denied may file a motion to reopen or reconsider the case, request certification, or seek judicial relief. Although the alien's employer cannot file an appeal when the Service takes no action on the petition, the employer is not precluded from filing a new petition in the alien's behalf.

The Service cannot utilize scarce resources for the purposes of handling unnecessary appeals, and believes that the review mechanisms discussed above are adequate to deal with any problems that may arise.

Temporary/Permanent Intent Policy—§ 214.2(h)(12) and § 214.2(l)(16)

The Service proposed to define temporariness in the H–1 and L classification and specify that a petitioner may legitimately have the intent to use the services of an alien lawfully for a temporary period and, in the future, to permanently employ the alien when and if the petitioner could lawfully do so; the alien may also legitimately have the intent to come to the United States temporarily and depart voluntarily at the end of his or her authorized stay unless, within that period, the alien has become a permanent resident of the United States. The temporary admission may not be sought, however, for the principal purpose of immigrating prematurely. The regulations clarified that the burden is on the petitioner/alien to establish the requisite intent.

The proposed regulations further clarified that the approval of a permanent labor certification or the filing of a preference petition for an alien would not by itself be ground to deny an H–1 or L petition or a request to extend an H–1 or L petition during the five/six-year period if the director, in his judgment, determines that certain conditions have been met. In the summary to the proposed rule, the Service explained those conditions and provided examples of factors which the director would consider in determining whether those conditions are met.

Most of the commenters appreciated the interpretation and clarification of temporary/permanent intent. Several commenters requested that the standards listed in the preamble be incorporated into the regulations. However, some were concerned that the regulations require an employer to establish that it is not seeking a temporary classification for the principal purpose of enabling the employee to enter the U.S. permanently in advance of the availability of a visa number. Other commenters contended that temporariness is established by a commitment that the alien will depart at the end of the authorized stay, unless he or she has been granted permanent residence in the meantime, and that it

ought not to matter whether the principal or subordinate purpose in coming to the United States is to eventually acquire permanent residence.

Eight of the commenters were concerned about the criteria for determining temporary intent under dual intent. They believed that the criteria are inaccurate indicators and plainly unnecessary. Most felt that the petitioner's and beneficiary's affirmation to abide by immigration laws should be sufficient. Specific comments regarding the factors to be considered in determining intent were:

- Some of the criteria set forth under dual intent will be difficult, if not impossible to meet. Criteria will require significant amounts of information to satisfy, and much of it will have to come from abroad. The paperwork required will be onerous and the costs to the public and private sectors will be significant.
- The existence of a position abroad to which the employee can be transferred should not be a relevant consideration when an employer with high credibility affirms that it will abide by the terms of the authorized stay. Very few, if any, employers are prepared to designate a position abroad to which they can or will transfer an alien at the end of the temporary stay, although they have every intention of complying with immigration laws. With research or technical positions in high-tech fields, it may well be true that a company has no position abroad to which the employee could be transferred.
- Requirement for availability of a position abroad to which the employee *will* be transferred should be changed to require only the availability of a job overseas to which the employee *could* be transferred subject to the normal considerations used by business in making job assignments.
- Past history of employing aliens on a permanent or temporary basis is of limited value in determining intent in subsequent cases. Intent is specific in each case.
- The fact that an employer may have employed aliens without authorization in the past does not bear on temporary or permanent intent in a subsequent case. A denial of a petition on this factor would become a punishment for improper past activities. Congress has not provided for such punishment.
- If a job offer is an accommodation, then an H or L petition should not be approved regardless of dual intent.

The Service agrees with several commenters that the examples of factors to be considered by the director in determining intent should be incorporated into the regulations for the benefit of the public and Service officers. The final regulations include these factors.

Some commenters would have the Service take the position that the petitioner's and alien's intent do not matter as long as the petitioner and the alien intend that the alien will leave the United States at the end of the alien's authorized stay. In addition, an assertion by the petitioner and alien to that effect should be sufficient without providing documentation to establish intent.

The statute clearly differentiates between immigrants and nonimmigrants. Section 214(b) of the Act states that every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officer, at the time of application for admission, that he is entitled to nonimmigrant status under 101(a)(15). Nonimmigrants must be coming to the United States for a temporary period with the intention to return abroad at the end of their authorized stay. The alien whose primary purpose is to immigrate to the United States must seek a preference classification and wait for a visa number to become available. The nonimmigrant classes are not intended to serve as a vehicle for an alien to enter the United States permanently in advance of the availability of a visa number.

The Service cannot, under the Act, condone the use of the nonimmigrant categories to wait for a visa number to become available. The criteria established by the Service for determining intent are reasonable and appropriate for the H–1 and L visa classification. They do not preclude the petitioner and the alien from providing evidence of other factors which they believe can more appropriately demonstrate their intent. The specific comments regarding the factors are discussed below.

Contrary to the belief of one commenter, none of the factors specified requires extensive documentation. Most require a written explanation from the petitioner and the alien. Others can be determined by the Service from the facts of the petition. Basically, the Service will require explanation of certain factors, rather than extensive documentation by the petitioner and the alien regarding their intent.

For L classification, the Service believes that the existence of operations and an appropriate position abroad to which the alien could be transferred at the end of the authorized stay is the most significant factor the Service can look at to determine intent. Intracompany transferee status envisions a temporary rotation to the United States with the expectation of returning to a position with the petitioner's operation(s) abroad. Where a permanent labor certification had been obtained or a preference petition had been filed for the petitioner and the record indicated that foreign operations had been terminated, the Service could reasonably conclude that the purpose of the nonimmigrant classification is for the alien to enter the United States permanently in advance of the availability of a visa number. The Service would also view the recommended language change "availability of a position abroad to which the employee could be transferred subject to normal considerations used by business in making job assignments" as no real commitment on the petitioner's part to transfer the alien to an assignment abroad.

The Service agrees that intent is specific in each case: however, a petitioner's past history of employing aliens would be somewhat indicative of future actions. For example, if the petitioner transferred 20 Ls to the United States during the past three years, and all became permanent residents based on their employment with the petitioner, there would be reason to believe that the petitioner is using the L category to permanently staff the U.S. operation in advance of the availability of visa numbers.

The extent to which an employer employs aliens without proper authorization bears on the credibility of the employer's assertions as to intent. To approve a petition involving permanent/temporary intent, the Service has to believe that the petitioner will not employ the alien beyond the authorized period of stay, unless the alien has become a permanent resident of the United States. If that employer employs other aliens without authorization, there is reason not to believe the employer's claim that he would not employ the beneficiary of the petition without authorization at the end of the authorized stay.

The Service agrees with one commenter's view that an H or L petition should be denied when the job offer is an accommodation, regardless of permanent/temporary intent. Service officers already deny H and L petitions when the job offer is cearly an accommodation.

Revocation of Petitions § 214.2(l)(9)

Four commenters felt that further explanation should be given regarding the circumstances in which revocation will occur because approval of the petition was improvidently granted. They believed that the term "improvidently granted" is so broad that a director could conceivably give notice of intention to revoke a petition for virtually any reason.

The Service agrees that the term "improvidently granted" could be given a broader interpretation than intended. This provision was intended to correct situations where there was gross error in approval of the petition. For example, after a petition has been approved, it may later be determined that a qualifying relationship did not exist between the United States and the foreign entity which employed the beneficiary abroad. To clearly specify what is intended, the Service has changed that provision to state that the director shall send to the petitioner a notice of intent to revoke the petition if it is found that approval of the petition involved gross error.

Technical Amendments

Other minor technical amendments have been made to provisions in the final rule to make the language technically correct or to further clarify the meaning. For example, the title "district director" has been changed to "director," since Regional Service Center directors have the same authority as district directors with respect to these regulations; petitioners will be allowed 30 days instead of 15 days to submit evidence in rebuttal to an intent to deny or revoke a petition: and further detail required in the petitioner's supporting statement which acompanies a beneficiary's application for extension of stay have been included in these regulations.

Description of Final Rule

This final rule sets forth the procedures whereby benefits under section 101(a)(15)(L) may be granted, denied, extended, revoked, or appealed. The regulations revise certain H–1 requirements, along with the L requirements, to change admission and/or extension time periods for an alien's stay in the United States, to define temporariness, and to clarify Service policy regarding the effect which approval of a labor certification or the filing of a preference petition has on an alien's H–1 or L nonimmigrant status. The H–1 revisions in this final rule will be incorporated at a later date into pending revisions to 8 CFR 214.2(h).

These regulations, for the most part, make clear Service policy regarding classification, admission, and requirements for petitioners and beneficiaries who seek approval of classification under section 101(a)(15)(L). They modify policies and procedures which, in the past, have restricted businesses and other organizations in transferring and maintaining key personnel needed in the United States. They also change some previous policies which had the effect of permitting a number of organizations and alien beneficiaries to qualify under section 101(a)(15)(L) that were not contemplated by Congress when that section was enacted.

This rule defines a number of terms relating to L classification and clarifies the Service's interpretations of these terms. Certain key requirements for L classification are also included in the definitions. For intracompany transferees, periods spent in the United States in lawful status for a branch of the same employer or a parent or an affiliate or subsidiary thereof are not interruptive of the required one year of continuous employment abroad, but do not count towards fulfillment of that requirement. Managers and executives must primarily perform managerial or executive duties; they will not be considered managers or executives if they primarily perform the tasks necessary to produce the product(s) or provide the service(s) of the organization. Special provisions have been established for managers and executives who are coming to the United States to open a new office. A qualifying organization under section 101(a)(15)(L) must, for the duration of the alien's stay in the United States, be doing business in the United States and at least one other country. Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization. Qualifying organizations may be a parent, branch, subsidiary, or an affiliate. Ownership and control of the entity abroad and the entity in the United States are factors for determining if the requisite relationship exists between the organizations.

The blanket petition program allows a petitioner to seek continuing approval of itself, its parent, and its branches, subsidiaries, and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of multiple numbers of aliens employed by itself, its parent, or some of its branches, subsidiaries, and affiliates. The blanket petition will be approved initially for three years and indefinitely thereafter. The approved organizations listed in the blanket petition may transfer managers, executives, and specialized knowledge professionals to the United States.

A petitioner is eligible to file a blanket petition on behalf of itself, its parent, and any number of its branches, subsidiaries, and affiliates as qualifying organizations if:

1. The petitioner, its parent, and those branches, subsidiaries, and affiliates are engaged in commercial trade or services;
2. The petitioner has an office in the United States that has been doing business for one year or more;
3. The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and
4. The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least 25 million dollars; or have a United States workforce of at least 1,000 employees.

Under the blanket petition program, the Service is responsible for determining whether the petitioner and related entities are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of aliens. Consular officers will determine whether the position in which the alien will be employed in the United States is with an organization named in the approval notice and whether the specific job is managerial, executive, or requires a specialized knowledge professional. The consular officer will determine further whether the alien had one immediate prior year of continuous employment abroad with an organization named in the approval notice and whether that employment was in a capacity that was managerial, executive, or required a specialized knowledge professional. All nonimmigrants who require a visa and are seeking admission as beneficiaries of blanket petitions will be required to possess a nonimmigrant visa issued by an American consular officer classifying the alien under section 101(a)(15)(L).

The rule adopts a specific limit on a temporary stay in the H–1 and L classifications. The beneficiary of an H–1 or L petition may be admitted to the United States initially for a period up to three years. An extension of stay may be authorized in increments not to exceed two years. After five years, an extension of stay not to exceed one year may be granted under extraordinary circumstances after certification to the

Administrative Appeals Unit. After a five or six-year period of stay, a new petition for the same alien will not be approved unless the alien departed voluntarily and resided outside the United States for one year. The rule provides exceptions to these limitations in certain circumstances.

The rule clarifies that a petitioner may legitimately have the intent to use the services of an alien lawfully for a temporary period and, in the future, to permanently employ the alien when and if the petitioner may lawfully do so; the alien may also legitimately have the intent to come to the United States temporarily and depart voluntarily at the end of his or her authorized stay unless, within that period, the alien has become a permanent resident of the United States. The temporary admission may not be sought, however, for the principal purpose of immigrating prematurely. The regulations clarify that the burden is on the petitioner/alien to establish the requisite intent.

Since the petitioner and alien may legitimately have a temporary/permanent intent, the approval of a permanent labor certification or the filing of a preference petition for an alien will not by itself be ground to deny an H–1 or L petition or a request to extend an H–1 or L petition during the five/ six-year period, if certain conditions are met. The regulations specify those conditions.

Finally, the rule includes procedural changes which improve the Service's administration of section 101(a)(15)(L), such as the elimination of petition extensions and the inclusion of specific grounds for revocation of L petitions.

The Service believes that these regulations reflect Congressional intent as it relates to the H–1 and L nonimmigrant categories and that the public will benefit from the changes to the extent that they make these categories more useful to businesses and other organizations. They also make clear Service policy regarding classification, admission, the alien's temporary stay in the United States, and requirements for petitioners and beneficiaries who seek approval or classification under these nonimmigrant categories.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Information collection requirements contained in this rule have been reviewed by OMB under the Paperwork Reduction Act and have been approved under control numbers 1115–0127 and 1115–0128.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: Secs. 101 and 214 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1101 and 1184).

2. Section 214.2 would be amended by revising paragraph (h)(6)(i); redesignating paragraph (h)(6)(ii) as (h)(6)(v); adding new paragraphs (h)(6)(ii), (h)(6)(iii), and (h)(6)(iv); revising paragraph (h)(9); redesignating paragraph (h)(11) as (h)(13); redesignating paragraph (h)(10) as (h)(11) and revising; redesignating paragraph (h)(12) as (h)(10) and revising; adding a new paragraph (h)(12); redesignating paragraphs (h)(13) and (h)(14) as paragraphs (h)(14) and (h)(15), respectively; and revising (l).

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(6) *Approval of Petition*—(i) *General.* The director shall consider all the evidence submitted and such other evidence as he or she may require to assist in the adjudication. The director shall notify the petitioner on Form I–171C of the approval of a petition filed on Form I–129B. Form I–171C shall include the name(s) of the beneficiary(ies), their classification, and the petition's period of validity. A petition for more than one beneficiary may be approved in whole or in part. Form I–171C shall cover only those beneficiaries approved for classification under section 101(a)(15)(H).

(ii) *H–1 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the beneficiary's temporary services, but not to exceed three years.

(iii) *H–2 petition.* If a certification by the Secretary of Labor or designated representative is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition will not be valid beyond the date to which the certification is valid. When the certification does not state a validity period, approval of the petition will not exceed one year from the date on which the certification was issued.

(iv) *H–3 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program.

* * * * *

(9) *Admission*—(i) *General.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission shall not exceed the date of validity of the petition.

(ii) *H–1 limitation on admission.* An alien who, as provided in paragraph (h)(10)(ii) of this section, has spent five or six years in the United States under section 101(a)(15)(H)(i) of the Act may not be readmitted to the United States under the H or L visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year. In view of this restriction, a new petition shall not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(H)(i) of the Act, unless the alien has resided and been physically present outside the United States. Brief trips for pleasure or business, for the immediate prior year are not interruptive of the one-year requirement, but do not count towards fulfillment of that requirement. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year. The limitations in this subparagraph shall not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, each period of stay must be based on a new petition, or the petitioner and the alien must provide clear and convincing proof that the alien qualifies for this exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(10) *Extension of visa petition validity*—(i) *General.* A visa petition under section 101(a)(15)(H) of the Act may be extended by filing a new Form

I-129B with the number of the previously approved petition. If there is no change in the previously approved visa petition, supporting documents are not required unless requested by the Service.

(ii) *H-1 petition.* An H-1 petition may be extended in increments of up to two years; however, the total period of approvals, including the initial approval, may not exceed five years, except in extraordinary circumstances. The number of petitions filed is not relevant. An additional extension not to exceed one year may be granted beyond five years under extraordinary circumstances. Extraordinary circumstances shall exist when it is found that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services will be in the national welfare, safety, or security interests of the United States. No further extensions may be granted. If the director decides that approval of the petition extension beyond five years, but not to exceed six years is warranted, the decision shall be certified to the Administrative Appeals Unit.

(iii) *H-2 and H-3 petitions.* A visa petition extension for H-2 and H-3 classification may be authorized in increments of not more than 12 months each under the same terms and conditions that applied to the original approval.

(11) *Extension of stay*—(i) *General.* If maintaining status, the beneficiary may apply for an extension of stay to the validity period of the approved visa petition by submitting Form I-539. An application for an extension of stay on behalf of a group of beneficiaries covered by the same original petition must be filed on Form I-539 by each individual alien, but only one form I-129B for extension of visa petition validity is required. In the case of an extension of stay for an alien ensemble performing as a group, only one Form I-539 is required with an attached list of beneficiaries. A change in the previously authorized employment or training requires the filing of a new petition by the prospective employer or trainer and the filing of an I-539 by the beneficiary. The Forms I-539 and I-129s shall be filed concurrently. There is no appeal from the denial of an alien's request for an extension of stay filed on Form I-539.

(ii) *H-1 extension of stay.* An extension of stay may be authorized in increments of up to two years for a beneficiary of an H-1 petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. The number of extensions requested during the five years and changes in employers are not relevant. An extension of stay not to exceed one year may be granted beyond five years under the extraordinary circumstances required in the paragraph (h)(10)(ii) of this section for extension of an H-1 visa petition. No further extensions may be granted. If the director decides that approval of the one-year extension is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit. No extension shall be granted to exceed the validity of the approved petition.

(iii) *H-2 extension of stay.* For an alien defined in section 101(a)(15)(H)(ii) of the Act, the application for extension of stay must be accompanied by a labor certification or a notice that the certification cannot be made, and the alien shall not be granted an extension which would result in an unbroken stay in the United States for more than three years. An application for an alien athlete or entertainer admitted under section 101(a)(15)(H)(ii) of the Act to perform services in the United States Virgin Islands cannot be approved for extension of stay beyond a total of 45 days.

(iv) *H-3 extension of stay.* An extension may be authorized in increments of not more than 12 months each under the same terms and conditions that apply to admission.

(12) *Effect of approval of a permanent labor certification or filing of a preference petition on H-1 classification*—(i) *Petitioner*—(A) *Conditions.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself ground to deny an H-1 petition or a request to extend an H-1 petition if the director, in his or her judgment, determines that certain conditions are met:

(*1*) The dates of employment must be within the time limit for which an H-1 petition may be authorized or extended; and

(*2*) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number.

(B) *Evidence.* In deciding whether or not the foregoing conditions have been met, the director will consider evidence provided by petitioner of factors such as, but not limited to the following, as appropriate:

(*1*) Petitioner's prior history of use of aliens in temporary and permanent capacities and extent to which petitioner has employed aliens without lawful authorization, and

(*2*) Whether the employment appears to be an accommodation rather than a bona fide employer/employee relationship.

(ii) *Beneficiary*—(A) *Conditions.* The approval of a labor certification or the filing of a preference petition is not by itself a ground to deny an alien's application for admission, change of status, or extension of stay if the director, in his or her judgment, determines that certain conditions are met:

(*1*) The alien must demonstrate that he/she has not abandoned residence abroad; and

(*2*) The alien must establish that he or she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization, unless he or she has become a permanent resident of the United States in the meantime.

(B) *Evidence.* In determining whether the alien meets these conditions, the director shall consider evidence, which the alien shall provide, of appropriate factors such as, but not limited to, the following:

(*1*) Evidence of a residence abroad, such as home, bank accounts, or prospects of a job abroad at the end of the authorized stay;

(*2*) Close family ties abroad;

(*3*) History of previous stays in the United States and visa classifications; evidence that the alien has not entered or remained in the United States in violation of status or U.S. immigration laws; and

(*4*) Alien's employment history within and outside the United States.

* * * * *

(l) *Intracompany transferees*—(1) *Admission of intracompany transferees*—(i) *General.* Under section 101(a)(15)(L) of the Act, an alien employee of a qualifying organization may be admitted temporarily to the United States to continue employment with a branch of his/her same employer or a parent, affiliate, or subsidiary of that employer in a managerial, executive, or specialized knowledge capacity. An alien transferred to the United States under this nonimmigrant classification is referred to as an intracompany transferee, and the organization which seeks the classification of an alien as an intracompany transferee is referred to as the petitioner. The Service has responsibility for determining whether the alien is eligible for admission and whether the petitioner is a qualifying organization. These regulations set forth

the procedures whereby these benefits may be applied for and granted, denied, extended, or revoked. They also set forth procedures for appeal of adverse decisions and admission of intracompany transferees. Certain petitioners seeking the classification of aliens as intracompany transferees may file blanket petitions with the Service. Under the blanket petition process, the Service is responsible for determining whether the petitioner and its parent, branches, subsidiaries, and affiliates specified are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of the alien.

(ii) *Definitions.*

(A) "Intracompany transferee" means an alien who, immediately preceding the time of his/her application for admission into the United States, has been employed abroad continuously for the immediate prior year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to continue to render his/her services to a branch of the same employer or a parent, subsidiary, or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, subsidiary, or affiliate thereof shall not be interruptive of the one year of continuous employment abroad, but such periods shall not be counted toward fulfillment of that requirement.

(B) "Managerial capacity" means an assignment within an organization in which the employee primarily directs the organization or a department or subdivision of the organization, supervises and controls the work of other supervisory, professional, or managerial employees, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), and exercises discretionary authority over day-to-day operations. The term manager does not include a first-line supervisor, unless the employees supervised are professional, nor does it include an employee who primarily performs the tasks necessary to produce the product and/or to provide the service(s) of the organization. See paragraph (1)(3)(v) of this section for application of this definition to aliens who are coming to the United States to open a new office.

(C) "Executive capacity" means an assignment within an organization in which the employee primarily directs the management of an organization or a major component or function of that organization, establishes the goals and policies of the organization, component or function, exercises wide latitude in discretionary decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. This definition does not include an employee who primarily performs the tasks necessary to produce the product and/or to provide the service(s) of the organization. See paragraph (1)(3)(v) of this section for application of this definition to aliens who are coming to the United States to open a new office.

(D) "Specialized knowledge" means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the organization's product, service, research, equipment, techniques, management, or other interests of the employer are not readily available in the United States labor market. This definition does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

(E) "Specialized knowledge professional" means an individual who has specialized knowledge as defined in paragraph (l)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

(F) "New office" means an office that has been doing business for less than one year.

(G) "Qualifying organization" means a United States or foreign firm, corporation, or other legal entity which, for the duration of the alien's stay in the United States as an intracompany transferee, directly or through a parent, branch, affiliate, or subsidiary is or will be doing business as an employer in the United States and in at least one other country and which otherwise meets the requirements of section 101(a)(15)(L). A qualifying organization is not required to engage in international trade.

(H) "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization which has employees and does not include the mere presence of an agent or office of the qualifying organization in the United States or abroad.

(I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.

(J) "Branch" means an operating division or office of the same organization housed in a different location.

(K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, 50% of a 50–50 joint venture and has equal control and veto power; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) "Affiliate" means one of two subsidiaries both of which are owned and controlled by the same parent or individual or one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

(M) "Director" means a district director or Regional Service Center director with delegated authority at 8 CFR 103.1.

(2) *Filing of petitions*—(i) Except as provided in paragraph (l)(2)(ii) of this section, a petitioner seeking to classify an alien as an intracompany transferee shall file a petition in duplicate on Form I–129L with the director having jurisdiction over the area where the alien will be employed. The petitioner shall advise the Service whether it has filed a petition for the same beneficiary with another office and certify that it will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in this petition have changed. Failure to make a full disclosure of previous petitions filed will result in denial of this petition.

(ii) A United States petitioner which meets the requirements of paragraph (l)(4) of this section and seeks continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of multiple numbers of aliens employed by itself, its parent, or those branches, subsidiaries, or affiliates may file a blanket petition on Form I–129L with the director having jurisdiction over the area where the petitioner is located. The blanket petition shall be adjudicated and maintained at the appropriate Regional Service Center. Approved blanket petition files shall be maintained indefinitely by that Regional Service Center. The petitioner shall be the single representative for the qualifying organizations with which the Service will deal regarding the blanket petition.

(3) *Evidence for individual petitions.* An individual petition filed on Form I–129L shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying

organizations as defined in paragraph (l)(4)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization immediately preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

(v) If the petition indicates that the beneficiary is coming to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary's prior year abroad was in an executive or managerial capacity and the proposed employment involves executive or managerial authority over the new operation;

(C) The intended United States operation, within one year of approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(ii) (A) or (B) of this section, supported by information regarding:

(*1*) The proposed number of employees and the types of positions they will hold;

(*2*) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(*3*) The size and staffing levels of the foreign entity.

(vi) If the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

(vii) Such other evidence as the director, in his or her discretion, may deem necessary.

(4) *Blanket petitions*—(i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as qualifying organizations if:

(A) The petitioner and each of those entities are engaged in commercial trade or services;

(B) The petitioner has an office in the United States that has been doing business for one year or more;

(C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and

(D) The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or have a United States work force of at least 1,000 employees.

(ii) Managers, executives, and specialized knowledge professionals employed by firms, corporations, or other entities which have been found to be qualifying organizations pursuant to an approved blanket petition may be classified as intracompany transferees and admitted to the United States as provided in paragraphs (l) (5) and (11) of this section.

(iii) When applying for a blanket petition, the petitioner shall include in the blanket petition all of its branches, subsidiaries, and affiliates which plan to seek to transfer aliens to the United States under the blanket petition. An individual petition may be filed by the petitioner or organizations in lieu of using the blanket petition procedure. However, the petitioner and other qualifying organizations may not seek L classification for the same alien under both procedures, unless a consular officer first denies eligibility. Whenever a petitioner which has blanket L approval files an individual petition to seek L classification for a manager, executive, or specialized knowledge professional, the petitioner shall advise the Service that it has blanket L approval and certify that the beneficiary has not and will not apply to a consular officer for L classification under the approved blanket petition.

(iv) *Evidence.* A blanket petition filed on Form I–129L shall be accompanied by:

(A) Evidence that the petitioner meets the requirements of paragraph (l)(4)(i) of this section.

(B) Evidence that all entities for which approval is sought are qualifying organizations as defined in subparagraph (l)(1)(ii)(G) of this section.

(C) Such other evidence as the director, in his or her discretion, deems necessary in a particular case.

(5) *Certification and admission procedures for beneficiaries under blanket petition.*

(i) *Jurisdiction.* United States consular officers shall have authority to determine eligibility of individual beneficiaries outside the United States seeking L classification under blanket petitions, except for visa-exempt nonimmigrants. An application for a visa-exempt nonimmigrant seeking L classification under a blanket petition or by an alien in the United States applying for change of status to L classification under a blanket petition shall be filed with the Service office at which the blanket petition was filed.

(ii) *Procedures*—(A) When one qualifying organization listed in an approved blanket petition wishes to transfer an alien outside the United States to a qualifying organization in the United States and the alien requires a visa to enter the United States, that organization shall complete Form I–129S, Certificate of Eligibility for Intracompany Transferee under a Blanket Petition, in an original and three copies. The qualifying organization shall retain one copy for its records and send the original and two copies to the alien. A copy of the approved Form I–171C must be attached to the original and each copy of Form I–129S.

(B) After receipt of Form I–171C and Form I–129S, a qualified employee who is being transferred to the United States may use these documents to apply for visa issuance with the consular officer within six months of the date on Form I–129S.

(C) When the alien is a visa-exempt nonimmigrant seeking L classification under a blanket petition or when the alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I–129S, a copy of the approved Form I–171C, and, as appropriate, Form I–506 (Application for Change of Nonimmigrant Status) completed by the alien beneficiary to the Service office with which the blanket petition was filed.

(D) The consular or Service officer shall determine whether the position in which the alien will be employed in the United States is with an organization named in the approved petition and whether the specific job is for a manager, executive, or specialized knowledge professional. The consular or Service officer shall determine further whether the alien's immediate prior year of continuous employment abroad was with an organization named in the

petition and was in a position as manager, executive, or specialized knowledge professional.

(E) Consular officers may grant "L" classification only in clearly approvable applications. If the consular officer determines that the alien is eligible for L classification, the consular officer may issue a nonimmigrant visa, noting the visa classification "Blanket L-1" for the principal alien and "Blanket L-2" for any accompanying or following to join spouse and children. The consular officer shall also endorse all copies of the alien's Form I-129S with the blanket L-1 visa classification and return the original and one copy to the alien. When the alien is inspected for entry into the United States, both copies of the Form I-129S shall be stamped to show a validity period not to exceed three years and the second copy collected and sent to the appropriate Regional Service Center for control purposes. Service officers who determine eligibility of aliens for L-1 classification under blanket petitions shall endorse both copies of Form I-129S with the blanket L-1 classification and the validity period not to exceed three years and retain the second copy for Service records.

(F) If the consular officer determines that the alien is ineligible for L classification under a blanket petition, the consular officer's decision shall be final. The consular officer shall record the reasons for the denial on Form I-129S, retain one copy, return the original of I-129S to the Service office which approved the blanket petition, and provide a copy to the alien. In such a case, an individual petition may be filed for the alien with the director having jurisdiction over the area of intended employment; the petition shall state the reason the alien was denied L classification and specify the consular office which made the determination and the date of the determination.

(G) An alien admitted under an approved blanket petition may be reassigned to any organization listed in the approved petition without referral to the Service during his/her authorized stay if the alien will be performing virtually the same job duties. If the alien will be performing different job duties, the petitioner shall complete a new Certificate of Eligibility and send it for approval to the director who approved the blanket petition.

(6) *Certification of documents.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(1) of this part may be accepted, without the original, if the copy bears a certification by an attorney or a voluntary agency in accordance with § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(7) *Approval of petition*—(i) *General.* The director shall notify the petitioner on Form I-171C of the approval of an individual or a blanket petition filed on Form I-129L. Only the Director of a Regional Service Center may approve blanket petitions. The original Form I-171C received from the Service with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in paragraph (l)(13) of this section.

(A) *Individual petition*—(*1*) Form I-171C shall include the beneficiary's name and classification and the petition's period of validity.

(*2*) An individual petition approved under this paragraph shall be valid for the period of established need for the beneficiary's services, not to exceed three years, except where the beneficiary is coming to the United States to open or to be employed in a new office.

(*3*) If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year, after which the petitioner shall demonstrate as required by paragraph (l)(14)(ii) of this section that it is doing business as defined in paragraph (l)(1)(ii)(H) of this section to extend the validity of the petition.

(B) *Blanket petition*—(*1*) Form I-171C shall identify the approved organizations included in the petition and the petition's period of validity.

(*2*) A blanket petition approved under this paragraph shall be valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with these regulations.

(*3*) A blanket petition may be approved in whole or in part and shall cover only qualifying organizations.

(C) *Amendments.* The petitioner shall file an amended petition with the Service office where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations, and any information which would affect the beneficiary's employment under section 101(a)(15)(L) of the Act.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to the same nonimmigrant classification and length of stay as the beneficiary, if the beneficiary will be employed and residing primarily in the United States and if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she is otherwise authorized to be employed pursuant to the Act.

(8) *Denial of petition*—(i) *Notice of intent to deny.* When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Individual petition.* If an individual petition is denied, the petitioner shall be notified on Form I-292 of the denial, the reasons for the denial, and the right to appeal the denial.

(iii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified on Form I-292 of the decision, the reasons for the denial, and the right to appeal the denial. When the petition is denied in part, the Service office issuing the denial shall forward to the petitioner, along with the denial, a Form I-171C listing those organizations which were found to qualify. If the decision is reversed on appeal, a new Form I-171C shall be sent to the petitioner to reflect the changes made as a result of the appeal.

(9) *Revocation of approval of individual and blanket petitions*—(i) *General.* The petitioner shall notify the Service of any changes in the relationship between approved entities and any changes in the employment of a beneficiary which would affect eligibility under section 101(a)(15)(L) and these regulations within ten days of the change.

(ii) *Automatic revocation.* The approval of any individual or blanket petition is automatically revoked if the petitioner withdraws the petition or the petitioner fails to request indefinite validity of a blanket petition.

(iii) *Revocation on notice*—(A) The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:

(*1*) One or more entities are no longer qualifying organizations;

(*2*) The alien is no longer eligible under section 101(a)(15)(L) of the Act;

(*3*) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;

(*4*) The statement of facts contained in the petition was not true and correct; or

(*5*) Approval of the petition involved gross error; or

(6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

(B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If a blanket petition is revoked in part, the remainder of the petition shall remain approved, and a revised Form I-171C shall be sent to the petitioner with the revocation notice.

(iv) *Status of beneficiaries.* If an individual petition is revoked, the beneficiary shall be required to leave the United States, unless the beneficiary has obtained other work authorization from the Service. If a blanket petition is revoked and the petitioner and beneficiaries already in the United States are otherwise eligible for L classification, the director shall extend the blanket petition for a period necessary to support the stay of those blanket L beneficiaries. The approval notice, Form I-171C, shall include only the names of qualifying organizations and covered beneficiaries. No new beneficiaries may be classified or admitted under this limited extension.

(10) *Appeal of denial or revocation of individual or blanket petition*—(i) A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) A petition that has been revoked on notice in whole or in part may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(11) *Admission.* A beneficiary may apply for admission to the United States only while the individual or blanket petition is valid. The beneficiary of an individual petition shall not be admitted for a date past the validity period of the petition. The beneficiary of a blanket petition may be admitted for three years even though the initial validity period of the blanket petition may expire before the end of the three-year period. If the blanket petition will expire while the alien is in the United States, the burden is on the petitioner to file for indefinite validity of the blanket petition or to file an individual petition in the alien's behalf to support the alien's status in the United States. The admission period for any alien under section 101(a)(15)(L) shall not exceed three years unless an extension of stay is granted pursuant to paragraph (l)(15) of this section.

(12) *L-1 limitation on admission*—(i) *Limits.* An alien who has spent five or, in some cases, six years in the United States under section 101(a)(15)(L) may not be readmitted to the United States under the H or L visa classification unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the one year abroad, but do not count towards fulfillment of that requirement. In view of this restriction, a new individual petition may not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(L) unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year. A consular or Service officer may not grant L classification under a blanket petition to an alien who has spent five or six years in the United States unless the alien has met the limitations of this subparagraph.

(ii) *Exception.* The limitations of paragraph (l)(12)(i) of this section shall not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations will not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, each period of stay must be based on a new petition, or the petitioner and the alien must provide clear and convincing proof that the alien qualifies for this exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(13) *Beneficiary's use of Form I-171C and Form I-129S*—(i) *Beneficiary of an individual petition.* The beneficiary of an individual petition who does not require a nonimmigrant visa may present a copy of Form I-171C at a port of entry to facilitate entry into the United States. The copy of Form I-171C shall be retained by the beneficiary and presented during the validity of the petition (provided that the beneficiary is entering or reentering the United States) for entry and reentry to resume the same employment with the same petitioner (within the validity period of the petition) and to apply for an extension of stay. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use an original Form I-171C to apply for a new or revalidated visa during the validity period of the petition and to apply for an extension of stay.

(ii) *Beneficiary of a blanket petition.* Each alien seeking L classification and admission under a blanket petition shall present a copy of Form I-171C and a Form I-129S from the petitioner which identifies the position and organization from which the employee is transferring, the new organization and position to which the employee is destined, a description of the employee's actual duties for both the new and former positions, and the positions, dates, and locations of previous L stays in the United States. A current copy of Form I-171C and Form I-129S should be retained by the beneficiary and used for leaving and reentering the United States to resume employment with a qualifying organization during his/her authorized period of stay, for applying for a new or revalidated visa, and for applying for readmission at a port of entry. The alien may be readmitted even though reassigned to a different organization named on the Form I-171C than the one shown on Form I-129S if the job duties are virtually the same.

(14) *Extension of visa petition validity*—(i) *Individual petition.* An individual petition under section 101(a)(15)(L), except those involving new offices, shall be automatically extended without the filing of Form I-129L, if the director extends the stay of the alien beneficiary in accordance with paragraph (l)(15) of this section. A new Form I-171C shall be issued to the petitioner at the same time that the beneficiary is notified that his or her extension of stay application has been approved. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. If the alien's extension of stay application is denied, lack of action on the petition may not be appealed. The filing of a new petition is not precluded.

(ii) *New offices.* A visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129L, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees; and

(E) Evidence of the financial status of the United States operation.

(iii) *Blanket petitions*—(A) *Extension procedure.* A blanket petition may only be extended indefinitely by filing a new Form I–129L with a copy of the previous approval notice and a report of admissions during the preceding three years. The report of admissions shall include a list of the aliens admitted under the blanket petition during the preceding three years, including positions held during that period, the employing entity, and the dates of initial admission and final departure of each alien. The petitioner shall state whether it still meets the criteria for filing a blanket petition and shall document any changes in approved relationships and additional qualifying organizations.

(B) *Other conditions.* If the petitioner in an approved blanket petition fails to request indefinite validity or if indefinite validity is denied, the petitioner and its other qualifying organizations shall seek L classification by filing individual petitions until another three years have expired; after which the petitioner may seek approval of a new blanket petition.

(15) *Extension of stay*—(i) *General.* An extension of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years except that extension of stay not to exceed one year may be granted beyond five years in extraordinary circumstances. The number of petitions filed and changes in employers are not relevant. Extraordinary circumstances shall exist when it is found that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services will be in the national welfare, safety, and security interests of the United States. No further extensions may be granted. If the director decides that approval of an extension beyond five years is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit. The spouse and minor children of an L–1 beneficiary may be included in the extension application and given extensions of stay to the same date as the beneficiary.

(ii) *Beneficiary of individual petition.* A beneficiary of an individual petition may apply for an extension of stay by submitting Form I–539, a copy of the original I–171C, and a letter from the petitioner which describes the beneficiary's current duties, hours of work and salary, specifies the new dates of employment requested, indicates whether and how the terms and conditions of the original petition have changed, specifies the current relationship between the petitioner and the qualifying organization abroad, and gives the reasons for the extension.

(iii) *Beneficiary of blanket petition.* A beneficiary of a blanket petition may apply for an extension of stay by submitting Form I–539, his or her copy of Form I–171C and I–129S, and a letter from the petitioner which describes the beneficiary's current duties, hours of work and salary, indicates whether and how the terms and conditions of the original Certificate of Eligibility have changed, and specifies the new dates of employment requested.

(iv) A new Form I–171C and a revalidated Form I–129S, as appropriate, shall be sent to the applicant if the extension is approved. Form I–541 shall be sent if the extension is denied. There is no appeal from the denial of an extension of stay.

(16) *Effect of approval of a permanent labor certification or filing of a preference petition on L–1 classification*—(i) *Petitioner*—(A) *Conditions.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself ground to deny an L petition or a request to extend an L petition if the director, in his or her judgment, determines that certain conditions are met:

(*1*) The dates of temporary employment must be within the time limit for which a petition may be authorized or extended;

(*2*) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number; and

(*3*) The petitioner must establish that it will transfer the beneficiary to an assignment abroad upon completion of the approved temporary employment unless the alien has been accorded permanent resident status or other authorization to work.

(B) *Evidence.* In order to establish the above conditions, the petitioner shall provide evidence of factors, such as:

(*1*) Petitioner's prior history of use of aliens in temporary and permanent capacities and extent to which petitioner has employed aliens without lawful authorization;

(*2*) Whether the employment appears to be an accommodation rather than a bona fide employer/employee relationship;

(*3*) Whether the organization has an established program for rotation of international personnel;

(*4*) Whether the employer or a subsidiary, parent, or affiliate has operations and an appropriate position abroad to which the alien could be transferred at the end of his/her authorized stay; and

(*5*) When the employee is a major stockholder or the sole proprietor of the petitioner, whether the petitioner has a record of international entrepreneurship.

(ii) *Beneficiary*—(A) *Conditions.* The approval of a labor certification or the filing of a preference petition is not by itself ground to deny an alien's application for admission, change of status, or extension of stay if the director, in his or her judgment, determines that certain conditions are met:

(*1*) The alien has demonstrated that he or she intends to enter and remain in the United States only in accordance with any authorized stay; and

(*2*) The alien has demonstrated that he or she intends to return abroad voluntarily at or before termination of that authorization, unless he or she has been awarded permanent resident status or other authorization to work in the meantime.

(B) *Evidence.* In order to establish that the above conditions are met, the alien shall provide evidence of factors, such as:

(*1*) History of previous stays in the United States and visa classifications and evidence that the alien has not entered or remained in the United States in violation of status or U.S. immigration laws;

(*2*) Alien's employment history within and outside the United States;

(*3*) Whether the employment appears to be an accommodation; and

(*4*) Whether the alien could reasonably be expected to continue his or her career outside the United States upon completion of his or her temporary employment.

* * * * *

Dated: February 10, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87–3769 Filed 2–25–87; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 302

[Docket No. 70115-7015]

Foreign Excess Property Regulations; Removal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is removing 15 CFR Part 302 from the Code of Federal Regulations. The Department is taking this action because Congress has further amended the Federal Property and Administrative Services Act of 1949, as amended, (63 Stat. 398, 399; 40 U.S.C. 512, 514(b) and 472; "the Act") by striking out in section 402(a)(1) "; but in no event shall any property be sold without a condition forbidding its importation into the United States, unless the Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods) or the Secretary of Commerce (in the case of any other property) determines that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of this country." Accordingly, the Department of Commerce no longer has the responsibility for making determinations on the importation of foreign excess property.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, Statutory Import Programs Staff, Room 1523, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, telephone no. (202) 377-1660.

SUPPLEMENTARY INFORMATION: Section 402 of the Act required the Department of Commerce to authorize the importation of foreign excess property (FEP) on the basis of an affirmative finding either that there was a shortage of the property or that the importation would be beneficial to the economy of the United States. FEP is any property under control of any Federal agency which is not required for its needs and the discharge of its responsibilities, found to be excess, and then disposed of outside the States of the Union, the District of Columbia, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. The idea behind section 402 was that the domestic peacetime economy should not be disrupted by surplus military equipment brought back to the U.S. section 3 of Pub. L. 99-627 (November 7, 1986) made the elimination of the Department's responsibilities in this area effective immediately. Therefore, removal of this rule is effective immediately. Notice and opportunity to comment are deemed impractical, unnecessary, and contrary to the public interest.

This action will not have a significant economic impact on a substantial number of small entities.

This action eliminates an information collection subject to the Paperwork Reduction Act (OMB control no. 0625-0026).

List of Subjects in 15 CFR Part 302

Customs duties and inspection, Surplus government property, Administrative practice and procedure, Penalties.

PART 302—[REMOVED AND RESERVED]

For reasons set forth above, Part 302 is removed and reserved.

Dated: February 18, 1987.

Joseph A. Spetrini,

Deputy to the Deputy, Assistant Secretary for Import Administration.

[FR Doc. 87-3906 Filed 2-25-87; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket Nos. RM86-12-001 through RM86-12-003; Order No. 461-A]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued: February 19, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying requests for rehearing of its final rule determining the basis for the benchmark rates of return for electric utilities for rate schedule filings made on or after February 1, 1987, in accordance with the new Part 37 of its regulations. As indicated in § 37.8 of the Commission's regulation, these benchmark rates of return remain advisory only.

EFFECTIVE DATE: The Order Denying Requests for Rehearing is effective February 19, 1987.

FOR FURTHER INFORMATION CONTACT:

Technical:
Marvin Rosenberg,
Ronald Rattey,
Office of Regulatory Analysis,
Federal Energy Regulatory Commission,
825 North Capitol Street, NE.,
Washington, DC 20426,
(202) 357-8283.

Legal:
L. Jorn Dakin,
Lori J. Tsang,
Office of the General Counsel,
Federal Energy Regulatory Commission,
825 North Capital Street, NE.,
Washington, DC 20426,
(202) 357-8472.

SUPPLEMENTARY INFORMATION:

Order Denying Requests for Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying three requests for rehearing of Order No. 461.[1] That order determined: (1) The average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1986 ("base year") and (2) a quarterly indexing procedure to update the cost estimate and establish benchmark rates of return on common equity for use in individual rate cases.[1] Order No. 461 was the third annual proceeding for evaluating the rate of return issue on a generic basis. The benchmark rates of return remain advisory for the year ending January 31, 1988.

II. Background

In Order No. 389,[2] the Commission added a new Part 37 to its regulations to implement a generic approach to rate of return on common equity determinations. The Commission's intent has been to produce more accurate and consistent rate of return decisions, to involve the Commission on an ongoing basis in the consideration of the financial and operating circumstances of the industry, and to reduce the resources directed to this issue by applicants, intervenors, and the Commission.[3]

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[1] Order No. 461, 52 FR 11 (1987).

[2] Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29946 (1984).

[3] *See* Order No. 420, 50 FR 21802, 21803 (1985).

In the first two annual proceedings implementing Part 37 of the Commission's regulations, the Commission estimated the rate of return on common equity by relying on a discounted cash flow ("DCF") model.[4] In Order No. 461, the Commission again adopted a DCF model, finding "compelling economic justification for relying on the market cost of capital as the standard for rate of return decisions." [5]

The growth rate used in the DCF model is based, in part, on a fundamental analysis.[6] A fundamental analysis separately evaluates the underlying components of dividend growth: retained earnings and new stock sales. Growth from retained earnings is a function of the expected rate of return on common equity and the expected retention rate. Retained earnings account for most of the dividend growth rate. Growth from new stock sales is the second element of dividend growth.

In determining current dividend yields for use in the DCF model, the Commission continued its policy of using the median dividend yields of a 100 company sample.

The DCF model is relied upon as a basis for two components of the generic rate of return proceeding. First, it is used as the basis for estimating the average cost of common equity for the jurisdictional operations of public utilities.[7] Second, it is the basis for the indexing procedure [8] which yields the benchmark rates of return.

In Order No. 461, the Commission again determined that a quarterly indexing procedure should be adopted and that the index should be the average of the median dividend yields for the two most recent calendar quarters for the company sample. For the first two years in which the Commission implemented Part 37 of its regulations, the quarter-to-quarter change in the benchmark rate, with the exception of the initial benchmark rate established in each annual proceeding, was capped at 50 basis points (one basis point equals 1/100 percent). In Order No. 461, the Commission eliminated the cap and set the benchmark rate equal to the cost of common equity.

In Order No. 461, the Commission also determined that it would not adopt the "ratemaking rate of return" adjustment. In Order No. 442, the Commission described the ratemaking rate of return as the rate of return which, when applied to the particular rate base determined by the regulatory agency, allows the electric utility to provide investors with their effective required return.[9] In Order No. 461, the Commission stated that the comments supported the conclusion that there remain formidable issues not presently resolved regarding implementation of this adjustment. Therefore, the Commission declined to apply the ratemaking rate of return concept to adjust the benchmark rates.[10]

Three of the commenters have requested rehearing of Order No. 461: The Southern Company (Southern), Alfred Winchell Whittaker (AWW), and the Wholesale Customer Group (WCG). Southern objects to the elimination of the 50 basis point cap from the indexing procedure. AWW objects to the use of a DCF model, proposing, instead, a comparable earnings standard. WCG objects to the average "sv" component of the growth rate adopted in applying the DCF model and the decision not to apply the "ratemaking rate of return" concept to the DCF model.

III. Discussion

A. Indexing Procedure

Southern requests rehearing of the elimination of the 50 basis point cap from the indexing procedure. Southern states that the cap would make the benchmark rates of return more stable in that large fluctuations would be avoided and that it would reduce the incentive to time rate filings based on the quarterly changes. Although the cap may cause the benchmark rates to lag behind the cost of capital when there are significant and long-lasting changes in market conditions, Southern says the effect would be relatively small and would not be expected to persist for very long periods. Further, Southern believes that any significant divergence of the benchmark rates from the cost of equity would be an exception rather than the rule. In sum, Southern contends that any detrimental effects would be outweighed by the benefits of retaining the cap.

The comments made by Southern were considered by the Commission in its decision to eliminate the cap in Order No. 461. The Commission continues to believe that elimination of the cap is appropriate for the reasons stated in Order No. 461. Specifically, the use of a six month dividend yield should provide a reasonable degree of stability. Moreover, based on the 1986 period, the Commission believes that significant and potentially lasting divergences between the benchmark rates and the cost of capital may occur if the cap is retained.

B. DCF Method

AWW requests that the Commission not use a DCF model. AWW argues that the efficient market premise of the DCF model is incorrect and that, because of this, the prices used in the DCF model are not adequately reflective of the cash flows expected by investors. AWW states that if the Commission remains with a DCF model, the benchmark rates will produce "mischievous results", adversely affecting both investors and ratepayers. AWW also argues that if the Commission retains a DCF model it should be modified to allow electric utility stocks to trade at 80 percent above book value, a level AWW states would be comparable to unregulated companies with corresponding risk. Finally, AWW urges the Commission to abandon the benchmark rate concept if the DCF model adopted in Order No. 461 is retained.

AWW also argues that *Hope* and *Bluefield* require a comparable earnings standard, rather than the cost of capital standard used by the Commission.[11] AWW recommends that the Commission adopt a formula based on the returns to book equity of nonregulated companies of comparable risk (a comparable earnings standard), based on their *Standard and Poor's* common stock ratings and their *Value Line* beta, safety, and timeliness ratings.

The issues raised by AWW were addressed in Order No. 461.[12] The Commission has reconsidered the arguments in AWW's rehearing request and remains convinced that the DCF model provides a reliable measure of the cost of common equity capital. In addition, AWW cites studies by Shiller [13] and Summers [14] in support of

[4] Order No. 420, 50 FR at 21804; Order No. 442–A, 51 FR 22505, 22508 (1986).

[5] 52 FR at 29.

[6] 52 FR at 18.

[7] 18 CFR 37.3(b) (1986).

[8] 18 CFR 37.3(c) (1986).

[9] *See* 51 FR 343, 349 (1986). One component of the ratemaking rate of return concept, raised on rehearing and discussed more fully below, is the proposition that a utility has an opportunity to reinvest intra-year retained earnings which reduces the rate of return ratepayers must pay to allow the utility an opportunity to pay out the amount required. 52 FR at 28.

[10] 52 FR at 29.

[11] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Water Works & Improv. Co. v. Public Service Commission of W. Va., 262 U.S. 679 (1923).

[12] 52 FR at 29–30.

[13] Robert J. Shiller, *Do Stock Prices Move Too Much to be Justified by Subsequent Changes in Dividends?*, 71 Am. Econ.

[14] Lawrence H. Summers, *Does the Stock Market Rationally Reflect Fundamental Values?*, 41 J. Fin. 591 (1986).

the position that stock markets are inefficient.[15] Both of these studies have recently been subject to criticism. In particular, there are assertions in the finance literature that Shiller's study does not demonstrate market inefficiency and that Summers' study is inconclusive.[16] The findings of both the Shiller and Summers papers do not appear to be generally accepted as proven propositions. Thus, the Commission reiterates its belief that it is premature to conclude that the efficient market theory [17] has been discredited.[18]

With respect to AWW's request that the DCF model be revised to permit electric utility stocks to trade at 80 percent above book value, the Commission believes that this proposal is equivalent in result to AWW's suggestion that a comparable earnings standard be adopted. The Commission continues to believe that the DCF model properly reflects the cost of common equity of utilities, and, as discussed more fully below, a comparable earnings standard does not reflect the market cost of common equity.

AWW has not established that the only appropriate standard for assessing rate of return on common equity is comparable earnings. In fact, the Commission is not required to accept any particular methodology. *Permian Basin Area Rate Cases,* 390 U.S. 747 (1968); *Federal Power Commission* v. *Hope Natural Gas,* 320 U.S. 591 (1944). Rate of return decisions are policy determinations. In the final analysis, the Commission must apply its informed judgment to the range of estimates which it has found to be helpful indicators of the cost of common equity. The Commission has authority to adopt those portions of the record it finds credible. *Nader* v. *FCC,* 520 F.2d 182, 192–94 (D.C. Cir. 1975). The Commission is also permitted to make pragmatic adjustments called for by particular circumstances. *Permian Basin Area Rate Cases,* 390 U.S. at 800.

Although comparable earnings data have been offered before as corroborative evidence of the cost of capital, the Commission has found fault with its use in this regard for essentially two reasons. First, unlike the relationship between risk and market required rates of return, the relationship between risk and accounting rates of return is not clear. In other words, companies with high risk don't necessarily earn high book returns, and vice versa for companies with low risk. In contrast, investors will expect/require a high market rate of return from companies with high risk and a lower market rate of return from lower risk companies. Second, and more fundamentally, accounting rates of return are not reliable measures of the current cost of capital, since they do not reflect the current market prices that are determined in competitive capital markets.

In Order No. 461, the Commission explained that the consistent use of a cost of capital standard over time is fair and equitable to both stockholders and to the utility's customers. The Commission found "compelling economic justification for relying on the market cost of capital as the standard for rate of return decisions." It also found insufficient evidence in the record to support the claim that market price, a primary input in a DCF formula, does not adequately reflect the cash flows expected by investors. For these reasons the Comission adopted a DCF model rather than any of the other approaches presented and considered in this proceeding. Furthermore, the Commission believes that its cost of capital approach is not precluded, but is in fact supported, by *Hope* and *Bluefield.*

C. Growth Rate

WCG states that Order No. 461 did not address WCG's comments regarding the Commission's method for estimating the equity accretion component ("sv") of the fundamental growth rate.[19] WCG argues that the Commission's approach to estimating the "sv" component inherently causes an upward bias in the estimated growth rate. WCG asserts that using industry averages for the components "s" and "v" provides an unbiased estimate of "sv" only when the parameters are independently and randomly distributed. WCG states that the companies that have the highest market-to-book ratios (and thus the lowest "v" values) have the lowest external financing requirements ("s" values) and vice versa. If there is such a negative correlation between the market-to-book ratio and external financing, WCG alleges, a growth rate estimate, determined by multiplying an average "s" by an average "v", will be biased upward. WCG argues that "sv" should be estimated on a company-by-company basis and then averaged to avoid this bias.

On review of this issue, the Commission is not persuaded that any adjustment to its growth rate determination of 4.6 percent is justified. WCG has not shown that a correlation exists or that the Commission's estimate of the fundamental growth rate is distorted due to this correlation. The Commission's estimate of the "sv" component was a relatively small factor in the fundamental growth rate evaluation, 30 basis points of the total 470 basis points. Moreover, the growth rate adopted by the Commission was also found to be reasonable based on a two-stage growth rate analysis.[20]

WCG's criticism of the Commission's method for estimating the "sv" component of fundamental growth is an incomplete analysis. The WCG analysis focuses on only one of the growth rate components. Any statistical problem

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[15] Rehearing request of AWW, at 5.

[16] In a recent article, Marsh and Merton discuss Shiller's finding that variations in stock market prices appear to be too large to be explained by variations in subsequent dividend payments. After analyzing both Shiller's model and his statistical analysis, they conclude that Shiller's "test results might be better interpreted as an impressive rejection of his model of dividend process than as a rejection of stock market rationality." T.A. Marsh and R.C. Merton, *Dividend Variability and Variance Bounds Tests for the Rationality of Stock Market Prices,* 76 Am. Econ. Rev. 483 (1986). In another recent article, Robert F. Stambaugh discusses Summers' thesis that statistical tests of the efficient markets hypothesis lack the power to find market inefficiencies. Stambaugh tested a model proposed by Summers, using real data, rather than the theoretical calculations which Summers used. His results were inconsistent with the predictions of the Summers' model. Robert F. Stambaugh, *Does the Stock Market Rationally Reflect Fundamental Values?: Discussion,* 41 J. Fin. 601 (1986).

[17] The efficient market theory is founded upon the proposition that "all relevant information is widely and cheaply available to investors and that all relevant and ascerteinable information is already reflected in security prices." *See* R. Brealey, and S. Myers, Principles of Corporate Finance, at 266 (1984). The Commission again notes that this is a general proposition subject to some known exceptions, such as insider trading activities.

[18] For a discussion of the general acceptance of market efficiency and the extensive testing of the efficient markets hypothesis, *see* Frank K. Reilly, Investment Analysis and Portfolio Management, Chapter 7 at 183–304 (2nd Ed. 1985).

[19] Fundamental growth is defined as the sum of growth from retained earnings and growth from equity accretion. The first component is equal to the expected rate of return on common equity (r) times the expected retention ratio (b). The second component is equal to the rate of growth in new common stock sales (s) times the equity accretion factor (v). The equity accretion factor is specified as one minus the reciprocal of the expected market-to-book ratio and measures the extent of accretion (or dilution) that occurs when new stocks are issued at prices above or below book value. The equity accretion factor is negative and reflects dilution when the market-to-book ratio is below unity. *See also* 52 FR at 18.

[20] *See* 52 FR at 23. Further, as the Commission noted in Order No. 461 three of the ten commenters that made growth rate recommendations, AUS, Second Cooperatives and FA Staff, proposed a growth rate of 4.6 percent. In addition, one other customer group, Cooperatives, recommended a growth rate of 4.76 percent based on a fundamental analysis comparable to that of the Commission. WCG proposed a growth rate of less than 3.7 percent, which the Commission found unreasonable.

resulting from a correlation between "s" and "v" may also be true of the larger retention growth component ("rb") of fundamental growth. That is, a similar correlation, possibly offsetting the "sv" correlation, may exist between the expected return on common equity ("r") and the expected retention ratio ("b"), since the growth rate that the Commission determined from its fundamental analysis was reasonably corroborated through other information.

WCG also has neither demonstrated empirically that a correlation exists between "s" and "v" for utilities generally nor provided evidence to evaluate any bias created by such correlation. The "sv" component of the fundamental growth rate analysis is a long run expected value. The statistics presented by WCG are historical data for recent years, not estimates of the values investors expect for the future. Also, WCG presents no estimates of "s" and "v" calculated separately for comparison with its combined individual company "sv" estimates.

The Commission does not believe that the record supports a finding that the alleged correlation exists for the industry as a whole or that, if it does, it would be any more than a short term phenomenon. Nor does the Commission have a basis for finding that, to the extent such correlation does exist, it has affected the Commission's fundamental growth rate estimate.

D. "Ratemaking Rate of Return"

WCG also requests rehearing of the decision not to apply the "ratemaking rate of return" concept, stating that the Commission failed to engage in reasoned decision-making when it rejected WCG's arguments favoring the adoption of a daily compounding DCF model as a means of implementing the "rate-making rate of return" concept. This concept refers to the proposition that a utility has an opportunity to reinvest intra-year retained earnings which reduces the rate of return ratepayers must pay to allow the utility an opportunity to pay out the amount required. WCG argues that application of that concept is necessary to recognize intra-year earnings beyond those contemplated in the nominal rate of return and proposes a formula whereby such a concept may be implemented.

In Order No. 461 the Commission found that questions regarding the "ratemaking rate of return" remain unresolved.[21] WCG has not provided adequate evidence for adopting its approach. Indeed, many other commenters raised formidable issues which the Commission believes are not susceptible to resolution based on the records in these generic proceedings at this time. Because of unresolved questions and the absence of a sufficient record upon which to postulate reasoned answers, the Commission has determined not to adopt the "ratemaking rate of return" for the third year in which the benchmark rates remain advisory only.

[21] 52 FR at 28–29.

IV. Conclusion

The Commission is unpersuaded that any basis has been presented to warrant modification of Order No. 461. Therefore, the Commission denies rehearing.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-3922 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-87-1324; FR 2340]

Mortgage Insurance; Changes In Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 232 (Mortgage Insurance for Nursing Homes) and on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: January 19, 1987.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 9.00 percent to 8.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of

Regulations published on October 27, 1986 (51 FR 38424) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Calalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 8.50 percent per annum, except that where an application for commitment was received by the Secretary before January 19, 1987, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 8.50 percent per annum, except that where an application for commitment was received by the Secretary before January 19, 1987, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after January 19, 1987, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 8.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: January 23, 1987.

Susan K. Zagame,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 87-3953 Filed 2-25-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a number of interpretive clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.36. These changes and additions are intended to make the guidelines more comprehensive and to more appropriately sanction certain sexual offenses against minors, offenses related to the freebased form of cocaine popularly known as "CRACK," and criminal conduct in institutions.

EFFECTIVE DATE: April 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

A. The Proposed Rules and Their Purposes

On November 25, 1986, the U.S. Parole Commission published in the **Federal Register** (51 FR 42593) a set of proposed revisions to 28 CFR 2.20 and 2.36 that fell into three categories: (a) A revision of an offense example in the Offense Severity Index of § 2.20 that covers unlawful sexual conduct with minors to clarify, and more appropriately sanction the offenses described therein; (b) a revision to the offense examples in the Offense Severity Index of § 2.20 adding a new example to sanction offenses related to the freebased form of cocaine popularly known as "CRACK"; and (c) a revision of the rescission guidelines found in § 2.36 to more appropriately sanction criminal behavior in prisons.

(a) First, Offense Example 232 in Chapter 2, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 grades the severity for unlawful sexual conduct with minors (e.g., carnal knowledge) as Category Four. Carnal knowledge is defined as sexual intercourse with a female who is less than sixteen years of age and who is not the wife of the offender. Offense Example 232 contains an exception that provides that: If the relationship is clearly consensual, and the victim is at least fourteen years old, and the age difference between the victim and the offender is less than four years, then the offense is to be graded as Category One. Finally, as a note to this offense example, the guidelines state that, if the victim is less than twelve years of age at the time of the offense, the aggravating factor of an extremely vulnerable victim is presumed to exist thus providing a rationale to go above the appropriate guideline range.

After reviewing this offense example, the Commission proposed to clarify the offenses/behavior covered therein by revising the title of 232 to "Carnal Knowledge or Sodomy Involving Minors" and, to more appropriately sanction this conduct, where the victim is less than fourteen years of age, to increase the severity to Category Seven. The Commission proposed further to add a new offense example, 233, to provide guidance for rating other unlawful sexual conduct with minors. Additionally, the Commission proposed to change the title of Offense Example 231 (Forcible Rape or Forcible Sodomy) to "Rape or Forcible Sodomy," thus removing a redundancy.

(b) Next, over the past several months, the Parole Commission, like the public in general, had been introduced

to information about a new, more potent form of cocaine known as "CRACK". Details as to the addictive nature of this drug, as to its manufacture and the typical distribution methods associated with it, and as to its availability to a wider audience of users because of its relatively inexpensive street sales price, convinced the Commission that the existing sanctions provided for cocaine in the Offense Behavior Severity Index of § 2.20 may not appropriately sanction offenses related to this freebased form of that drug.

The Parole Commission had proposed, therefore, to amend its paroling policy guidelines contained in 28 CFR 2.20 and to develop separate guidelines for "CRACK". In that regard, the Commission sought public comment as to the nature and content of these guidelines by publishing an Advance Notice of Proposed Rulemaking in the July 31, 1986 edition of the **Federal Register** (51 FR 27424). In an effort to broaden the reviewing audience, thus increasing the potential for the receipt of useful comment, the Commission arranged for the Department of Justice to issue a press release on the proposal. Additionally, over 75 letters describing this endeavor were forwarded to members of Congress and other organizations and individuals interested in and knowledgeable about the drug. Further, an article was published in *The Third Branch* (the monthly newsletter of the Federal Judiciary) further detailing the effort.

In response to that Notice, the Parole Commission received ten (10) comments. Four (4) United States Senators (D'Amato, Dodd, Heflin and Roth) wrote to note their approval of the Commission's effort to address the problem created by the drug, but only one (1) (D'Amato) had a specific recommendation: He stated that increasing the existing cocaine guidelines by a factor of ten would be warranted because of "CRACK's" "extreme potency and its addictive qualities, and of the small quantities in which it is produced and sold." The District Attorney in Philadelphia suggested that the Commission treat "CRACK" like it treats Dilaudid, while the treasurer of Americans for Substance Abuse Prevention counseled that the penalties for possession of one gram of "CRACK" be equivalent to the penalties for 1,000 grams of regular cocaine. The Chief Probation Officer from the Eastern District of Missouri "supported" the proposal to do something, but expressed a concern that these new guidelines for "CRACK" might "inadvertently decrease criminal acts regarding the distribution of 'regular' cocaine"; and the Chief Probation Officer for the Northern District of Indiana labeled the proposal as "a responsible and reasonable approach" to the issue, but one that may need future revision. An inmate at the Federal Correctional Institution at Petersburg, Virginia, wrote to inform the Commission that making "CRACK" has the side effect of removing impurities from cocaine, thus reducing the total amount of the drug in question. Finally, the Assistant Attorney General for the Criminal Division of the U.S. Department of Justice wrote to "commend" the Commission's efforts in recognizing the dangers of the drug and stated that, until enhanced penalties are enacted for "CRACK" by the Congress, the Commission's proposal was "the most significant action that can be taken" in this regard.

The Commission proposed to adopt separate guidelines for "CRACK," guidelines that treat the drug as ten times more potent than cocaine and are based on the weight of the drug alone, with no specific purity measure. In this regard, the Parole Commission sought specific comment on two issues. The first related to the relative potency of "CRACK" cocaine as compared with other forms of the drug. The Commission's proposal rated various quantities of "CRACK" in severity categories corresponding to the categories for $\frac{1}{10}$ those quantities for regular cocaine. Information on this determination was thus sought. Secondly, the Commission sought guidance on how best to define "CRACK." The proposed guidelines refer to "freebased cocaine." A more appropriate or accurate definition may be needed.

(c) Finally, 28 CFR 2.36 contains the Commission's guidelines for sanctioning criminal conduct committed in a prison facility. Because of the relative severity and significance of all offenses committed in such institutions, the Commission proposed to increase the sanctions imposed for such behavior other than those now in effect for escape, attempted escape, and for certain administrative rule infractions. The sanction for use or simple possession of illicit drugs in institutions and for refusal to provide a urine sample for drug testing would be increased also. As proposed, the sanctions in § 2.36(a)(2)(ii) would be changed as follows: Category One: <=8 months; Category Two: <=10 months; Category Three: 12–16 months; Category Four: 20–26 months; Category Five: 36–48 months; Category Six: 52–64 months; Category Seven: 64–92 months; Category Eight: 120+ months. The proposed sanction for use or simple possession of illicit drugs would be 0–8 months as would refusal to provide a urine sample.

B. Public Comment

No public comment was received in response to the proposed rule changes.

C. Changes From the Proposed Rules

To conform with the provisions of 18 U.S.C. § 2241 as contained in the Sexual Abuse Act of 1986 (Pub. L. 99–654), the Commission is changing the age level in Offense Examples 232(c) and 233(b) in Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 from *fourteen* years old to *twelve* years old.

Also, rather than create new Offense Example 923 *Distribution or Possession With Intent to Distribute Freebased Cocaine ("CRACK")* in Chapter Nine, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20, the Commission is incorporating, as proposed, the guideline levels for freebased cocaine within the existing Offense Example for cocaine (Offense Example 921, Chapter Nine, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20). In considering the proposed rule in this regard, the Commission reviewed the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570). Further, as a conforming change, proposed Offense Example 924 is eliminated.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

28 CFR Part 2 is amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. The title of Offense Example 231 in Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

231 Rape or Forcible Sodomy

3. Offense Example 232 in Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

232 Carnal Knowledge or Sodomy Involving Minors*

(a) Grade as Category Four, except as provided below.

(b) If the relationship is clearly consensual and the victim is at least fourteen years old, and the age difference between the victim and offender is less than four years, grade as Category One.

(c) If the victim is less than twelve years old, grade as Category Seven.

4. Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 is amended by adding new Offense Example 233 to read as follows:

233 Other Unlawful Sexual Conduct With Minors

(a) Category Four

(b) Exception: If the victim is less than twelve years old grade as Category Six.

5. Offense Example 921 Chapter Nine, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

Subchapter C—Cocaine Offenses

921 Distribution or Possession With Intent to Distribute Freebased Cocaine ("CRACK")

(a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount; or 1.5 kilograms or more of freebased cocaine), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (e.g., involving 5 kilograms, but less than 15 kilograms of 100% purity, or equivalent amount; or 500 grams but less than 1.5 kilograms of freebased cocaine), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;

(d) If large scale (e.g., involving more than 1 kilogram, but less than 5 kilograms of 100% purity, or equivalent amount; or more than 100 grams, but less than 500 grams of freebased cocaine) grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;

(f) If medium scale (e.g., involving 100 grams-1 kilogram of 100% purity, or equivalent amount; or 10 grams-100 grams of freebased cocaine), grade as Category Five;

(g) If small scale (e.g., involving 5–99 grams of 100% purity, or equivalent amount; or 1 gram-9.9 grams of freebased cocaine), grade as Category Four;

(h) If very small scale (e.g., involving less than 1.0–4.9 grams of 100% purity, or equivalent amount; or less than 1 gram of freebased cocaine), grade as Category Three;

(i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

6. Paragraph (a)(1) of the Rescission Guidelines in 28 CFR 2.36 is revised to read as follows:

*Terms marked by an asterisk are defined in Chapter Thirteen.

§ 2.36 Rescission guidelines.

(a) * * *

(1) Administrative Rule Infraction(s) (including alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0–60 days per instance of misconduct, or by 0–8 months in the case of use or simple possession of illicit drugs or refusal to provide a urine sample. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

* * * * *

7. Paragraph (a)(2)(ii) of the Rescission Guidelines in 28 CFR 2.36 is amended to read as follows:

§ 2.36 Rescission guidelines.

(a) * * *

(2) * * *

(ii) Other New Criminal Behavior in a Prison Facility

Severity rating in the new criminal behavior (from § 2.20)	Guideline range
Category One	<=6 months.
Category Two	<=10 months.
Category Three	12–16 months.
Category Four	20–26 months.
Category Five	36–48 months.
Category Six	52–64 months.
Category Seven	64–92 months.
Category Eight	120+ months.

* * * * *

Dated: February 6, 1987.

Cameron M. Batjer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–3956 Filed 2–25–87; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is adopting a new regulation, 28 CFR 2.64, to explain the Commission's interpretation of section 235(b)(3) of the Sentencing Reform Act of 1984, which provides for the transition from the present system of sentences with parole eligibility to a determinate sentencing system. Section 235(b)(3), which calls for the Parole Commission to set release dates within the applicable parole guideline ranges for the prisoners remaining in its jurisdiction before ceasing operations, has given rise to a number of questions. This regulation is intended to resolve those questions by giving formal notice of the Commission's interpretation of that provision. Specifically, the Commission interprets the release provision of section 235(b)(3) (in its present form) as (a) applying only to persons who will be incarcerated on October 31, 1992 (the day before the fifth anniversary of the effective date of the Sentencing Reform Act); (b) not requiring the release dates to be set any earlier than the last three months before October 31, 1992; and (c) not allowing the Commission to set a release date which would conflict with the parole eligibility or ineligibility provisions of a prisoner's sentence.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Patrick J. Glynn, General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Section 235(b)(3) of the Sentencing Reform Act, states as follows:

> The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction the day before the expiration of five years after the effective date of this act, that is within the range that applies to the prisoner under the applicable parole guideline. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of five years following the effective date of this Act.

Legislation was introduced in the 99th Congress to delete the requirement for the section 235(b)(3) release decisions to within the parole guideline range. S. 1236, Sec. 37. That section, however, was not acted upon, and, although it is anticipated that similar legislation will be introduced in the 100th Congress, the requirement for decisions within the applicable parole guideline ranges remains a part of the Sentencing Reform Act as enacted.

A number of prisoners have urged that section 235(b)(3) be applied to their benefit in ways which the Commission had not envisioned. The claims of those prisoners have generally been one or more of the following:

1. That the Commission must give them decisions within the parole guideline ranges now because they will be in the Commission's jurisdiction (either in prison or on supervision) at the end of the five-year phaseout period;

2. That their parole eligibility dates are overridden by the requirement for a release date within the guideline ranges;

3. That parole ineligibility provisions [e.g., 21 U.S.C. 848(c)] are overridden by the requirement for a release date within the guideline ranges; and

4. That the five year period referred to began on October 12, 1984.

The Commission does not believe any of the above points are correct interpretations of the Sentencing Reform Act.

First, the five-year period referred to in section 235(b)(3) does not begin until November 1, 1987. The reference is to "five years after the effective date of this Act." Section 235 appears in Chapter II of the Comprehensive Crime Control Act of 1984, which is referred to as the "Sentencing Reform Act of 1984," 98 Stat. 1987, and which has a general effective date of November 1, 1987. Section 235(a)(1), 98 Stat. 2031, as amended, Pub. L. 99–217, Sect. 4, 99 Stat. 1728. Furthermore, the legislative history of section 235(b) states that that section retains the Parole Commission and current law provisions related to parole in effect for the five-year period after the effective date of the Sentencing Reform Act to deal with sentences imposed under current sentencing practices, and that the setting of release dates within the guideline ranges is required for the prisoners who have not been released before the end of that five year period. Senate Report No. 98–225 (98th Cong., 1st Sess.) 189, reprinted at 1984 U.S. Code Cong. & Admin. News 3182, 3372.

Second, although section 235(b)(3) refers to persons within the Commission's jurisdiction at the end of the five-year period, the section was clearly not designed to require release dates within the guideline ranges for persons who will be within the Commission's jurisdiction as parolees at the end of the five-year phase out period, (i.e., prisoners who will be released at some time prior to November 1, 1992, above the applicable parole guideline ranges). The legislative history of the Section explains its operation as follows:

> Most of those individuals incarcerated under the old system will be released during the five-year period. As to those individuals who have not been released at that time, the Parole Commission must set a release date for them prior to the expiration of the five years that is consistent with the applicable parole guidelines.

Senate Report No. 98–225, *supra*, at 189. Thus, the term "jurisdiction," as used in section 235(b)(3), refers to the Commission's parole-releasing jurisdiction and not to the Commission's post-release supervisory jurisdiction.

Third, the Commission does not read section 235(b)(3) as requiring the release dates within the guideline ranges to be set any earlier in the five year period than the three to six months necessary to permit an administrative appeal of the date before the end of the five year period. See 18 U.S.C. 4215(a). This is consistent with the above-quoted portion of the legislative history and with the provision in section 235(a)(1)(B) that the current parole laws, which include the possibility for decisions outside of the guideline ranges, remain in effect during the five-year period. The parole guidelines may be revised at any time until their final application, pursuant to the Commission's current statutory mandate. Hence, the applicable guideline ranges will not necessarily be known until the Commission sets final release dates in 1992.

Fourth, section 235(b)(3) does not advance a prisoner's parole eligibility date or confer parole eligibility on a prisoner whose sentence does not provide for any parole eligibility at all. The guidelines are not "applicable" in the first instance to any but an "eligible" prisoner. 18 U.S.C. 4206(a). Moreover a prisoner serving a non-parolable sentence is not a person who would be within the Commission's jurisdiction the day before the expiration of the five year period. And in the case of either a minimum term of parole ineligibility or a totally nonparolable sentence, the general savings statute 1 U.S.C. 109 would prevent such penalties, once imposed, from being retroactively extinguished since there has not been express statutory release from such penalties. See *Warden* v. *Marrero*, 417 U.S. 653 (1974).

This new interpretative regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Probation and parole, Prisoners.

PART 2—[AMENDED]

28 CFR Part 2 amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

> **Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.64 is added to read as follows:

§ 2.64 Sentencing Reform Act.

(a) It is the Commission's interpretation of section 235(b)(3) of the Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984), as originally enacted, that persons who will be incarcerated at the expiration of five years after the effective date of the Sentencing Reform Act, and whose sentences provide for parole eligibility shall, before the expiration of that five year period, be given release dates by the Commission within the guideline ranges found by the Commission to be appropriate for their cases.

(b) The release dates required by section 235(b)(3) need not be set any earlier than the time required to allow an administrative appeal within the five-year period; i.e.; three to six months before the end of that period. Thus, the Commission may continue to make decisions outside of its guideline ranges, with such decisions being subject to a *de novo* review and modification by the Commission to conform to the guideline ranges before the end of the five year period.

(c) Section 235(b)(3) does not apply to persons who will be on parole or mandatory release supervision at the expiration of the five-year period.

(d) Section 235(b)(3) does not change the parole eligibility date established by a prisoner's sentence and does not confer parole eligibility on prisoners whose sentences do not provide any eligibility for parole.

Dated: February 6, 1987.

Cameron M. Batjer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–3957 Filed 2–25–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS FOX (CG–33) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy,

Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS FOX (CG-33) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully within 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS FOX	CG-33						X	X	31

Dated: February 6, 1987.

Approved.

John Lehman,

Secretary of the Navy.

[FR Doc. 87-3944 Filed 2-25-87; 8:45 am]

BILLING CODE 3810-AE-M

POSTAL SERVICE

39 CFR Part 233

Forfeiture; Delegation of Functions to Chief Postal Inspector, United States Postal Inspection Service; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: The Postal Service is correcting two errors in the procedures to be followed by the Postal Inspection Service when it conducts civil forfeitures of property subject to forfeiture under the Protection of Children Against Sexual Exploitation Act of 1977, as amended, which appeared in the **Federal Register** on February 12, 1987 (52 FR 4496).

EFFECTIVE DATE: March 14, 1987.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268-3076.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-2999, in the issue of Thursday, February 12, 1987, the Postal Service published a final rule on civil forfeitures it conducts. In two places the published rule uses incorrect words that change the intended meaning of the rule. For example, at one point, the rule requires the Postal Inspection Service to keep a written inventory of the property seized and to provide a written receipt to the party from whom the property was seized as soon after the seizure as practicable, but in no event "less" than ten days after the seizure. The rule should have said but in no event "more" than ten days after the seizure.

At another point, the rule provides a procedure to follow for a person desiring a judicial determination of forfeiture. Any such person must file a claim, accompanied by a bond, unless the person is financially unable to post the bond because of indigency. The published rule provides that an indigent person may "require" a waiver of the bond by filling out a particular Postal Service form. The rule should have said that an indigent person may "request" waiver of the bond. This final rule corrects the erroneous language.

For the reasons explained above, the Postal Service hereby makes the following corrections to FR Doc. 87-2999 beginning on page 4496 in the issue of Thursday, February 12, 1987:

List of Subjects in 39 CFR Part 233

Crime, Postal Service.

PART 233—[AMENDED]

§ 233.7 [Corrected]

1. On page 4497, middle column, in § 233.7, in the next to last line of paragraph (c), strike out "less" and insert "more" in lieu thereof.

2. On page 4497, right hand column, in § 233.7, in the third sentence of paragraph (h)(2), strike out "require" and insert "request" in lieu thereof.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-3930 Filed 2-25-87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3081/R869; FRL-3161-4]

Pesticide Tolerance on Agricultural Commodities; Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the insecticide amitraz in or on the fat, kidney, liver, and meat byproducts of hogs. This rule

to establish the maximum permissible level for residues of amitraz in or on the above commodities was requested by Nor-Am Chemical Company.

EFFECTIVE DATE: Effective on February 26, 1987.

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

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Acting Product Manager (12), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 20, 1984 (49 FR 25293), that Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803, had filed a petition proposing to amend 40 CFR 180.287 by establishing tolerances for the combined residues of the insecticide amitraz [*N*-(2,4-dimethylphenyl)-*N*-[[(2,4-dimethylphenyl) imino]methyl]-*N*-methylmethanimidamide and its metabolites *N*-(2,4-dimethylphenyl)-*N*-methyl formamide and *N*-(2,4-dimethylphenyl)-*N*-methylmethanimidamide (both calculated as the parent compound) in or on the following commodities: Hogs, fat, meat, and meat byproducts (mbyp) at 0.05 part per million (ppm) and hogs, kidney and liver at 0.1 ppm. No comments were received in response to the notice at filing.

EPA is also amending the introductory text of 40 CFR 180.287 by changing the expression for the metabolites for amitraz to be consistent with *Codex Alimentarius*.

The petition was later amended by: increasing the tolerance for hog fat from 0.05 ppm to 0.1 ppm, for hog meat byproducts from 0.05 ppm to 0.3 ppm, and for hog kidney and liver from 0.1 ppm to 0.2 ppm.

In April 1977, the Agency initiated a Special Review for amitraz because an 80-week mouse oncogenicity study showed a significant increase in the incidence of lymphoreticular tumors in mice. Proposed uses for amitraz pending with the Agency were apples and pears. To determine the risks, the Agency conducted a dietary and occupational risk assessment. In reviewing the benefits and risks, the Agency determined that there would be significant benefits from the use on pears and little or no benefits from the use on apples since there were suitable alternatives. After weighing the benefits and risks, the Agency determined that the registration of amitraz for use on pears would not cause unreasonable adverse effects because it would result in substantial benefits and very small risks. Therefore, the Agency issued a conditional registration for 4 years for use of amitraz on pears. Recently, this decision was reevaluated and reaffirmed via the Registration Standard process.

One of the conditions under which amitraz was conditionally registered was the requirement that an additional mouse oncogenicity study be submitted. This study was submitted and referred to the Agency's Carcinogen Assessment Group (CAG) for evaluation. The results of this study show an increase in the incidence of hepatocellular tumors (both benign and malignant) in female mice. Based on this study and the first mouse study, CAG has determined that amitraz has carcinogenic activity in the mouse. The second study did not appreciably change the Agency's quantitative assessment of the potency of amitraz from the first mouse study. CAG concluded that based on the weight of available evidence amitraz should be considered a possible human carcinogen (a Group "C"). This classification is based on the Agency's published Guidelines for Carcinogen Risk Assessment published in the **Federal Register** of September 24, 1986 (51 FR 33992).

In reaching this conclusion, CAG considered the following information:

1. The positive carcinogenic effects were found in only one species, the mouse;

2. Tumors were discovered mostly in animals at the scheduled terminal sacrifice;

3. The rat was negative for oncogenic effects at doses as high as 200 ppm; and,

4. There is no positive epidemiological carcinogenicity data for amitraz.

In addition, the mutagenic potential of amitraz has been determined to be negative in the gene mutation, host-mediated, and dominant lethal test systems. Studies including the Ames bacterial test, a mouse lymphoma assay, and an unscheduled DNA synthesis in human embryonic cells have been conducted with amitraz with negative results.

On February 12, 1986, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) completed a review of the data base supporting the Agency's decision to classify amitraz as a Group "C" carcinogen. The SAP concluded that the weight of evidence is inadequate to clearly categorize the carcinogenicity of amitraz. As described above, amitraz was also found to be negative in a battery of mutagenicity studies. For these reasons, the SAP disagreed with the Agency recommendation and recommended that amitraz be classified as a Group "D" carcinogen (not classifiable as to human carcinogenicity). They also recommended that the Agency consider any data that may be available or could be obtained which would better characterize the carcinogenicity of amitraz. The Agency is currently considering what additional data, if any, would allow it to better characterize the carcinogenic potential of amitraz.

The tolerance is based on the following assumptions which reflect very conservative estimates of the percentage of animals treated and the residue levels present on edible hog tissue. These assumptions are likely to overestimate actual dietary exposure.

1. The metabolic pathway of amitraz in humans is presumed to be the same as that found in test animals;

2. The highest value of risk obtainable from the animal data is applicable to humans;

3. All hogs raised in the United States will be treated with amitraz; and,

4. All edible hog tissue will contain amitraz at the full tolerance levels.

As previously stated in this document, the Agency conducted a dietary and applicator risk assessment to determine the risks from the pear use and based that assessment on very conservative assumptions. The Agency also assessed the dietary and applicator risks associated with the use on pears using more realistic assumptions. These assumptions were: Only 40 to 50 percent of the pear acreage is treated annually with amitraz, and the residues present average only 1.0 ppm instead of the full tolerance of 3.0 ppm.

In addition, the Agency established a tolerance for use of amitraz on cattle (51 FR 16846; May 7, 1986). The dietary risk estimated to occur from the use of amitraz on cattle is the same level as the risk estimated from the use on pears using the most conservative approach of calculating risk.

The Agency expects little if any incremental increase in risk to occur as the result of the use of amitraz on hogs.

The chronic toxicology data base is complete for amitraz.

The toxicological data considered in support of this petition include numerous acute toxicity studies: A 90-day feeding study in rats with a no-

observed-effect level (NOEL) of 3.0 ppm (0.15 milligram per kilogram of body weight (mg/kg/bwt)); a 90-day feeding study in mice with a NOEL of 3.0 ppm (0.45 mg/kg/bwt); a 2-year rat feeding/oncogenicity study which was negative for oncogenic effects under the conditions of the study and with a NOEL of 200 ppm (10.0 mg/kg/bwt) for nononcogenic effects; a three-generation rat reproduction study with a NOEL of 15 ppm (0.75 mg/kg/bwt); rat and rabbit teratology studies which were negative at doses up to 12 mg/kg/bwt and 25 mg/kg/bwt, respectively, and a 2-year mouse oncogenicity study which demonstrated an increase in the incidence of hepatocellular tumors in female mice; and a 2-year dog feeding study with a NOEL of 0.25 mg/kg/bwt. Based on the 2-year dog feeding study with a NOEL of 0.25 mg/kg/bwt and using a safety factor of 100, the acceptable daily intake (ADI) for humans is calculated to be 0.0025 mg/kg/bwt/day, or 0.15 mg/day for a 60kg individual. The theoretical maximum residue contribution (TMRC) resulting in the human diet from this and previously established tolerances is 0.0723 mg/day and utilizes 48.20 percent of the ADI.

On the basis of the available data on amitraz, the Agency has concluded that the human risk posed by the use of amitraz on hogs does not raise prudent concerns of unreasonable adverse effects.

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes. The analytical method is published in the Food and Drug Administration's (FDA) *Pesticide Analytical Manual* Vol. II (PAM–II).

There are no regulatory actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, it is concluded that the pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

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

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 10, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for 40 CFR Part 180 continues to read as follows:

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

2. 40 CFR 180.287 is amended by revising the introductory text and the entries for "Hogs, fat," "Hogs, mbyp," and "Hogs, meat" and by adding and alphabetically inserting the entries "Hogs, kidney," and "Hogs, liver" to read as follows:

§ 180.287 Amitraz; tolerances for residues.

Tolerances are established for residues of the insecticide amitraz (*N'*-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)imino] methyl]]-*N*-methylmethanimidamide) and its metabolites *N*-(2,4-dimethylphenyl)-*N*-methyl formamide and *N*-(2,4-dimethylphenyl)-*N*-methylmethanimidamide (both calculated as the parent) in or on the following raw agricultural commodities (RAC) at the following levels:

Commodities	Parts per million
* * * * *	
Hogs, fat	0.1
Hogs, kidney	0.2
Hogs, liver	0.2
Hogs, mbyp	0.3
Hogs, meat	0.05
* * * * *	

[FR Doc. 87–3938 Filed 2–25–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3069/R872; FRL–3158–7]

Pesticide Tolerance for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, both free and conjugated, and of fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, all expressed as fluazifop, in or on the raw agricultural commodity carrots. This regulation to establish maximum permissible levels for residues of the resolved isomer of fluazifop and fluazifop-P-butyl, all expressed as fluazifop, in or on carrots was requested in a petition by ICI Americas, Inc.

EFFECTIVE DATE: Effective on February 26, 1987.

ADDRESS: Written objections, identified by the document control number [PP 4F3069/R872], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard F. Mountfort, Product Manager (PM) 23, Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of May 23, 1984 (49 FR 21795), which announced that ICI Americas, Inc. Agricultural Chemicals Division, Wilmington, DE 19897, had filed pesticide petition 4F3069 with the EPA. This petition proposed that a tolerance be established for residues of (±)-2-[4-[[5-(trifluoro-methyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of (±)-butyl 2-[4-[[5-(trifluoro-methyl)-2-pyridinyl]oxy]

phenoxy]propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the raw agricultural commodity carrots at 0.2 part per million (ppm). ICI Americas, Inc. subsequently amended the proposal by increasing the tolerance level in or on carrots to 2.0 ppm, which was published in the **Federal Register** of November 6, 1985 (50 FR 46178). The tolerance expression is being editorially corrected to specify the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl] oxy]phenoxy]propanoic acid, and fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate.

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

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

1. Plant and animal metabolism studies.

2. A rat oral lethal dose (LD_{50}) with an LD_{50} of 3,300 milligrams (mg) per kilogram (kg) of body weight (bwt).

3. A rabbit subchronic dermal study with a no-observed-effect level (NOEL) of 100 gm/kg.

4. A 90-day rat feeding study with a NOEL of 0.5 mg/kg/day.

5. A 90-day dog feeding study with a NOEL of 25 mg/kg/day.

6. A rat teratology study with a teratogenic and maternal toxicity NOEL of 10 mg/kg/day (the teratogenic and maternal toxic effect level is 200 mg/kg/day [highest dose] with diaphragmatic hernia) and the fetotoxic NOEL of 1 mg/kg/day (Margin of Safety values are based on the developmental toxicity NOEL of 1 mg/kg/day).

7. A rabbit teratology study with no terata at 90 mg/kg/day (highest dose) and a fetotoxic NOEL of 10 mg/kg/day.

8. A 2-generation rat reproduction study with a NOEL of 80 ppm (4 mg/kg/day).

9. A 2-year chronic feeding/oncogenicity study in rats with no-observed-oncogenic potential under conditions of the study up to and including 3.0 mg/kg/day (highest dose) and a systemic toxicity NOEL of 1 mg/kg/day.

10. An 18-month mouse chronic feeding/oncogenicity study with no-observed-oncogenic potential up to and including 3.0 mg/kg/day (highest dose) and a systemic toxicity NOEL of 1.0 mg/kg/day.

11. An Ames test (negative).

12. A rat cytogenetic study (negative).

13. An *in-vitro* transformation assay (negative).

14. An acute delayed neurotoxicity study in hens (negative).

15. A 1-year dog feeding study with a NOEL of 5 mg/kg/day.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.01 mg/kg bwt/day. The maximum permitted intake for a 60-kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0457 mg/day: the current action will increase the TMRC by 0.0144 mg/day (31.5 percent). Published tolerances utilize 7.6 percent of the ADI. The current action will utilize an additional 2.4 percent to utilize a total of 10.0 percent of the ADI.

The nature of the residue of the pesticide is adequately delineated, and an adequate analytical method, high-pressure liquid chromatography using an ultraviolet detector, is available in Pesticide Analytical Manual, Volume II, for enforcement purposes. Existing tolerances for fluzifop-butyl are adequate to cover secondary residues in meat, milk, poultry, or eggs resulting from this use of the pesticide. There are currently no regulatory actions pending against the pesticide.

Based on the information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 11, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

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

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

2. Section 180.411 is amended by adding paragraph (c) to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) Tolerances are established for residues of the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, both free and conjugated and of fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, all expressed as fluazifop, in or on the raw agricultrual commodity:

Commodities	Parts per million
Carrots	2.0

[FR Doc. 87-3643 Filed 2-25-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E3428, 6E3391/R866; FRL-3158-8]

Pesticide Tolerances for Certain Pesticide Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities. These regulations, to establish maximum permissible levels of residues for the pesticides in or on the commodities, were requested in petitions by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 26, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6E3428, 6E3391/R866], may be submitted

to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION: EPA issued proposed rules, published in the Federal Register of December 17, 1986, which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petitions (PP) as follows on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the named Agricultural Experiment Stations (AES).

1. *PP 6E3428.* 52 FR 45134. AES of Louisiana. Proposed establishing a tolerance for residues of the fumigant phosphine resulting from the postharvest use of magnesium phosphide in or on the raw agricultural commodity sweet potatoes at 0.01 part per million (ppm).

2. *PP 6E3391.* 51 FR 45133. AES of California, Indiana, North Carolina, Oklahoma, and Washington. Proposed establishing tolerances for residues of the insecticide cyano(3-phenoxy-phenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate in or on the raw agricultural commodities turnip tops at 20 ppm and turnip roots at 0.5 ppm.

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

The data submitted and other relevant information have been evaluated and discussed in the proposed rules. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore the tolerances are established as set forth below.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 11, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

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

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

2. Section 180.375(a) is amended by adding, and alphabetically inserting, the following commodity to read as follows:

§ 180.375 Magnesium phosphide; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Sweet potatoes	0.01
* * * * *	

3. Section 180.379(a) is amended by adding, and alphabetically inserting, the following commodities to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl) benzeneacetate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Turnip roots	0.5
Turnip tops	20.0
* * * * *	

[FR Doc. 87–3644 Filed 2–25–87; 8:45 am]

BILLING CODE 6560–50–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Museum Assessment Program

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final regulations.

SUMMARY: The Institute of Museum Services issues a final amendment to its regulations for the Museum Assessment Program revising the limitation on the amount of a grant.

EFFECTIVE DATE: The amendment is effective February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Ruth Weant, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506 Telephone: (202) 786–0539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act"), Title II of the Arts, Humanities and Cultural Affairs Act of 1976, as amended, establishes an Institute of Museum Services (IMS). IMS is an independent agency placed in the National Foundation on the Arts and the Humanities. The purpose of the Act is stated in section 202, in pertinent part, as follows:

> It is the purpose of the Museum Services Act . . . to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage . . .

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public.

The Institute's regulations contain provisions relating to the Institute's Museum Assessment Program (MAP), which has been conducted since fiscal year 1981. 45 CFR 1180.70–1180.76. MAP is designed to assist museums in carrying out institutional assessments. Grants enable museums to obtain technical assistance in order to evaluate their programs and operations according to generally accepted professional standards. A museum which receives a grant under the program requests assessment from an appropriate professional organization, a term which is defined in the Institute's regulations. See 45 CFR 1180.74(b).

IMS published a notice of proposed rulemaking proposing an amendment to the MAP regulations on January 8, 1987. 52 FR 691. The notice described the proposed amendment and the reason why changes were needed. 52 FR 691. This document does not repeat that discussion. In response to an invitation for public comment contained in the notice of proposed rulemaking, one

individual submitted a comment indicating no opposition to the proposed change in the MAP award ceiling.

Executive Order 12291

This amendment has been reviewed in accordance with Executive Order 12291. It is classified as non-major because it does not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Director certifies that the amendment will not have a significant economic impact on a substantial number of small museums. To the extent that it affects States and State agencies it will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. The amendment will affect certain museums receiving federal financial assistance under the Museum Services Act. However, it will not have significant economic impact on the small entities affected because it does not impose excessive regulatory burdens or require unnecessary federal supervision.

Paperwork Reduction Act of 1980

The regulations do not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 45 CFR Part 1180

Museums, National Boards.

Authority: Museum Services Act Secs. 201–210, 20 U.S.C. 961–68.

Dated: February 20, 1987.

Lois Burke Shepard,

Director, Institute of Museum Services.

(Catalog of Federal Domestic Assistance No. 45.301, Museum Services Program)

PART 1180—[AMENDED]

The Institute of Museum Services amends Part 1180 of Title 45 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 U.S.C. 961 et seq.

2. Revise § 1180.73(b) to read as follows:

§ 1180.73 Form of assistance; limitation on amount.

* * * * *

(b) The amount of a grant to a museum under this subpart may not exceed $1,400.

[FR Doc. 87–4011 Filed 2–25–87; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 85–349; FCC 86–575]

Cable Television; Amendment of Cable Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order staying effective date.

SUMMARY: The Commission stays the January 15, 1987, effective date of the final rule regarding Amendment of Part 76 of the Commission's Rules on Carriage of Television Broadcast Signals by Cable Television Systems, 51 FR 44606 (Dec. 11, 1986). The stay will remain in effect until 30 days after the release date of a Memorandum Opinion and Order is published in the **Federal Register** by the Commission addressing the petitions for reconsideration filed in this proceeding. The *Order* dismisses as moot motions for stay of the effective date of the proceeding filed by Seventeen Cable Operators, Turner Broadcasting Systems, Inc. and the National Cable Television Association, Inc., the Community Antenna Television Association and the National Association of Broadcasters.

DATES: The effective date of the *Report and Order*, 51 FR 44606, is stayed until 30 days after the release of the Memorandum Opinion and Order in MM Docket No. 85–349 is published in the **Federal Register**, addressing petitions for reconsideration filed in the proceeding.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan R. Stillwell, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in MM Docket No. 85–349, adopted December 24, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 76

Cable television.

William J. Tricarico,

Secretary.

[FR Doc. 87–3849 Filed 2–25–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 231, 242 and 252

Department of Defense Federal Acquisition Regulation Supplement on Penalties for Unallowable Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for public comment.

SUMMARY: The Defense Acquisition Regulatory Council has approved a new DFARS Subpart 231.70 and changes to Subpart 242.7 and new clauses at 252.231–7001 and 252.231–7002 to implement the interest penalty provisions of section 2324 of Pub. L. 99–145, the DoD Authorization Act of 1986.

DATES: Effective date: February 26, 1987.

Comments due on or before April 27, 1987. Please cite DAR Case 85–216 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L) (MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense Authorization Act, 1986 (Pub. L. 99–145) amends Title 10 of the United States Code by adding new section 2324, Allowable costs under defense contracts. Section 2324 contains provisions regarding contractor submittal of proposals for settlement of final indirect costs. Included in these provisions is authority for DoD to assess certain penalties when contractors submit unallowable costs in final indirect rate proposals. It is not necessary that the costs actually have been paid to the contractor.

To implement the penalty provisions of the law, DFARS is revised to add new Subpart 231.70, Penalties for Unallowable Costs, new section 242.771, same title, new contract clause 252.231–7001, same title, and new contract

clause 252.231–7002, Penalties for Unallowable Costs—Fixed Price Incentive.

B. Regulatory Flexibility Act

The Department of Defense certifies that the revisions to DFARS 231.7001, 242.771, 252.231–7001 and 252.231–7002 will not have a significant impact on a substantial number of small entities because no contractor should be putting clearly unallowable costs in their billing rates. Furthermore, the penalties are prescribed by law.

C. Paperwork Reduction Act

The rule does not contain any additional information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

D. Determination to issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim regulation. This action is necessary to implement section 2324 of Pub. L. 99–145, the DoD Authorization Act of 1986, and to protect the Government in those instances when contractors might put clearly unallowable costs in their billing rates.

List of Subjects in 48 CFR Parts 231, 242 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 231, 242 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 231, 242 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. A new Subpart 231.70, consisting of section 231.7001, is added to read as follows:

Subpart 231.70—Penalties for Unallowable Costs

§ 231.7001 Penalties for Unallowable Costs.

(a) *General.* (1) Public Law 99–145 (10 U.S.C. 2324 (a) through (d)) prescribes the assessment of penalties when contractors submit unallowable costs in proposals for settlement of indirect costs under certain Department of Defense contracts. Covered contracts are contracts covered by the penalty provision of Pub. L. 99–145 and include all Department of Defense contracts in an amount of more than $100,000 other than fixed-price contracts without cost incentives. As prescribed at 231.7001(d) such contracts will contain either one of the clauses at 252.231–7001 or 252.231–7002. It is not necessary that such unallowable costs have been paid to the contractor.

(2) An unallowable cost is defined at FAR 31.001.

(3) Penalties provided under the law are as follows:

(i) If the cost is unallowable based on clear and convincing evidence, the penalty is equal to the (A) amount of the disallowed cost plus (B) interest on the paid portion, if any, of the disallowance.

(ii) If the cost was determined to be unallowable before proposal submission, the penalty is equal to (A) the amount in (a)(3)(i) above plus (B) two times the amount of the disallowed cost.

(iii) If any penalty is assessed under (a)(3)(i) or (a)(3)(ii) above, an additional penalty of not more than $10,000 per proposal may be assessed.

(4) The above stated penalties are in addition to other civil and criminal penalties provided by law.

(b) *Responsibilities*—(1) *Contracting Officer.* (i) The cognizant administrative contracting officer (ACO) is responsible for determining whether the penalties under (a)(3)(i) and (a)(3)(ii) above should be assessed.

(ii) The cognizant ACO is responsible for initiating recommendations that the penalty under (a)(3)(iii) above be assessed.

(2) *(Department/Agency.* (i) Departments/Agencies are responsible for designating officials authorized to assess the penalty under (a)(3)(iii) above.

(ii) Department/Agencies are responsible for setting forth requirements for documentation and review of ACO determinations to assess the penalties under (a)(3)(i) and (a)(3)(ii) above, and ACO recommendations to assess the penalty under (a)(3)(iii) above.

(3) *Contract Auditor.* The contract auditor, in review and/or determination of final rates, shall make a recommendation to the ACO as to the appropriateness of penalties on questioned unallowable costs. Any such recommendation shall include documentation sufficient for a decision.

(c) *Guidelines.*—(1) *Assessing the Penalty.* (i) The ACO shall assess the penalty under (a)(3)(i) above when the submitted cost is unallowable based on clear and convincing evidence.

(ii) The ACO shall also assess the penalty under (a)(3)(ii) above when the submitted cost was determined to be unallowable prior to submission of the proposal. Prior determinations of unallowability may be evidenced by the following documentation (This list is not all inclusive):

(A) A DCAA Form 1 (see FAR 42.705–2) which was not appealed by the contractor or withdrawn by DCAA.

(B) A contracting officer final decision which was not appealed under the Disputes clause.

(C) Prior ASBCA or Court decision which upheld a cost disallowance involving the contractor.

(D) Any determination of unallowability under the procedures provided in FAR 31.201–6, Accounting for unallowable costs.

(iii) The ACO shall issue a demand letter (see FAR 33.211) to the contractor for payment of any penalty assessed under (a)(3)(i) or (a)(3)(ii) above. The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the applicable penalty is separate from demanding repayment of the paid portion of the disallowed cost.)

(iv) The designated official, after receiving the ACO's recommendation and where circumstances warrant the additional penalty, may assess the penalty under (a)(3)(iii) above. Appropriate circumstances may include repeated submission of unallowable costs in a specific proposal.

(2) *Computing the Penalty.* (i) The amount of the disallowed cost subject to penalty is the amount submitted in the contractor's proposal which is allocated to the covered contracts (see (a)(1) above) and which is determined to be unallowable, based on clear and convincing evidence by the contracting officer.

(ii) Interest is to be computed on the paid portion of the disallowed cost.

(A) The overpayment may be considered to have occurred, and interest to start running, from the midpoint of the contractor's fiscal year. An alternate equitable method should be used if the cost was not incurred and paid evenly over the fiscal year.

(B) The rate specified by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97) is the interest rate to be used.

(C) Interest shall be computed from the date of overpayment to the date of the demand letter for payment of the penalty.

(D) The paid portion of the disallowed cost will be determined in consultation with the contract auditor.

(d) *Contract clauses.* (1) The contracting officer shall insert the clause

at 252.231–7001, Penalties for Unallowable Costs, in all solicitations and contracts exceeding $100,000 which contain the clause at FAR 52.216–7 or FAR 52.216–13.

(2) The contracting officer shall insert the clause at 252.231–7002, Penalties for Unallowable Costs—Fixed-Price Incentive, in all solicitations and contracts exceeding $100,000 which contain the clause at FAR 52.216–16 or 52.216–17.

PART 242—CONTRACT ADMINISTRATION

3. Section 242.771 is added to read as follows:

242.771 Penalties for Unallowable Costs.

(a) 10 U.S.C. 2324 (a) through (d) prescribes the assessment of penalties when contractors submit unallowable costs in proposals for settlement of indirect costs under Department of Defense contracts. Subpart 231.70 provides guidance on penalty assessment.

(b) The ACO shall review all costs submitted in the contractor's proposal which are subsequently disallowed by the Government to determine whether a penalty is assessable under the criteria in 231.7001(c)(1).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 252.231–7001 and 252.231–7002 are added to read as follows:

252.231–7001 Penalties for Unallowable Costs.

As prescribed at 231.7001(d)(1), insert the following clause.

Penalties for Unallowable Costs (Feb. 1987)

(a) The Contractor is required, under the Allowable Cost and Payment clause in this contract, to submit final indirect cost rates within ninety (90) days after the expiration of each of its fiscal years. The Contractor shall not include in any such submission any cost which is unallowable under the definition in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) If the Contracting Officer determines by clear and convincing evidence that a cost submitted by the Contractor in its proposal for settlement for indirect costs incurred is unallowable in accordance with (a) above, the Contractor shall be assessed a penalty equal to (1) the amount of the disallowed cost allocated to this contract plus (2) simple interest, to be computed on the funds the Contractor was paid in excess of the amount to which the Contractor was entitled (see paragraph 231.7001(c) of the Department of Defense Supplement to the FAR). The simple interest will be computed using the applicable rate effective for each six month interval prescribed by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97).

(c) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal for settlement of indirect costs incurred includes a cost determined to be unallowable in the case of such Contractor before the submission of such proposal, the Contracting Officer shall assess, in addition to the penalty assessed in paragraph (b) above, a penalty in the amount equal to two times the amount of the unallowable cost.

(d) The determination of the Contracting Officer under (b) and (c) above is a final decision for the purpose of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) and appealable in the manner provided in Section 7 of such Act (41 U.S.C. 606).

(e) The Government is entitled to assess an additional penalty of not more than $10,000 per proposal, if any penalty is assessed under (c) or (d) above.

(f) Contractor submission of unallowable costs is also subject to the provisions of 18 U.S.C. 287 and 31 U.S.C. 3729.

(g) Payment by the Contractor of any penalty assessed under (b) or (c) above does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

252.231–7002 Penalties for Unallowable Costs—Fixed-Price.

As prescribed at 231.7001(d)(2), insert the following clause.

Penalties for Unallowable Costs—Fixed-Price Incentive (Feb. 1987)

(a) 10 U.S.C. 2304 provides for certain penalties if a Contractor submits to the Department of Defense a proposal for settlement of indirect costs incurred by the Contractor for any period after such costs have been accrued if that proposal includes the submission of a cost which is unallowable under the definition in section 31.001 of the Federal Acquisition Regulation. The Contractor shall not include such unallowable costs in any such proposal.

(b) The term "proposal for settlement of indirect costs incurred" shall include—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of his fiscal year which relates to any payment (such as a progress or billing payment or interim cost reimbursement) made on the basis of billing rates or which will be used in negotiating the final contract price, or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause which is used to establish the final contract price.

(c) If the Contracting Officer determines by clear and convincing evidence that cost submitted by the Contractor in a proposal for settlement of indirect costs incurred is unallowable in accordance with (a) above, the Contractor shall be assessed a penalty equal to (1) the amount to the disallowed cost allocated to this contract, plus (2) simple interest, to be computed on the funds the Contractor was paid, whether as a progress payment or billing payment, in excess of the amount to which the Contractor was entitled (see paragraph 231.7001(c) of the Department of Defense Supplement to the FAR). The simple interest will be computed using the applicable rate effective for each six month interval prescribed by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97).

(d) If the Contracting Officer determines that a cost submitted by the Contractor in a proposal for settlement of indirect costs incurred includes a cost determined to be unallowable in the case of such Contractor before the submission of such proposal, the Contracting Officer shall assess, in addition to the penalty assessed in paragraph (c) above, a penalty in an amount equal to two times the amount of the unallowable cost.

(e) The determination of the Contracting Officer under (c) and (d) above is a final decision for the purpose of Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) and appealable in the manner provided in Section 7 of such Act (41 U.S.C. 606).

(f) The Government is entitled to assess an additional penalty of not more than $10,000 per proposal, if any penalty is assessed under (c) or (d) above.

(g) Contractor submission of unallowable costs is also subject to the provisions of 18 U.S.C. 287 and 31 U.S.C. 3729.

(h) Payment by the Contractor of any penalty assessed under (c) or (d) above does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

[FR Doc. 87–4030 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–01–M

Proposed Rules

Federal Register
Vol. 52, No. 38
Thursday, February 26, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 3784S]

General Administrative Regulations—Standard Reinsurance Agreement; Standards for Approval

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of Additional Proposed Rulemaking and Extension of Comment Period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby extends for an additional thirty days the comment period on its proposal to issue a new Subpart L in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to contain the Standards for Approval; Reinsurance Agreement Regulations combining the standards for financial approval (7 CFR Part 400, Subpart G), with the provisions for operational standards (7 CFR Part 400, Subpart I). The intended effect of this additional proposed rule is to: (1) Make mandatory FCIC's assumption of all obligations for unpaid losses to any multiple peril crop insurance policyholder whose policy is reinsured by FCIC when an insurance company reinsured by FCIC is unable to fulfill such obligations by reason of a directive or order issued by any State Department of Insurance, or a court of competent jurisdiction; and (2) extend FCIC's exemption from punitive and other damages which are not available in suits against the Corporation, to Reinsured Companies and their agents in certain instances. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments on this proposed rule must be received by not later than March 30, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512.1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1991.

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

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

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

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

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

On Tuesday, July 1, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 23782, proposing to combine into one document the financial standards and financial reporting requirements provisions of 7 CFR Part 400, Subpart G—Standards for Approval; Reinsurance Agreement with 7 CFR Part 400, Subpart I—Reinsurance Agreement, containing operational standards.

In order for the reader to refer to provisions contained in 7 CFR Part 400, Subparts G and I, FCIC herewith provides a redesignation table to indicate the proposed relocation of such previous provisions in the proposed 7 CFR Part 400, Subpart L:

Old	New
7 CFR Part 400, Subpart G	
400.50 Applicability of Standards for Approval.	400.143.
400.51 Definitions	400.141 and 142.
400.52 Certification of submissions	400.150.
400.53 Notification of deviation from Financial Standards.	400.154.
400.54 Revocation and non-acceptance.	400.155.
400.55 Qualifications for acceptability	400.150.
400.56 Qualifications for less than acceptable; waiver.	400.152 and 153.
7 CFR Part 400, Subpart I	
400.75 Availability of reinsurance agreements.	400.144.
400.76 Eligibility for reinsurance agreements.	400.145.
400.77 Obligations of the Corporation	400.146.
400.78 Limitations on Corporation's obligations.	400.147.
400.79 Obligations of participating insurance companies.	400.148.
400.80 Disputes	400.149.
400.81 OMB control numbers	400.157.

FCIC herein proposes to add a further element of reinsurance with respect to: (1) The assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement in the event that a company reinsured under such Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by FCIC by reason of a directive or order issued by a State Department of Insurance or by a court of competent jurisdiction; and (2) providing that no policy of insurance reinsured by FCIC, nor any claim, settlement, or adjustment action under such policy will provide a basis for a claim for damages, that the Corporation would not be liable for, against reinsured companies or their agents or employees, unless the claimant establishes that the basis of its

claim for such damages was the result of the reinsured company's or its agents' or employees' actions which were beyond the scope of their authority or was the result of their failure to substantially comply with FCIC's procedures in the handling of the claim or in servicing the insured's policy.

Background

Most State laws regulating insurance provide for a guaranty fund assessment whereby the State obtains funds from regulated insurance companies licensed to operate within that State. The funds are used by the state to discharge any unfunded obligations of any such regulated insurance company.

The Standard Reinsurance Agreement between FCIC and a reinsured Company provides that, whenever a Company reinsured by FCIC is unable to fulfill its obligations to any policyholder reinsured under the Agreement, by virtue of an order or directive issued by a State Department of Insurance, or a court of competent jurisdiction, all such policies affected by such order or directive are immediately transferred to FCIC along with the obligations for all unpaid losses whether they occurred before or after such transfer. In addition, FCIC collects all funds with respect to all policies transferred and assumes from the Company the right to all uncollected premiums.

Since FCIC guarantees fulfillment of the Reinsured Company's obligations to insureds, the guarantee fund will not be required to pay on such policies. Any requirement by a State Department of Insurance for guaranty fund assessment against insurance companies licensed to operate in a state who participate in the Standard Reinsurance Agreement with FCIC on policies reinsured by FCIC is unnecessary because, in reality, such obligations to insureds are and have been guaranteed by FCIC as a part of its reinsurance agreement.

Under the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (the Act), State and local laws or rules are not applicable to contracts or agreements of FCIC, or the parties thereto, to the extent that such contracts or agreements provide that such State or local laws or rules shall not apply, or that such laws or rules are inconsistent with such contracts or agreements (7 U.S.C. 1506(k)).

The Act further precludes recovery of assessments for the purpose of discharging unfunded obligations through additions to premium rates as provided by some of the state laws with respect to licensed insurance companies.

Rates charged by FCIC and the Reinsured Companies for insurance under the Act must, under the requirements of the Act, cover only anticipated indemnities and establish a reasonable reserve against unforeseen losses (7U.S.C. 1508(b)(1)).

FCIC has determined that State laws or rules providing for guaranty fund assessment for the purpose of discharging unfunded obligations of insurance companies should be preempted because the Standard Reinsurance Agreement provides adequate assurance that, with respect to Multiple Peril Crop Insurance reinsured by FCIC, any such State requirements will be properly met.

It is therefore determined that no such State laws of insurance practice, will arise under any FCIC reinsured multiple peril crop insurance business conducted in any State and that such business should not be subject to any guaranty fund assessment.

For this purpose, FCIC exercises the preemptive authority contained in 7 U.S.C. 1506(k) by adding a provision to the proposed 7 CFR 400.146, contained herein, providing: (1) Mandatory assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement; and (2) determination that no assessment for any State guaranty fund may be computed or levied against companies for, on account of, any premiums payable on policies of Multiple Peril Crop Insurance reinsure by FCICI.

In addition, FCIC proposes to more clearly define the obligations of the Corporation with respect to damages by providing that no policy of insurance reinsured by FCIC will be the basis of a claim for damages which the FCIC would not be liable for unless the claimant establishes that the claim is based on the failure of the reinsured Company or its agents to properly follow FCIC procedures and instructions in the handling of the claim or servicing the insured's policy, or unless the Reinsured Company or its agents were acting outside the scope of their authority

The losses paid by a reinsured Company, including the sum paid by the Company under any crop insurance contract reinsured by FCIC in settlement of any claim and in satisfaction of any judgement rendered on account of such claim, are computed in the ultimate net loss of the Company. Such ultimate net loss computation may also include interest and insured's court costs contained in a final judgement against the Company in a court of competent jurisdiction.

In order to assure that the portion of the liability for ultimate net losses which the Company cedes to FCIC as reinsurance is correct and justified, FCIC proposes that no policy of insurance reinsured by FCIC will be the basis for a claim for damages unless the claimant establishes in court, or in the case of a settlement, satisfies FCIC, that the reinsured Company failed to comply with FCIC procedures with respect to the claim, or in servicing the insured, or that the Company or its agents were acting beyond the scope of their authority.

For the purpose of notice to the insureds, all Multi Peril crop insurance policies reinsured by the Corporation must be clearly identified as such.

FCIC herein proposes to add to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on July 1, 1986, at 51 FR 23782, the additional proposed provisions described above.

For this purpose, FCIC republishes the notice of proposed rulemaking as amended herein and provides an additional comment period of thirty days in which written comments, data, and opinions may be submitted on the original proposed rule and the additional proposal contained herein to include provisions as described above.

Written comments, data, and opinions on this additional proposed rulemaking should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Crop Insurance—Standard Reinsurance Agreement—Standards for Approval.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation (FCIC) hereby proposes to remove and reserve 7 CFR Part 400, Subparts G and I and add a new Subpart L in Chapter IV of Title 7, Code of Federal regulations, to be known as 7 CFR Part 400, Subpart L, General Administrative Regulations—Standard Reinsurance Agreement—Standards for Approval, commencing July 1, 1987, for the 1988 and subsequent contract years, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart L—Standard Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract Years

Sec.

400.141 Definitions.
400.142 Definitions, IRIS Ratios.
400.143 Applicability.
400.144 Availability of the Standard Reinsurance Agreement.
400.145 Eligibility for Standard Reinsurance Agreements.
400.146 Obligations of the Corporation.
400.147 Limitations on the Corporation's obligations.
400.148 Obligations of participating insurance company.
400.149 Disputes.
400.150 General qualifications.
400.151 Qualifying when a State does not require that a financial statement be filed.
400.152 Qualifying with less than eight IRIS Ratios in the usual range.
400.153 Qualifying by waiver.
400.154 Notification of deviation from financial standards.
400.155 Revocation and non-acceptance.
400.156 State action preemptions.
400.157 OMB control numbers.
400.158—400.299 [Reserved]

Subpart L—Standard Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract Years

Authority: Secs 501–520, Pub. L. 75.430, 52 Stat. 72–77 (7 U.S.C. 1501–1520), as amended.

§ 400.141 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, the following terms as used in this rule are defined to mean:

(a) "Company" means the company reinsured by FCIC or applying to FCIC for a Standard Reinsurance Agreement.

(b) "Corporation" means the Federal Crop Insurance Corporation.

(c) "Current Assets" mean assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business, or within one year, if the operating cycle is less than one year.

(d) "Current liabilities" mean liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time.

(e) "FCIC" means the Federal Crop Insurance Corporation.

(f) "Financial statement" means the financial statement of an insurer seeking FCIC reinsurance prepared annually by an independent public accountant in accordance with generally accepted accounting principles; together with related exhibits, schedules, and explanations. This is the financial statement of an insurer submitted to the State Insurance Department if required by any state in which the insurer does business.

(g) "Guaranty fund assessments" mean the state administered program utilized by some state insurance regulatory agencies to obtain funds with which to discharge unfunded obligations of insurance companies licensed to do business in that state.

(h) "Insurer" means an insurance company that is licensed or admitted as such in any State, Territory, or Possession of the United States.

(i) "MPUL" means the maximum possible underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any other reinsurance agreement, as evaluated by FCIC.

(j) "Nonaffiliated company" means an insurer (1) that is not owned or controlled by the reinsured, (2) which does not own or control the reinsured, or (3) which is not jointly owned or controlled with the reinsured by any person or entity.

(k) "Obligations" mean crop or indemnity for crop loss on policies reinsured under the Standard Reinsurance Agreement.

(l) "Plan of Operation" means a statement submitted to FCIC each year in which a reinsured or a prospective reinsured specifies the reinsurance options it wishes to use, its marketing plan, and similar information as required by the Corporation.

(m) "Reinsurance agreement" means an agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

(n) "Reinsured" means the insurer which is a party to the Standard Reinsurance Agreement with FCIC.

(o) "Standard Reinsurance Agreement" (also "Agreement") means the reinsurance agreement between the reinsured and FCIC.

§ 400.142 Definitions, IRIS Ratios.

As used in this rule, with respect to the IRIS Ratios, the following terms are defined to mean:

(a) "Agents' Balances to Surplus Ratio" means premiums and agents' balances in the course of collection, divided by surplus.

(b) "Change in Surplus Ratio" means the increase or decrease in surplus, divided by the prior year-end surplus, with surplus adjusted for deferred acquisition expenses.

(c) "Change in Writings Ratio" means the increase or decrease in net premiums written, divided by the prior year's net premiums written.

(d) "Estimated Current Reserve Deficiency to Surplus Ratio" means the estimated current deficiency or redundancy in the liabilities for losses and loss adjustment expenses, divided by surplus. The estimated deficiency or redundancy is the net earned premium, times the average of the developed loss ratios from the one-year and the two-year reserve development to surplus ratios, minus the liabilities for losses and loss adjustment expenses reflected in the Company's annual or financial statement.

(e) "Investment Yield Ratio" means the net investment income divided by the average invested assets. Invested assets are: investments, cash, and investment income due and accrued, less borrowed money.

(f) "IRIS Ratios" mean the eleven financial ratios contained in the National Association of Insurance Commissioner's Insurance Regulatory Information System (IRIS). They are calculated using data from an insurer's annual statement for the accounting period ending the previous December 31st, and are expressed as percentages.

(g) "Liabilities to Liquid Assets Ratio' means liabilities divided by liquid assets. Liquid assets are cash, investments, investment income due and accrued, and agents' balances or uncollected premiums deferred and not yet due, less investments in affiliates and real estate in excess of 5% of liabilities.

(h) "One-Year Reserve Development to Surplus Ratio" means the one-year development of losses and loss adjustment expenses, divided by the prior year-end surplus. The one-year reserve development is the net payments during the current year for losses incurred more than one year prior, plus current liabilities for such losses, minus the liabilities on such losses at the prior year end.

(i) "Premium to Surplus Ratio" means net premiums written, divided by surplus.

(j) "Surplus Aid to Surplus Ratio" means surplus aid from reinsurance, divided by surplus. Surplus aid is estimated by multiplying the ratio of ceded commissions to ceded premiums by the unearned premiums on reinsurance ceded to nonaffiliated companies.

(k) "Two-Year Overall Operating Ratio" means the sum of the following

two ratios: losses and loss expenses incurred, dividends to policyholders, and net investment income, all divided by net premiums earned; and other underwriting expenses, less income, divided by net premiums written.

(l) "Two-Year Reserve Development to Surplus Ratio" means a ratio calculated the same as the one-year reserve development to surplus ratio, except that a two-year base period is used.

(m) "Usual Range" means the range of IRIS Ratio results that has been established by the National Association of Insurance Commissioners as usually indicative of financially sound insurers.

§ 400.143 Applicability.

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1988 and subsequent contract years.

§ 400.144 Availability of the Standard Reinsurance Agreement.

The Federal Crop Insurance Corporation will offer Standard Reinsurance Agreements to eligible Companies under which the Corporation will reinsure policies which the Companies issue to producers of agricultural commodities. The Standard Reinsurance Agreement will be consistent with the requirements of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and provisions of the regulations of the Corporation found at Chapter IV of Title 7 of the Code of Federal Regulations.

§ 400.145 Eligibility for Standard Reinsurance Agreements.

A Company will be eligible to participate in a Standard Reinsurance Agreement if the Corporation determines the Company meets the standards and reporting requirements of this subpart.

§ 400.146 Obligations of the Corporation.

The Standard Reinsurance Agreement will include the following among the obligations of the Corporation.

(a) The Corporation will reinsure policies written on terms, including premium rates, approved by the Corporation, on crops and in areas approved by the Corporation, and in accordance with the provisions of the Federal Crop Insurance Act, as amended, and the provisions of these regulations.

(b) The Corporation will pay a portion of each producer's premium on the policies reinsured under the Agreement, as authorized by the Federal Crop Insurance Act, as amended.

(c) The Corporation will assume all obligations for unpaid losses on policies reinsured under the Agreement in the event any company reinsured under the Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by the Corporation by reason of a directive or order issued by any State Department of Insurance, State Commissioner of Insurance, any court of law having competent jurisdiction or any other similar authority of any jurisdiction to which the Company is subject.

(d) Each policy reinsured by the Corporation must be clearly identified in bold face or large type on the face thereof as follows:

This insurance policy is reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended (the Act) (7 U.S.C. 1501 et seq.), and all terms of the policy and rights and responsibilities of the parties are specifically subject to the Act and the regulations under the Act published in Chapter IV of 7 CFR.

§ 400.147 Limitations on the Corporation's obligations.

The Agreement will include the following among the limitations on the obligations of the Corporation.

(a) The Corporation may, at any time, suspend its obligation to accept additional liability from the Company by providing written notice to that effect.

(b) The obligations of the Corporation under the Agreement are contingent upon the availability of appropriations.

(c) The Corporation will not reinsure any policy sold by the Company to a producer after the date the Company receives notice that the Corporation has determined that the producer is ineligible to receive Federal Crop Insurance.

§ 400.148 Obligations of participating insurance company.

The Agreement will include the following among the obligations of the Company.

(a) The Company shall follow all applicable Corporation procedures in its administration of the crop insurance policies reinsured

(b) The Company shall make available to all eligible producers crop insurance for the crops and in the areas which are stated in its plan of operation as approved by the Corporation.

(c) The Company shall provide the Corporation, on forms approved by the Corporation, all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants refused coverage and all insured producers cancelled from insurance, along with the reason for such action, the crop program and the amount of coverage for each.

(d) The Company shall utilize only loss adjustment procedures and methods that are approved by the Corporation.

(e) The Company shall sell the policies covered under the Agreement through licensed agents or brokers who have successfully completed a training course approved by the Corporation.

(f) The Company shall not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex, age, handicap, or national origin.

§ 400.149 Disputes.

All disputes arising under this Subpart and the Standard Reinsurance Agreement entered into by the Company and the Corporation must be submitted for decision to the Manager of the Corporation. The decision of the Manager shall be final unless the Company requests reconsideration in writing within 45 days of the receipt of the decision. Any hearing provided by the Corporation will be of an informal nature and the rules of evidence will not apply. Pending final decision of the dispute, the Company will proceed diligently with the performance of the Agreement, as required by the Corporation.

§ 400.150 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be a licensed or admitted insurer in any State, Territory, or Possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent financial statement, that is at least equal to the values specified in the Minimum Surplus Table,[1] times an underwriting loss at a 400 loss ratio for the policies anticipated to be reinsured by FCIC (As used in the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least 5 percent of all policies it reinsures with FCIC are issued in that state);

(d) Have at least eight of its eleven IRIS ratios, based on its most recent financial statement, fall within the usual

ranges stipulated in the Usual Ranges of IRIS Ratios Table:[1]

(e) Submit to FCIC with its Plan of Operation each year a copy of the latest financial statement, signed by the President and another officer of the insurer, and filed with the Insurance Department of any state in which the Company does business; and

(f) Submit to FCIC any insurance department examination report, loss reserve certification, independent auditor's letter relating to the adequacy of the Company's internal control, and any other appropriate financial information, as requested by FCIC.

§ 400.151 Qualifying when a State does not require that a financial statement be filed.

An insurer which is exempted by the Insurance Department of the state from submitting a financial statement to the state must, in addition to the requirements of § 400.150 (a), (b), (d), and (f):

(a) Submit to FCIC with its Plan of Operation each year a copy of the latest annual financial statement prepared by an independent public accountant with generally accepted accounting principles, signed by the President and another officer of the insurer, which, if not exempted, would have been filed with the Insurance Department of any state in which it does business;

(b) Have a ratio of current assets to current liabilities of at least 1.2 to 1; and

(c) Have surplus at least equal to the values specified in the Minimum Surplus Requirements Table, times its MPUL from the policies to be reinsured by FCIC.

[1] The Minimum Surplus Table and the Usual Ranges of IRIS Ratios Table are shown below.

TABLE.—MINIMUM SURPLUS

Number of States in which a company issues FCIC-reinsured policies—	Minimum surplus values (multiply by underwriting loss at a 400 loss ratio—
1	8
2 through 10	5
11 or more	4

TABLE.—USUAL RANGES OF IRIS RATIOS

IRIS ratio	Usual range (percent)	
	From	To
Premium to surplus		+300
Change in writings	−33	+33
Surplus aid to surplus		+25
2-year overall operating ratio		+100
Investment yield	+6 and up	
In surplus	−10	+50
Liabilities to liquid assets		+105
Agent's balances to surplus		+40
1-year reserve development to surplus		+25
2-year reserve development to surplus		+25
Estimated current reserve deficiency to surplus		+25

§ 400.152 Qualifying with less than eight IRIS ratios in the usual range.

An insurer with less than eight of the IRIS ratios in the usual range (required by § 400.150(d)) may qualify if, in addition to the requirements of § 400.150 (a), (b), (c), (e), and (f), the insurer:

(a) Submits a plan, acceptable to FCIC, to eliminate the financial deficiency indicated by the IRIS ratios;

(b) Has a B+ rating or higher in the latest edition of "Best's Insurance Reports," is listed in the latest edition of "Surety Companies Acceptable on Federal Bonds," or is currently approved under the provisions of Treasury Department Circular No. 570; or

(c) (1) Has a ratio of current assets to current liabilities of at least 1.2 to 1, and a surplus at least equal to the values specified in the Minimum Surplus Table times its MPUL from the policies to be reinsured by FCIC;

(2) Has an irrevocable source of surplus such that conditions in (1) are met; or

(3) Has a binding agreement with another insurer that qualifies such insurer under this Part 400 to assume financial responsibility in the event of the reinsured's failure to meet its obligations on FCIC reinsured policies.

§ 400.153 Qualifying by waiver.

If an insurer does not qualify under any of the above methods because of unique circumstances and FCIC determines that the insurer is otherwise financially sound, FCIC may enter into a reinsurance agreement with the insurer.

§ 400.154 Notification of deviation from financial standards.

An insurer must immediately advise FCIC if it deviates from compliance with any of the requirements of this Chapter. FCIC may require the insurer to update its financial statement during the year. FCIC may terminate the reinsurance agreement if the Company is out of compliance with the requirements of this Chapter.

§ 400.155 Revocation and non-acceptance.

(a) FCIC will deny reinsurance to any insurer or will terminate any existing reinsurance agreement if any false or misleading statement is made in the financial statement or any other document submitted by the insurer in connection with its qualification for FCIC reinsurance.

(b) No policy issued by an insurer subsequent to revocation of a reinsurance agreement will be reinsured by FCIC. Policies in effect at the time of revocation will continue to be reinsured by FCIC for the balance of the crop year then in effect for the applicable crop. However, if materially false information is made to the Corporation and that information directly affects the ability of the Company to perform under the Standard Reinsurance Agreement, or if the Company commits any fraudulent or criminal act in relation to the Standard Reinsurance Agreement or any policy reinsured under the Standard Reinsurance Agreement, FCIC may require that the Company transfer the servicing and contractual right to all business in effect and reinsured by the Corporation to the Corporation.

§ 400.156 State action preemptions.

(a) No policyholder shall have recourse to any state guaranty fund or similar state administered program for crop or premium losses reinsured under such Standard Reinsurance Agreement. No assessments for such State funds or programs shall be computed or levied on companies for or on account of any premiums payable on policies of Multiple Peril Crop Insurance reinsured by the Corporation.

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of damages against the Company issuing such policy, other than damages to which the Corporation would be liable under federal law if the Corporation had issued the policy of insurance under its direct writing program, unless the claimant establishes in a court of competent jurisdiction, or to the satisfaction of the Corporation in the event of a settlement, that such damages were caused by the culpable failure of the Company to substantially comply with the Corporation's procedures or instructions in the handling of the claim or in servicing the insured's policy, or unless the Company or its agents were acting outside the scope of their authority (apparent or implied) in performing or omitting the actions claimed as a basis for the damage action.

§ 400.157 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

§ 400.158—400.299 [Reserved]

Done in Washington, DC, on February 4, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-3897 Filed 2-25-87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Proposed Suspension of Provision on Mandatory Committee Membership for Certified Seed Producers in District No. 5, and Conforming Change

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would suspend a provision in § 946.25(c) of the marketing order that requires one producer member and that member's alternate on the State of Washington Potato Committee from District No. 5 to be a certified seed producer. Suspension of the provision would allow any producer in District No. 5 to serve on the committee. Over the years, the number of tablestock market producers relative to seed producers has increased. The rule also would make conforming changes in § 946.104 of the rules and regulations issued under the order to reflect the suspension of the order provision. The proposal was recommended by the committee.

DATE: Comments must be received by March 9, 1987.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch F&V, AMS USDA, Washington DC 20250, telephone (202) 447–5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (The Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This proposed rule would suspend an order provision in § 946.25(c) requiring one producer member of the State of Washington Potato Committee from District No. 5, and that member's alternate, to be a certified seed producer. It would also remove the requirement in § 946.104(a)(5) of the rules and regulations that makes only potato seed producers eligible for committee membership from District No. 5. These actions are designed to make the producer membership from District No. 5 more representative of the producer makeup in that district. District No. 5 includes 17 counties west of the Cascade mountain range slope in Washington. It is bounded on the south by the Oregon border, on the north by the Canadian border, and on the west by the Pacific Ocean.

There are approximately 60 handlers of Washington potatoes subject to regulation under the marketing order for potatoes grown in Washington. In addition, there are approximately 350 producers of Washington potatoes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities. This action is primarily of an administrative nature and, as such, does not impose any additional costs on handlers or producers.

The proposed rule is issued under the Marketing agreement and Order No. 946, both as amended (7 CFR Part 946), regulating the handling of Irish potatoes grown in the State of Washington. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed actions are based on the recommendation of the State of Washington Potato Committee established under the order, and upon other available information.

The proposed rule would suspend the proviso in § 946.25(c) of the marketing order regarding District No. 5 producer representation. The proviso to be suspended reads as follows: *"Provided,* That one producer member of the committee from District No. 5, with his respective alternate, shall be a certified seed producer". Section 946.104(a)(5) of Subpart—Rules and Regulations (7 CFR 946.100 through 946.142) allocates one producer member and alternate member to District No. 5 and requires each to be a certified seed producer. The proposal would make a conforming change in § 946.104(a)(5) necessary because of the suspension.

The suspension of the proviso in § 946.25(c) and the conforming change in § 946.104(a)(5) removing the certified seed producer requirements are necessary to reflect changes in the producer makeup in that district in recent years. District No. 5 had originally been composed mostly of certified seed producers. However, the number of tablestock growers has increased over the years, and currently they substantially exceed seed growers. Allowing both certified seed and tablestock growers to serve on the committee on District No. 5, would foster more equitable producer representation on the committee reflective of the current producer makeup and recognize that it is inequitable to allot the one position for District No. 5 only to certified seed producers.

It is hereby found and determined that a comment period of less than 30 days is appropriate, because nominations for the member and alternate member for District No. 5 are scheduled to begin February 19, 1987. A longer comment period would not allow completion of this action in time for the scheduled nominations. Moreover, this action is not controversial and is fully supported by the producers in District No. 5.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

The proposal is to suspend indefinitely certain provisions in § 946.25(c) (7 CFR Part 946), and to amend Subpart-Rules and Regulations (7 CFR Part 946.101 through 946.142) as follows:

1. The authority citation for 7 CFR Part 946 continues to read as follows:

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

§ 946.25 [Amended]

2. Section 946.25(c) is amended by changing the colon to a period and by indefinitely suspending the proviso in paragraph (c) which reads as follows: *"Provided,* That one producer member

of the committee from District No. 5, with his respective alternate, shall be a certified seed producer."

3. Section 946.104 (43 FR 52199, November 9, 1978) is amended by removing the last sentence in paragraph (a)(5). As revised § 946.104(a)(5) reads as follows:

§ 946.104 Reapportionment of committee membership.

* * * * *

(5) District No. 5—One producer member and one handler member.

Dated: February 19, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-4018 Filed 2-25-87; 8:45 am]

BILLING CODE 3410-02-M

Rural Telephone Bank

7 CFR Part 1610

Rural Telephone Bank Loan Policies

AGENCY: Rural Telephone Bank, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Telephone Bank (RTB) hereby amends Part 1610 Loan Policies, Chapter XVI in Title 7 of the Code of Federal Regulations by redesignating the text of § 1610.5 as 1610.5(a) and adding a new paragraph (b). Section 1610.5(b) provides that each advance of funds on RTB loans approved after the effective date of the final rule shall bear interest at the cost of money rate determined by the Governor of the RTB, prevailing at the time of such advance but not less than 5 percent.

The primary purpose of this amendment is to insure that the RTB lends funds at its "cost of money rate" as mandated in section 408(b)(3) of the Rural Electrification Act of 1936 (7 U.S.C. 901–950b) as amended. The amendment will also eliminate risk to the RTB caused by fluctuating interest rates. The amendment will affect all future RTB borrowers.

DATE: Comments concerning this proposed rule must be received on or before March 30, 1987.

ADDRESS: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2823—South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9550. The Draft Regulatory Impact Analysis describing the options considered in developing this rule amendment is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore has been determined to be "not major."

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees, and 10.852—Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. 1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This rule amendment contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et. seq.).

Background

The Board of Directors of the Rural Telephone Bank at its meeting held on September 18, 1986, adopted a resolution calling for the above rule change. The Rural Telephone Bank is mandated by law to lend money at its cost of money rate. Current RTB policies and procedures establish a fixed rate for a loan, and all subsequent advances under the loan, at the time the loan is approved. The fixed rate is based on a projection of the anticipated cost of money rate to the RTB at least one year after the loan is approved. Draw down of loan funds by borrowers can extend over a period of five years.

The Bank's borrowing rate materially affects the rate at which it can lend money. Thus, during periods of extreme interest rate volatility, as witnessed during recent years, the interest rate on a particular loan commitment may bear no resemblance to the Bank's average cost of money at the time the loan is advanced because of this time differential. For example, a loan commitment made to a borrower at 8 percent in January of 1980 could have been drawn down two years later in January of 1982 when the average cost of money to the Bank was 11 percent. Conversely, a loan commitment made to a borrower in January of 1982 could have been drawn down on May 1, 1986, when the average cost of money to the Bank was 8 percent.

This raises a serious question as to whether the current system of applying the Bank's interest rates accurately reflects its statutory obligation to lend at the "cost-of-money rate." And, it places both the Bank and the borrower at considerable risk, with the Bank bearing the greater proportion, since the borrower may avoid drawing down the loan funds if disadvantageous, whereas the Bank has committed itself to lend the funds for a period of years at a specified rate of interest without fixing its cost of money. Since the Bank does not match the interest rate on loan commitments with the interest rate on advances, the investment of all three classes of stockholders is being subjected to enormous risk. This, of course, includes the Government's investment of almost $450 million in the Bank's Class A stock plus almost $800 million invested by Treasury in the Bank's debentures.

To avoid this type of risk, the Federal Financing Bank refrains from establishing an interest rate at the time of commitment. It sets the interest rate on each advance as it is made.

Given the Rural Telephone Bank's statutory obligation to lend funds at its "average cost of moneys," it is imperative that the most current interest rate established by the Governor be applied to each advance. Such a procedure would not intrude upon the Governor's authority under the Act to determine the Bank interest rates. Nor would it affect current determinations of borrower eligibility.

List of Subjects in 7 CFR Part 1610

Loan programs—communications, Telecommunications telephone.

PART 1610—[AMENDED]

In view of the above 7 CFR Part 1610 is hereby amended to read as follows:

1. The authority citation for 7 CFR Part 1610 continues to read:

Authority: 85 Stat. 29 et seq.; 7 U.S.C. 931 et seq.; as amended at Pub. L. 93–32, 87 Stat. 65 et seq.

2. The text of § 1610.5 is redesignated as paragraph (a) and new paragraph (b) is added to read as follows:

§ 1610.5 Concurrent REA and Bank loans.

(a) * * *

(b) Notes for loans approved by the Governor after (the effective date of this rule) shall provide that each advance thereunder shall bear interest at the cost of money rate determined by the Governor, prevailing at the time of such advance.

Dated: February 13, 1987.

Jack Van Mark,

Acting Governor, Rural Telephone Bank.

[FR Doc. 87-3889 Filed 2-25-87; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-21]

Northern States Power Co. & Wisconsin Electric Power Co.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition for rulemaking submitted by Northern States Power Company and Wisconsin Electric Power Company. The petitioners requested that the Commission amend its regulations to include plant security information within the definition of Restricted Data, or alternatively within the definition of National Security Information, and to ensure that the discovery of plant security information during the Commission's adjudicatory proceedings is subject to the protection of 10 CFR Part 2, Subpart I for Restricted Data or National Security Information. According to petitioners, the revisions are necessary in order to protect plant security information from unauthorized disclosure, and thus ensure that security plans are not compromised. In the time since the petitioners submitted their petition, amendments to the Atomic Energy Act concerning plant security information and corresponding revisions to the Commission's regulations have been made. Therefore, the Commission is denying the petition because existing regulatory framework adequately balances the need for protection of plant security information with the need to disclose such information to parties in adjudicatory hearings.

ADDRESS: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial are available for public inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristina Jamgochian, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427-4754.

SUPPLEMENTARY INFORMATION:

The Petition

On June 6, 1977, the Nuclear Regulatory Commission received a petition from the Northern States Power Company and the Wisconsin Electric Power Company. The petitioners requested that the Commission amend its regulations to include plant security information within the definition of Restricted Data, or alternatively within the definition of National Security Information, and to ensure that the discovery of plant security information during the Commission's adjudicatory proceedings is subject to the protection of 10 CFR Part 2, Subpart I for Restricted Data or National Security Information.

Basis for the Request

The Commission's regulations, 10 CFR 50.34, requires each applicant for a license to operate a nuclear power reactor to include in the license application a physical security plan demonstrating how the applicant plans to comply with the Commission's requirements in 10 CFR Part 73. These regulations require licensees to provide physical protection against radiological sabotage and against theft of special nuclear material (10 CFR 73.40). These security plan issues have been raised and litigated in the Commission's adjudicatory proceedings for construction permits and operating licenses.

At the time of petitioners request, security plan information was afforded the same protection in Commission adjudicatory proceedings as that given to privileged or confidential commercial or financial information. As recognized by petitioners, disclosure of this information to intervenors in a licensing proceeding is authorized under a protective order issued by the licensing board. These protective orders bar further disclosure of the information. However, the petitioners asserted that this treatment does not adequately protect security plan information against public disclosure. According to the petitioners, the reclassification of security plan information as either Restricted Data or National Security Information would provide a more effective level of protection. Petitioners also noted that the Commission's regulations do not protect against disclosure in proceedings conducted by agencies other than the NRC.

The petitioners offered the following justification for the proposed revision of the regulations:

- The penalties for disclosure of plant security information would only be triggered after there had been an unauthorized disclosure and any resulting damage had occurred;
- Organizations seeking to disclosure or wrongful use plant security information could intervene in a licensing proceeding solely in order to gain access to the information; and
- State agencies often insist on considering plant security questions in the course of State proceedings and may not afford *in camera* protection to this information.

For the above reasons, petitioners would limit access to plant security information to persons having security clearances. According to petitioners, this could be accomplished by establishing it as Restricted Data under section (y) of the Atomic Energy Act, as amended, 42 U.S.C. 2014(y), or as National Security Information pursuant to Executive Order 11652, as amended. By requiring an intervenor in a licensing proceeding to obtain a security clearance in advance of access to plant security information, the Commission would gain substantial assurance that the individual securing such information would not misuse it. In addition, agencies other than NRC would be bound to observe the Federal requirements on the disclosure of Restricted Data or National Security Information. The plant security information could be disclosed only to persons having the requisite security clearances.

Public Comments on the Petition

On July 21, 1977, the Commission published a notice in the **Federal Register** and requested comments on the petition (42 FR 37458). The NRC received 12 public comments on the petition for rulemaking. Two commenters were major suppliers of equipment to nuclear power plants and the other 10 commenters were nuclear power plant licensees, one of which was the petitioners. Nine commenters, including the petitioners, supported the petition for rulemaking. In addition, the petitioners requested that a letter from the Advisory Committee on Reactor

Safeguards (ACRS) to the Chairman of the NRC dated August 18, 1977, be included in the record of this proceeding. In this letter the ACRS recommended ". . . that access to sensitive material of this type be restricted to persons with appropriate clearances and a definite need to know."

Three commenters did not agree with the petition. These commenters felt that the proposal recommended by petitioners would inhibit the utility companies' internal use of such information because of the large number of employees requiring its use. They also felt that establishng and administering a clearance program would create an overwhelming burden to the utility in terms of time and expense.

Reasons for Denial

In the time since the petitioners submitted their petition, amendments to the Atomic Energy Act concerning plant security information and corresponding revisions to the Commission's regulations have been made. Section 207(a)(1) of Public Law No. 96–295 added a new section 147 of the Atomic Energy Act, 42 U.S.C. 2167. This provision directed the Commission to promulgate regulations to prohibit the unauthorized disclosure of certain types of Safeguards Information. In response, the Commission promulgated regulations that establish a framework for the protection of this information. As published in 46 FR 51718 of October 22, 1981, 10 CFR 73.2(jj) defines "Safeguards Information" as:

> . . . information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed (1) security measures for the physicial protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

A provision contained in 10 CFR 73.21(c)(1) of the Commission's regulations prohibits any person from having access to Safeguards Information unless the person has an established "need to know" for the informaton and also falls into one of several specified categories of individuals. One of these categories, 10 CFR 73.21(c)(1)(vi), is for individuals to whom disclosure is ordered pursuant to 10 CFR 2.744(e), which governs requests for the production of NRC records and documents by parties to an NRC adjudicatory hearing. Under 10 CFR 2.744, a party to a hearing may request documents containing Safeguards Information. However, 10 CFF 2.744(d) requires that the requested document must not only be relevant to the issues in the hearing, but the presiding officer must also find that the disclosure of the information is necessary to a proper decision in the proceeding. If these requirements are met, any order to produce the document may contain protective terms and conditions, including the signing of an affidavit of nondisclosure. These protective terms and conditions are designed to limit the disclosure of Safeguards Information to the parties in the proceeding, to any interested governmental entities participating pursuant to 10 CFR 2.725(c), and their qualified witnesses and counsel. The presiding officer is authorized to impose sanctions for the violation of an order pertaining to the disclosure of Safeguards Information under 10 CFR 2.744(e). For example, if a protective order were violated by an intervenor, § 2.744(e) would allow the licensing board to dismiss the intervenor from the proceeding. If a protective order is violated by counsel for an intervenor, the licensing board may bar the particular counsel from further participation in the proceeding. Under 10 CFR 2.713(c)(3), the licensing boards are also required to notify the State bar to which the attorney is admitted of such suspension. It is conceivable that there may be some circumstances in which these sanctions might not prove satisfactory because they would not reach witnesses who make unauthorized disclosures of protected information and who are not under the direct control of the parties to the adjudicatory proceeding. In actual practice, however, these sanctions have been more than adequate. In addition to these sanctions, section 147, 42 U.S.C. 2282, and section 223, 42 U.S.C. 2273, of the Atomic Energy Act, as amended, impose civil and criminal penalties for unauthorized disclosure of unclassified Safeguards Information.

In promulgating its regulations on the disclosure of Safeguards Information, the Commission was required by section 181 of the Atomic Energy Act, 42 U.S.C. 2231, to provide for the protection of Safeguards Information with the *minimum* impairment of procedural rights. The provisions of 10 CFR 73.21 and 2.744, discussed above, were seen by the Commission as the minimum restrictions necessary to protect public health and safety or the common defense and security in the context of adjudicatory hearings. This principle is also the basis for the creation of the separate category of "Safeguards Information" rather than including this type of information in the more restrictive categories of Restricted Data or National Security Information, which are governed by special procedures in 10 CFR Part 2, Subpart I. These regulations also reflect the Commission's judgment that the adequacy of a security plan bears significantly on public health and safety and is a proper issue for consideration in an adjudicatory proceeding.

The existing regulatory framework adequately balances the need for protection of plant security information with the need to disclose such information to parties in adjudicatory hearings. Accordingly, the petition is denied.

Dated at Bethesda, Maryland, this 13th day of February, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Excutive Director for Operations.

[FR Doc. 87–4006 Filed 2–25–87; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 73

[Docket Nos. 73–2, 73–7, and 73–8]

Wisconsin Electric Power Co., et al.; Withdrawal of Petitions for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petitions for rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioners' request, three related petitions for rulemaking (PRM–73–2, 73–7, and 73–8) that were filed by Shaw, Pittman, Potts & Trowbridge on behalf of Wisconsin Electric Power Co. (73–2, 73–7, 73–8), Wisconsin Public Service Corp. (73–2), Public Service Gas & Electric Co. (73–7, 73–8), Baltimore Gas & Electric Co. (73–2), Commonwealth Edison Co. (73–7, 73–8), Yankee Atomic Power Co. (73–7, 73–8), Northern States Power Co. (73–7, 73–8), and Sacramento Municipal Utility District (73–7, 73–8), collectively referred to as petitions for rulemaking filed by Wisconsin Electric Power Co., et al. The three petitions for rulemaking requested the elimination of certain requirements at nuclear power plants: "pat-down" physical searches of individuals, log-out for certain individuals, and searches of hand-carried personal effects of certain screened employees.

ADDRESSES: A copy of the petitioners' letter requesting the withdrawal of the petitions is available for public inspection or copying for a fee in the NRC's Public Document Room, 1717 H

Street, NW., Washington, DC 20555. Single copies of the petitioners' letter requesting the withdrawal of the petitions may be obtained free of charge by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7086 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on September 15, 1977 (42 FR 46431), the NRC announced the receipt of and requested comments on a petition for rulemaking (PRM–73–2) filed by Wisconsin Electric Power Co., et al. The comment period expired on October 17, 1977. (About 100 letters of comment were received on the petition.) The petition, which was dated August 19, 1977, requested that the NRC amend § 73.55(d)(1) to eliminate the requirement for "pat-down" physical searches of individuals entering a protected area of a nuclear power plant. Petitioners' contended that the requirement was unnecessary because comparable highly sensitive facilities, such as those used to store nuclear weapons, do not have such a requirement.

In **Federal Register** notices published on February 16, 1982 (47 FR 6657 and 6658), the NRC announced the receipt of and requested comments on two petitions for rulemaking (PRM–73–7 and 73–8) filed by Wisconsin Electric Power Co., et al. The comment period for both petitions expired on April 19, 1982. (Thirteen letters of comment were received on each petition). Both petitions were dated December 2, 1981. PRM–73–7 requested that the NRC amend § 73.70(d) to eliminate the log-out requirement at nuclear power reactors for individuals given access to normally unoccupied vital areas. The petitioners contended that the requirement was not only unnecessary from a safety standpoint, but that it might be detrimental to safe plant shutdown and effective plant response to other emergencies. PRM–73–8 requested that the NRC amend § 73.55(d)(2) to eliminate the requirement for searches of hand-carried personal effects of screened employees entering a protected area of a nuclear power plant.

By letter dated January 12, 1987, the petitioners confirmed their agreement to withdraw the petitions for rulemaking. Important to the petitioners' decision to withdraw these petitions is the fact that the NRC recently published two final rules on August 4, 1986 (51 FR 27817–27825). One of the rules, "Searches of Individuals at Power Reactor Facilities," revised § 73.55(d) regarding the search requirements for individuals entering the protected area of nuclear power plants; and the other rule, "Miscellaneous Amendments Concerning Physical Protection of Nuclear Power Plants," amended several paragraphs of §§ 73.55 and 73.70 regarding access control to vital areas, the protection of certain physical security equipment, requirements for key and lock controls, and the suspension of safeguards measures during emergencies. Because of the foregoing rulemaking activities, the petitioners have agreed to withdraw the petitions.

Dated at Bethesda, Maryland, this 19th day of February 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87–4007 Filed 2–25–87; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[No. 87–175]

Federal Savings and Loan Insurance Corp.; Transfers of Assets of Insured Institutions

Dated: February 17, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to adopt a clarifying amendment to its statement of policy regarding mergers and transfers of assets. The purpose of the amendment is to make clear that the Board's regulations governing transfers of assets, savings accounts, and other liabilities by institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") are applicable to all transfers in bulk not made in the ordinary course of business, including transfers by operation of law effected pursuant to charter conversions, mergers, consolidations, and other business combinations and reorganizations in which an FSLIC-insured institution is not the surviving entity, and that, accordingly, application to and approval by the Board are required for such transactions. The proposed amendment is a slightly modified version of an interpretive rule recently adopted by the Board. The Board is making this proposal to resolve any uncertainty that may exist concerning the types of transfers that are subject to the Board's regulations.

DATES: Comments must be received on or before March 30, 1987.

ADDRESS: Send comments to Director, Information Service Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: John A. Buchman, Attorney, (202) 377–6963; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377–6459; Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1986, the Board, acting as operating head of the FSLIC, amended its statement of policy regarding mergers and transfers of assets set forth in § 571.5(a) of its Rules and Regulations for FSLIC-Insured Institutions ("Insurance Regulations"). The Board's objective in adopting the amendment was to make clear that application to and approval by the Board under 12 CFR 563.22(b) are required for transfers of assets and savings account liabilities of insured institutions that are effected by operation of law pursuant to charter conversions, mergers, consolidations, and other business combinations and reorganizations in which an FSLIC-insured institution is not the surviving entity. *See* Board Resolution No. 86–1096, 51 FR 36528 (Oct. 10, 1986) (to be codified at 12 CFR 571.5(a)). In support of this clarification, the Board noted, *inter alia*, that there is no basis for limiting the applicability of § 563.22(b) to transfers resulting from conventional purchase and assumption transactions or bulk sales of assets and that the clarification is consistent with one of the Board's primary purposes when it amended § 563.22(b) in 1983—"to protect accountholders whose rights and interests could be adversely affected by a transfer of their accounts in connection with a transfer of substantially all of an institution's assets." *Id. See* Board Resolution No. 83–243, 48 FR 21302 (May 12, 1983). The Board also found that compliance with the notice, comment, and delayed

effectiveness requirements of section 553 of the Administrative Procedure Act ("APA") (5 U.S.C. 553) and the Board's regulations thereunder (12 CFR 508.11, 508.14) was not necessary, given the clarifying and interpretive nature of the rule. Accordingly, the rule was adopted by the Board in final form and became effective on October 10, 1986, the date on which the revision to 12 CFR 571.5(a) was published in the **Federal Register.**

The validity of the Board's interpretation was subsequently challenged by United States Federal Savings and Loan Association, Sarasota, Florida, and Barnett Banks of Florida, Inc. In an order dated December 19, 1986, the United States District Court for the Middle District of Florida, Jacksonville Division, issued a preliminary injunction against the Bank Board's "[implementation or enforcement] of its rule requiring approval of [the proposed] merger [of United First into a commercial bank subsidiary of Barnett] before the merger could take place." [1] In support of its order, the district court found that plaintiffs were likely to succeed on their claim that the clarification was, in fact, a legislative rule and that the rule was promulgated in violation of the procedural requirements of section 553 of the APA.[2]

The Board has filed an appeal from the court's order with the United States Court of Appeals for the Eleventh Circuit.[3] The Board believes that its appeal raises substantial issues on which it should ultimately prevail and remains of the view that the clarifying amendment was promulgated in compliance with all applicable precedural requirements. Accordingly, pending appeal, the Board will continue to require all insured institutions that propose to make transfers of all or a substantial portion of their assets and/or savings account liabilities to comply with the provisions of 12 CFR 563.22(b), regardless of how the transfer is to be structured or effected or how the transfer is characterized under state law.[4]

The Board, acknowledges, however, the possibility that the federal appeals court could affirm the district court's holding. The Board also recognizes that, although the district court's preliminary injunction in *United First* was, by its terms, only applicable to Barnett's acquisition of United First, a number of the insured institutions presently contemplating transfers of assets by operation of law may question the need for continued compliance with the application and approval requirements of § 563.22(b) in light of the court's decision. To avoid any uncertainty that exists regarding the procedural validity of the recent clarification of 12 CFR 571.5(a) and to provide interested parties an opportunity to express their views on this mattter, the Board hereby proposes a revised modification to the definition of "transfers" in § 571.5(a) substantially similar to the clarification previously adopted by the Board. The Board's primary purpose in making this proposal is to ensure that application to and approval by the Board is required for (1) all conventional transfers of assets, deposit accounts and/or other liabilities not in the ordinary course of business that are effected pursuant to purchases of assets, assumptions of liabilities, and/or bulk sales of assets transactions, and (2) all transfers by operation of law in which an institution insured by the FSLIC is not the surviving entity. The proposal differs from the earlier clarification in one respect to make clear that transfers by operation of law in which FSLIC insurance of accounts will continue are not subject to the requirements of 12 CFR 563.22(b). The reason for this change is discussed below.

Current Proposal

The Board is proposing to revise the definition of "transfers" in 12 CFR 571.5(a) to include transfers by operation of law that are effected pursuant to charter conversions, mergers, consolidations, and other business combinations and reorganizations in which an institution insured by the FSLIC is not the surviving entity. As noted by the Board in the preamble to its October 7, 1986 clarifying amendment, there is no basis for limiting the application of §563.22(b) only to transfers that result from conventional purchase and assumption or bulk sale transactions. A transfer by operation of law has the same practical effect as a conventional purchase and assumption transaction—namely, transfer of an institution's assets, deposits, and other liabilities to a distinct and separately existing legal entity. Moreover, many of the same legal and supervisory concerns that originally prompted the board to adopt § 563.22(b) arise in both contexts. *See* Board Resolution No. 83–243, 48 FR 21302 (May 12, 1983). Accordingly, the Board believes that conventional transfers and transfers by operation of law equally warrant Board oversight.

Application of § 563.22(b) to transfers of all types is also supported by the basic approach that has been followed in the Savings and Loan Holding Company Amendments to the National Housing Act ("Holding Company Act"), as well as other regulations of the board, in interpreting similar concepts. The provisions governing "acquisitions" under the Holding Company Act, for example, explicitly encompass transfers of control of an institution effected through various types of transactions, including mergers, consolidations, or purchases of assets. *See* 12 U.S.C. 1730a(e)(1)(A)(ii). The Board's mutual-to-stock conversion regulations (12 CFR Part 563b) also define an acquisition of control to include "every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise." *See* 12 CFR 563b.3(i)(8)(iii). In short, the approach taken in determining whether a transaction is an "acquisition" for purposes of the Holding Company Act and the Board's regulations has been to focus on the substance of a transaction, rather than its characterization or structure. A similar approach in the present instance would dictate that transfers by operation of law are "transfers" within the meaning of § 571.5(a) and therefore are subject to the application and approval requirements of § 563.22(b).

In addition, the clarification to § 571.5(a) that the Board is proposing today is also consistent with one of the Board's primary purposes when it amended § 563.22(b) in 1983—to ensure that the rights and interests of accountholders are protected in connection with a transfer of substantially all of an institution's assets. *See* Board Resolution No. 83–243, 48 FR at 21303. Conversion by operation

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[1] Transcript at 55, *United First Federal Savings and Loan Ass'n, et al.* v. *Federal Home Loan Bank Board*, No. 86–661–Civ–J–16 (M.D. Fla., Dec. 19, 1986) ("*United First*").

[2] *Id.* at 54. The district court's order did not address the separate issue of whether the Board had the statutory authority to adopt this clarification of its statement of policy in 12 CFR 571.5.

[3] The Board's motion for expedited appeal from the order has been granted by the Eleventh Circuit, and oral argument is currently scheduled for the week of March 9, 1987.

[4] Prior to the Board's adoption of its October 7, 1986, clarifying rule, the Office of General Counsel of the Board ("OGC") had issued a number of opinion letters advising insured institutions that their proposed transfers by operation of law constituted "transfers" which would be subject to the provisions of § 563.22(b). As previously stated, the Board has determined that OGC's interpretation of the prior version of 12 CFR 571.5(a) is correct and does not believe that an amendment to its statement of policy was or is necessary in order for § 563.22(b) to be applicable to all such transfers. *See* Board Resolution No. 86–1096, 51 FR at 36529. It is therefore the Board's view that, for the reasons set forth in OGC's recent opinions, transfers by operation of law would continue to be within the scope of the transfer of assets regulation even if the district court's preliminary injunction were upheld on appeal.

of law of a mutual institution into a commercial bank or savings bank insured by the Federal Deposit Insurance Corporation ("FDIC") presents the concern that the inchoate ownership interests of the institution's accountholders would no longer be preserved and protected by the Board's mutual-to-stock conversion regulations. Similarly, transformation into an FDIC-insured bank of an insured institution that has recently converted to the stock form of ownership, and the accompanying transfer of the institution's liquidation account, would limit the ability of the Board to protect the interests of former mutual accountholders in the liquidation account of the converted institution in the event of its subsequent liquidation. Thus, this proposed amendment to 12 CFR 571.5(a) would further a primary objective of the Board when paragraph (b) was added to § 563.22. *See id;* Board Resolution No. 83–88, 48 FR 8480 (Mar. 1, 1983).

The Board believes that the application of § 563.22(b) to transfers by operation of law would also serve an additional purpose by providing the Board with an opportunity to review such transactions and ensure that they are effected in compliance with all applicable federal laws. In this regard, the Board notes that in at least one recent instance a federally-chartered thrift converted into a national bank without prior application to or approval by the Board. It has consistently been the Board's view that federally-chartered institutions are governed exclusively by federal law and the Board's rules and regulations for federal associations,[5] and that in the absence of any enabling provision in the Home Owners' Loan Act of 1933, as amended ("HOLA"), or the regulations thereunder, such a transfer is invalid. In the situation cited above, if the federal thrift had sought Board approval of its proposed transfer by operation of law, the Board could have advised the thrift that a federally-chartered association lacks the authority to convert directly into a national bank under the HOLA and could have acted to prevent a violation of law by an institution over which it has "cradle-to-grave" regulatory authority. *See Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 145 (1983) *quoting California* v. *Coast Federal Savings and Loan Ass'n,* 98 F. Supp. 311, 316 (S.D. Cal. 1951). The proposed clarification would therefore strengthen the ability of the Board to enforce those laws that are applicable to insured institutions.[6]

As a final matter, the Board notes that in the *United First* litigation, questions were also raised as to whether the Board possessed the legal authority to adopt its recent clarifying amendment. Specifically, plaintiffs in the case claimed that the October 7, 1986, interpretive rule exceeded the Board's statutory authority and was therefore invalid, because (1) the rule would interfere with the ability of a federally-chartered thrift to convert to a state charter under section 5(i)(3) of the HOLA, and (2) it would conflict with the right of a thrift to terminate its status as an insured institution under section 407(a) of the NHA.[7] Given that the issue of the Board's legal authority to regulate transfers by operation of law may again be raised in this rulemaking proceeding, the Board believes that each of these arguments should be addressed at this time.

With respect to the plaintiffs' first contention, it is not the intent of the Board to make the requirements of § 563.22(b) applicable to transfers effected pursuant to conversions of federally-chartered thrifts into state-chartered savings and loan associations. Although the October 7, 1986, clarifying amendment defined "transfers" to include transfers by operation of law of all kinds, the preamble to the amendment indicated that the purpose of the interpretation was to make clear that application to and approval by the Board would be required for "transfers by operation of law . . . in which an insured institution is not the surviving entity. . . ." Board Resolution No. 86–1096, 51 FR 36528. Because the resulting state-chartered association in a one-step federal-to-state conversion transaction must retain FSLIC insurance of accounts.[8] the Board determined that application of 12 CFR 563.22(b) to transfers by operation of law that only involve a termination of FSLIC insurance would not interfere with a federal association's right under section 5(i)(3) to become a state-chartered institution.

To resolve any uncertainty that has existed as to the types of transfers by operation of law for which Board approval under 12 CFR 563.22(b) is required, the Board makes clear in the amendment hereby proposed that the Board's regulations governing transfers of assets would apply, in addition to all conventional transfers in bulk, only to those transfers by operation of law in which the surviving entity is not FSLIC-insured. The Board notes in this regard that transfers by operation of law in which FSLIC insurance of accounts continues do not generally present the concerns regarding accountholder protection and conformity under law which are raised in other transfer contexts. Moreover, many of these types of transfers by operation of law, such as mergers, acquisitions, and consolidations, are already subject to the requirement of Board approval. *See* 12 CFR 546.2, 552.13, 563.22(a), 563b.3(i) and 574.3. For these reasons, the Board believes that its interpretation as revised would be fully consistent with section 5(i)(3) and would enable the Board to review those transfers that typically present the greatest number of legal and supervisory issues.

As to the second argument made by plaintiffs in *United First,* it is true that under the proposed amendment application to and approval by the Board would be required for a transaction in which the assets and liabilities of a state-chartered institution are transferred and the FSLIC-insured status of the institution is terminated. However, the event that would trigger the applicability of § 563.22 would be the transfer of assets itself and not the termination of insured status. In other words, any state-chartered institution may terminate its insured status pursuant to section 407 of the NHA by notifying the FSLIC, and nothing in the Board's transfer of assets regulation interferes with the ability of a thrift to effect such a termination. Accordingly, the Board perceives no conflict between the NHA and the clarification that would cause the latter to be invalid.

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[5] *See, e.g., Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 166–67 (1983); *California* v. *Coast Federal Savings & Loan Ass'n,* 98 F. Supp. 311 (S.D. Cal. 1951).

[6] The Board believes that on this basis the clarification would constitute a legitimate exercise of its enforcement authority under section 407(e) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1730(e). *See Otero Savings and Loan Ass'n* v. *Federal Home Loan Bank Board,* 665 F.2d 279, 285–86 (10th Cir. 1981).

[7] The district court, in issuing its preliminary injunction, neither addressed nor resolved the issue of the Board's statutory authority to promulgate the interpretive rule.

[8] In its recent opinion letters to insured institutions contemplating transfers by operation of law, OGC has expressed the view generally that transfers by operation of law in which the surviving entity is nt FSLIC-insured involve voluntary terminations of insured status under section 407(a) of the NHA, 12 U.S.C. 1730(a), given the volitional nature of the transfer. In the Board's view, OGC's characterization of such transactions is correct. Thus, a federally-chartered thrift could not directly convert into a state-chartered, FDIC-insured institution because section 407(a) prohibits federal savings and loan associations and federal savings banks from voluntarily terminating their status as insured institutions. *See* 12 U.S.C. 1730(a); 12 U.S.C. 1462(d).

Public Comment Period

The Board has determined that a 30-day public comment period is appropriate because prompt action is in the public interest in order to resolve the uncertainty which currently exists as to the types of transfers subject to § 563.22(b) and to make the foregoing clarification effective as soon as possible. 12 CFR 508.13; Board Resolution No. 80–584, 45 FR 63135 (Sept. 23, 1980).

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* The elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the proposed rule would apply are the 1,651 insured institutions that has assets totaling $100 million or less as of December 31, 1986.

3. *Impact of the proposed rules on small institutions.* The proposed rule would not have a disproportionate effect on small institutions, nor is it expected that the rule will have a significant economic impact on a substantial number of small institutions.

4. *Overlapping or conflicting federal rules.* There are no federal rules that duplicate, overlap, or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* No alternative to the proposal would better attain the objectives of the proposal.

List of Subjects in 12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority citation for Part 571 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437), sec 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071.

2. Paragraph (a) of § 571.5 is received to read as follows:

§ 571.5 Mergers and transfers of assets and liabilities.

(a) *General policy.* This is a statement of the Federal Home Loan Bank Board's general policy on merger and transfer proposals. It does not ordinarily apply to mergers and transfers instituted for supervisory reasons. The term "merger" includes consolidations as well as statutory mergers, and the term "transfers" means tranfers in bulk not made in the ordinary course of business including, but not limited to, transfers of assets and savings account liabilities, purchases of assets, assumptions of savings accounts and other liabilities, and transfers of assets in bulk that are effected by operation of law pursuant to statutory conversions, mergers, consolidations, and other reorganizations and combinations; *Provided however,* that the term "transfers" shall not include transfers in bulk that are effected by operation of law pursuant to statutory conversions, mergers, consolidations, and other reorganizations and combinations where the surviving entity is an insured institution. Transactions in accordance with § 545.82 of this chapter between a Federal association or a state-chartered insured institution and a finance subsidiary as defined in § 563.13–2(a)(4) of this subchapter are not "transfers" for purposes of this paragraph. Potential merger and transfer applicants are encouraged to review proposed transactions with the Supervisory Agent prior to proceeding with the formal application process. Generally, the Board regards mergers or transfers primarily as business decisions to be made by the institutions involved.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–3973 Filed 2–25–87; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 70116–7016]

U.S. Trade in Services: Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1986

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules for a new BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, covering 1986. The data from the survey will be used to develop U.S. trade policy and support U.S. negotiations on services trade with foreign countries. They will enable the Government to better assess U.S. competitiveness in, and institute export promotion programs for, services industries. They will also result in improvement in U.S. balance of payments statistics and in the ability of U.S. services businesses to identify and evaluate market opportunities.

The survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The proposed rules will implement a portion of the President's responsibilities for collecting data on U.S. services trade under the Act. These responsibilities have been delegated to the Secretary of Commerce, who has redelegated them to BEA. The proposed rules will amend 15 CFR Part 801, as published in the **Federal Register** on March 6, 1986.

DATE: Comments on the proposed rules will receive consideration if submitted in writing on or before April 27, 1987.

ADDRESS: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 2030, or hand delivered to Room 608, Tower Building, 1401 K Street NW., Washington, DC 20005. Comments received will be available for public inspection in Room 608, Tower Building, between 8:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of

Commerce, Washington, DC 20230; phone (202) 523–0657.

SUPPLEMENTARY INFORMATION:

Purpose

In response to urgent concerns expressed by representatives of U.S. services industries to the U.S. Congress and to the Administration about the need to reduce international barriers to services trade, Congress included an amendment in the Trade and Tariff Act of 1984 authorizing mandatory surveys of trade in services. Under the General Agreement on Tariffs and Trade and in other international fora, the United States has taken the initiative to make reduction in barriers to services trade a topic for negotiations. Such negotiations can only be conducted effectively if the U.S. Government has sufficient data to assess the size of U.S. services trade, both in the aggregate and by individual country and type of service; to evaluate the extent to which U.S. services trade has been disadvantaged by trade barriers; and to determine the benefits that would result from a reduction in those barriers.

BEA's existing direct investment surveys collect information on trade in services between U.S. and affiliated foreign persons (that is, between U.S. parent companies and their foreign affiliates and between U.S. affiliates and their foreign parent companies). In addition, BEA's existing services surveys collect data on certain types of services transactions with unaffiliated foreign persons—specifically, on royalties and license fees; foreign ocean carriers' expenses in the United States; foreign airline operators' revenues and expenses in the United States; freight revenues and foreign expenses of U.S. ocean carriers; U.S. airline operators' foreign revenues and expenses; foreign contract operations of U.S. construction, engineering, architectural, and related consulting and technical services firms; and reinsurance transactions with insurance companies resident abroad. The proposed BE–20 survey will collect information on selected services transactions between U.S. and unaffiliated foreign persons that are not covered by the existing surveys. It will fill many of the remaining gaps in data on services needed by the Government to conduct trade policy and negotiations, better assess U.S. competitiveness in services industries, and institute export promotion programs for services. In addition, the survey data will result in improvement in U.S. balance of payments statistics and in the ability of U.S. services businesses to identify and evaluate market opportunities. It is anticipated that the information from the benchmark survey will be updated in subsequent years by an annual follow-on survey that is more limited in scope and that will cover only a sample of the companies reporting in the BE–20 survey.

Statutory Authority

The Trade and Tariff Act of 1984 amended the International Investment Survey Act of 1976 to extend the latter's coverage to international services trade and to rename it the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended by section 306 of Pub. L. 98–573), hereafter "the Act." Section 4(a) of the Act authorizes the conduct of mandatory surveys of trade in services between U.S. and foreign persons, including benchmark surveys of trade between U.S. and unaffiliated foreign persons. Specifically, it provides that "The President shall, to the extent he deems necessary and feasible— . . . (4) conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2)) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; . . ." In section 3 of Executive Order 11961, as amended by Executive Order 12518 of June 3, 1985, the President delegated the authority under the Act as concerns trade in services to the Secretary of Commerce. The Secretary of Commerce has, in turn, redelegated this authority to BEA.

Background

A "Notice of Proposed Rulemaking" to implement a previous version of the BE–20 benchmark survey, to make several existing surveys of U.S. services trade between U.S. and foreign persons mandatory, and to bring all existing services surveys under the authority of the International Investment and Trade in Services Survey Act was published in the September 18, 1985 **Federal Register**, Volume 50, No. 181 (50 FR 37867).

After publication of these proposed rules and submission of the previous version of the BE–20 survey to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35), OMB disapproved the BE–20 survey. A letter dated October 21, 1985, from Wendy L. Gramm, Administrator for Information and Regulatory Affairs of OMB, to Allan H. Young, Director of BEA, stated that, while OMB recognized the importance of securing information on international trade in services, as reflected in the International Investment and Trade in Services Survey Act, it believed the BE–20 survey in the form then submitted for approval was "unreasonably burdensome on reporting firms and would not yield the quality of data required to achieve the survey's purposes." OMB requested that BEA hold consultations with potential industry respondents to achieve improvements and burden reductions in the BE–20 forms before resubmitting the forms for approval.

Following disapproval of the BE–20 survey, the sections of the proposed rules dealing with that survey were removed, and final rules to make BEA's existing voluntary surveys of U.S. services transactions with foreign persons mandatory and to bring all existing services surveys under the International Investment and Trade in Services Survey Act were published in the March 6, 1986 **Federal Register**, Volume 51, No. 44 (51 FR 7771).

In response to OMB's request, BEA began to meet regularly with a task force of business representatives, assembled by the Business Advisory Council on Federal Reports (BACFR), to develop a revised BE–20 survey that would collect the needed information with the minimum burden on respondents. The proposed rules contained herein are for the revised version of the survey, which is considerably simpler and less burdensome than the version submitted to OMB in 1985.

Steps taken to reduce the reporting burden include the development of an "Optional Checklist," which is to be included as a supplement to the survey, for U.S. Reporters to use in determining whether they have covered transactions; this determination may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can say, with a reasonable degree of certainty without conducting a manual records search, whether or not the Reporter had any covered transactions during the reporting period. In addition, it was decided that only individual transactions that exceeded $250,000 in the reporting period are to be reported, by country, on a mandatory basis. Transactions of $250,000 or less are requested to be reported on a voluntary basis if, for a given type of service, they exceeded $500,000 in aggregate. Such transactions may be reported on a judgmental basis and do not have to be disaggregated by country. Information provided on these latter transactions will make the survey results more complete and will better ensure that all types of services are adequately represented in any negotiations or other policy initiatives supported by the survey data. Finally,

several existing survey forms that, in the original proposal, had been modified and incorporated into the BE–20 survey, have not been included in the revised proposal and remain separate.

Executive Order 12291

BEA had determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of information is necessary to secure data on U.S. services transactions with unaffiliated foreign persons that will be used to develop U.S. trade policy; support U.S. negotiations on services trade with foreign countries; enables the Government to better assess U.S. competitiveness in, and develop export promotion programs for, services industries; improve U.S. balance of payments statistics; and increase the ability of U.S. services businesses to identify and evaluate market opportunities. A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. A copy of the proposed survey may be obtained from: Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0657. Comments from the public on this collection of information requirement should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this proposed rulemaking because it will not have a significant economic impact on a substantial number of small entities. Most small businesses will be excluded from reporting data on a mandatory basis, as a result of the $250,000 cutoff level applicable to individual transactions under the survey's mandatory reporting requirement. Also, under the survey's voluntary reporting provision, the $500,000 cutoff level applicable to total transactions of a given type will include many other small businesses from reporting any data at all. Those that do have reportable transactions are requested to provide judgmental estimates only of the total amount of transactions of a given type, not disaggregated by country. This voluntary reporting provision ensures that smaller businesses with significant inernational transactions can be covered, but with the minimum burden possible. Even if a small business is required to file on a mandatory basis, or chooses to report information on a voluntary basis, it is unlikely to be very diversified and will probably report data only on the one schedule relevant to its particular activity. Thus, the burden for small businesses should be low.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: February 2, 1987.

Allan H. Young,

Director, Bureau of Economic Analysis.

PART 801—[AMENDED]

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801 as follows:

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 801.9(a) is revised to read as follows:

§ 801.9 Reports required.

(a) *Benchmark surveys.* BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons: Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that benchmark surveys of trade in services between U.S. and unaffiliated foreign persons be conducted, but not more frequently than every 5 years. The survey is referred to as the "BE–20." Specific reporting requirements, exemption levels, and the year of coverage of a given BE–20 survey may be found in § 801.10.

* * * * *

3. Section 801.10 is added to read as follows:

§ 801.10 Rules and regulations for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—1986.

A BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, will be conducted covering companies' 1986 fiscal year. All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given below. More detailed instructions are given on the report form itself.

(a) The BE–20 survey consists of two Parts and six Schedules, A–F. Part I (Name, Address, and Determination of Reporting Status) requests information needed to determine whether a report is required and which schedules apply. Part II (Identification and Selected Financial and Operating Data of U.S. Reporter) requests information about the reporting entity. Each of the six schedules covers a different type or group of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who is to report and transactions to be reported.* (1) Mandatory reporting—A BE–20 report is *required* from each U.S. person who had one or more individual sale *or* purchase transactions in excess of $250,000 with an unaffiliated foreign person in any of the services listed in paragraph (d) of this section during the U.S. person's 1986 fiscal year.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty without conducting a detailed manual records search.

(ii) Reporters who must file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE–20 and all applicable schedules. The total amounts of individual transactions exceeding $250,000 that are applicable to a particular schedule are to be entered in the appropriate column(s) on

line 1, Section A of the schedule. In addition, these amounts must be distributed below line 1 of the country(ies) involved in the transaction(s).

(2) *Voluntary reporting.* U.S. persons receiving a copy of the survey are *requested* to provide, for each of the services listed in paragraph (d) of this section, supplemental estimates of individual sale or purchase transactions with unaffiliated foreign persons that are $250,000 or less but for which the total value exceeds $500,000 during the U.S. person's 1986 fiscal year. These estimates are requested whether or not the U.S. Reporter also had activity to report under the mandatory reporting requirement in paragraph (b)(1) of this section.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(ii) The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) on line 39, Section B of the schedule; they are *not* to be disaggregated by country. Reporters filing voluntary information only and who have *no* individual transactions exceeding $250,000 should also complete Part 1, Sections A, B, and C of Form BE–20, answering "no" for each type of service listed in Part 1, Section B. They should not complete Part II of Form BE–20.

(3) Any U.S. person receiving the BE–20 survey form from BEA, even if the person is not subject to the mandatory reporting requirement in paragraph (b)(1) of this section and is not filing information on a voluntary basis pursuant to paragraph (b)(2) of this section, must nevertheless complete and return to BEA Part I of the form, answering "no" for each type of service listed in Part I, Section B, and indicating in Part I, Section C that no voluntary data are being reported. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *BE–20 definition of transaction.* (1) For purposes of the BE–20 survey, a "transaction" is defined as the total amount of services sold to (received from) or purchased from (paid to) an unaffiliated foreign person, as entered on the respondent's books during its 1986 fiscal year.

(2) Notwithstanding paragraph (c)(1) of this section, in the following cases, a "transaction" is to be measured by an item other than sales or purchases in determining whether the thresholds for mandatory or voluntary reporting are exceeded:

(i) Advertising. Advertising agencies should use gross billings to unaffiliated foreign persons, including funds passed through to media companies and not included in the agency's income statement.

(ii) Telecommunications. For jointly provided (basic) services, receipts from foreign persons for messages or leased lines originating abroad, and payouts to foreign persons for messages or leased lines originating in the United States, should be used.

(iii) Performing arts, sports, and other performances, presentations, and events. Fees are defined net of allowances for expenses.

(iv) Employment agencies and temporary help supply services. Receipts and payments should include any funds for compensation of workers carried on the payroll of the agency or supply service, as well as for agency fees.

(d) *Covered types of services.* Only the services listed below are covered by the BE–20 survey. Other services, such as transportation, reinsurance, lending and borrowing and related fees and charges, brokerage fees, royalties and license fees, etc., are NOT covered. Covered services are:

(1) *Advertising services.* Preparation of advertising and placement of such advertising in media, including charges for media space and time.

(2) *Computer and data processing services.* Data entry, processing (both batch and remote), and tabulation; computer systems analysis, design, and engineering; software, both custom programming and prepackaged, including rights to use, reproduce, or distribute such software; equipment leasing (except financial leasing); integrated hardware/software systems; and other computer services (e.g., timesharing, maintenance, and repair).

(3) *Data base and other information services.* Business and economic data base services, including business news, stock quotation, and financial information services; medical, legal, technical, demographic, bibliographic, and similar data base services; general news services, such as those purchased from a news syndicate; and other information services, including reservation systems and credit reporting and authorization systems.

(4) *Telecommunications services.* (i) Message telephone, telex, telegram, and other jointly provided (basic) services—Receipts from foreign persons (communications companies and postal, telephone, and telegraph agencies (PTT's)) for own share of revenues for transmitting message originating abroad to U.S. destinations, and payouts to foreign persons (communications companies and PTT's) for their share of revenues for transmitting messages originating in the United States to foreign destinations. For messages originating in foreign countries and routed through the United States (for example, from Caribbean countries via the United States to Western Europe), includes receipts from the foreign person originating the message and payouts to the country of destination. Also includes receipts for transmitting messages between foreign points when not routed through the United States. Includes packet switched services when not offered in connection with enhanced services, and other regulated services of the type reportable to the FCC on Report 4361.

(ii) Private leased channel services. Receipts from foreign persons for circuits and channels terminating in the United States and for circuits and channeled between foreign points, and payouts to foreign persons for leased channels and circuits terminating in foreign countries.

(iii) Value added (enhanced) services. Telecommunications services that add value or function above and beyond the telecommunications transport services that deliver the value-added services to end users. They can include electronic mail, voice mail, code and protocol processing, and management of data networks; facsimile services and videoconferencing; and other value-added (enhanced) services.

(iv) Support services. Services related to the maintenance and repair of telecommunications equipment; ground station services; capacity leasing for transiting; and launching of communications satellites.

(5) *Agricultural services.* Soil preparation services, crop services, veterinary and other animal services, farm labor and management services, and landscape and horticultural services.

(6) *research and development, and commercial testing, laboratory services.* Laboratory and other physical research and development and product testing. Excludes medical and dental laboratory services.

(7) *Management, consulting, and public relations services.* Management services, except management of health care facilities (see paragraph (d)(8) of this section); consulting services, except consulting engineering services related to actual or proposed construction or mining services projects (see paragraph

(d)(18) of this section) and computer consulting (see paragraph (d)(2) of this section); and public relations services, except those are an integral part of an advertising campaign (see paragraph (d)(1) of this section). Excludes management and operation of a foreign business by a U.S. person, or of a U.S. business by a foreign person, where operating staff as well as management is provided. (Generally, such operations would be deemed to constitute a foreign affiliate of the U.S. person, or a U.S. affiliate of the foreign person, to be reported in BEA's direct investment surveys, rather than in this survey.)

(8) *Management of health care facilities.* Management of hospitals, nursing homes, and other health care facilities. If operating staff is provided, generally should be reported in BEA's direct investment surveys, rather than in this survey.

(9) *Accounting, auditing, and bookkeeping services, etc.* Excludes data processing and tabulating services (see paragraph (d)(2) of this section).

(10) *Legal services.* Legal advice or other legal services.

(11) *Educational and training services.* Educational or training services provided on a contract or fee basis. Excludes tuition and fees charged to individual foreign students by U.S. educational institutions or to individual U.S. students by foreign educational institutions. Also excludes training done by a U.S. or foreign manufacturer in connection with the sale of a good (see paragraph (d)(15) of this section).

(12) *Mailing, reproduction, and commercial art.* Direct mail advertising services; blueprinting, photocopying, and other reproduction services, including those in connection with direct mail advertising; commercial photography, art, and graphic services; and stenographic services.

(13) *Employment agencies and temporary help supply services.* Employment services and provision of temporary help and personnel to perform services for others on a contract or fee basis. Where workers are carried on the payroll of the agency, includes receipts from or payments to unaffiliated foreign persons covering the compensation of workers, as well as agency fees.

(14) *Industrial engineering services.* Engineering services related to the design of movable products, including product, design services. Excludes engineering and architectural services that relate to immovable products, such as those that relate to actual or proposed construction or mining services projects (see paragraph (d)(18) of this section). Excludes computer systems engineering (see paragraph (d)(2) of this section). (Includes, however, services performed with the assistance of computers, such as computer-assisted design work.)

(15) *Industrial-type maintenance and repair, installation, and training services.* (i) Maintenance and repair services primarily to machinery and equipment. May also include small maintenance and repair work on buildings, structures, dams, highways, etc., but only to the extent that the work is not covered under paragraph (d)(18) of this section). Would include such services as the periodic overhaul of turbines or locomotives, the extinguishing of natural gas well fires, and refinery maintenance. Excludes computer maintenance and repair services (see paragraph (d)(2) of this section).

(ii) Installation, startup, and training services provided by a manufacturer in connection with the sale of goods. Do not include such services where the cost is included in the price of the goods and not separately billed or is declared as a part of the price of the goods on the shippers export or import declaration filed with the U.S. Customs Service; however, services provided at a price over and above that entered on the shippers export or import declaration should be included. These services would be reported elsewhere if not provided in connection with the sale of goods. For example, installation of machinery and equipment is normally considered a construction activity, and training personnel in the use of new machinery would ordinarily be reported as an educational or training service. However, this separate category has been provided for reporting such services when provided in connection with goods.

(16) *Performing arts, sports, and other live performances, presentations, and events.* Fees (net of allowances for expenses) for performances abroad by U.S. or foreign performers, and for performances in the United States by foreign performers. To be reported by U.S. management companies, booking agents, promoters, and presenters who book performances and events abroad by U.S. or foreign performers; U.S. performers who received funds directly from a foreign person rather than through a U.S. management company (or similarly entity); and management companies, booking agents, promoters, and presenters who book performances in the United States by foreign performers. (As used here, "performers" means entertainers, sports teams, orchestras, dance companies, lecturers, and similar persons or performing groups.)

(17) *Direct insurance.* Applies only to insurance *purchased* from unaffiliated foreign insurance carriers and includes premiums (net of cancellations) paid to these carriers. A U.S. Reporters should not report direct transactions with a foreign insurance company that is its foreign affiliate; such transactions are to be reported on direct investment survey Form BE–577. A U.S. Reporter should, however, report direct transactions with a foreign insurance company that is an affiliate of another U.S. company, as the U.S. Reporter and the foreign insurance company are unaffiliated. Note that the criterion for reporting is whether the transaction is between a U.S. and an unaffiliated foreign person. It is immaterial whether the assets insured are located in the United States or abroad. Excludes reinsurance transactions with insurance companies resident abroad. When insurance is purchased through a broker, the guidelines for reporting transactions carried out through an intermediary, which are contained in the *General Instructions* to the survey, should be followed.

(18) *Construction, engineering, architectural, and mining services.* Covers only *purchases* of the following types of services: services of general contractors in the fields of building and heavy construction; construction work by special trade contractors, such as the erection of structural steel for bridges and buildings and on-site electrical work; architectural, engineering, and land-surveying services; and mining services, including oil and gas field services. Includes only those engineering services purchased in conjunction with construction and mining services projects; industrial engineering services, such as product design services, should be included under paragraph (d)(14) of this section). Includes services purchased in connection with proposed projects (e.g., feasibility studies) as well as projects that are actually being carried out. Note that the U.S. Reporter's *sales* of construction, engineering, architectural, and mining services are not reportable in this survey, but on separate Form BE–47.

[FR Doc. 87–3905 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 25, 240, 250, 270, 275 and 285

[Notice No. 622; Re: Notice No. 617]

Timely Remittance of Tax by EFT

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to amend ATF regulations implementing 26 U.S.C. 5061(e) and 5703(b), relating to the payment of tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes by electronic fund transfer (EFT). The proposed amendments establish that a remittance of tax by electronic fund transfer is made when the payment is credited to the Treasury Account at the Federal Reserve Bank in New York City. These amendments to the regulations would insure timely payment of taxes by electronic fund transfer. ATF has received a number of requests for additional time to review and comment on these amendments, and is, therefore extending the comment period to allow more time for public review and comment.

DATE: Written comments must be received by April 15, 1987.

ADDRESS: Send written comments to: Chief, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 617).

FOR FURTHER INFORMATION CONTACT: Pauline C. Ashe, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566-7602.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1987, AFT published Notice No. 617, proposing to amend AFT regulations implementing 26 U.S.C. 5061(e) and 5703(b) to establish that a remittance of tax by electronic fund transfer is made when the payment is credited to the Treasury Account at the Federal Reserve Bank in New York City.

AFT has received written comments from the Association of American Vintners, the Distilled Spirits Council of the United States, Inc., the National Liquor Stores Association, Inc., the Kobrand Corporation and the National Association of Beverage Importers, Inc. Each of the aforementioned organizations has requested additional time to gather data and to formulate comments. AFT has also received verbal inquiries concerning additional time for comments from interested parties directly affected by the issue raised in Notice No. 617.

Disclosure of Comments

ATF will not recognize any material in the comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure. Copies of written comments received in response to this notice will be available for public inspection during normal business hours at: FTF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The principal author of this document is Pauline C. Ashe, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This notice is issued under the authority contained in 26 U.S.C. 7805 (68 Stat. 917, as amended).

Signed: February 24, 1987.

W.T. Drake,

Acting Director.

[FR Doc. 87-4144 Filed 2-24-87; 3:22 pm]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket Nos. S-205, S-206, and S-207]

Safety Standards: Scaffolds Used in the Construction Industry, Fall Protection in the Construction Industry, and Stairways and Ladders Used in the Construction Industry; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period.

SUMMARY: This notice extends the time in which written comments and requests for a hearing may be submitted concerning the notices of proposed rulemaking which OSHA issued on November 25, 1986 on Scaffolds (51 FR 42680), Fall Protection (51 FR 42718), and Stairways and Ladders (51 FR 42750) used in the construction industry.

DATE: Written comments and requests for a hearing on the proposal must be postmarked by June 1, 1987.

ADDRESS: Comments and requests for a hearing must be submitted, in quadruplicate, to the Docket Office, Dockets S-205, S-206, and S-207, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-7894. The data, views and arguments, as well as the hearing requests and objections, that are submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room S-4220, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: OSHA issued Notices of Proposed Rulemaking on November 25, 1986 (51 FR 42680, 51 FR 42718 and 51 FR 42750) which proposed to revise the interrelated safety standards for scaffolds, fall protection, stairways, and ladders used in construction. Interested persons were given until February 23, 1987 to submit comments pertaining to the proposals. The notices of proposed rulemaking also informed the public of the opportunity to request an informal public rulemaking hearing in the proposals.

OSHA has received several requests for an extension of the comment period, based on the complexity of the subject matters, the extent of the proposed revisions, and the fact that all three proposed regulations, effectively, request comments from the same interested parties. To ensure the fullest participation of interested persons, OSHA is extending the period in which written comments may be submitted on the proposed rules until June 1, 1987. The comments should be sent in quadruplicate to the Docket Office at the above address. Commenters are requested to provide substantive data and documentary evidence in support of their views and arguments on the proposals.

In addition, OSHA is extending the period during which interested persons may file objections to the proposed rules or request an informal hearing until June 1, 1987. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the

above address and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked by June 1, 1987;
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. (Sec. 6(b), 29 U.S.C. 655; 29 CFR Part 1911, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 20th day of February, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–3980 Filed 2–25–87; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

Department of Defense Federal Acquisition Regulation Supplement on Availability of Contractor Records

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comment.

SUMMARY: The Defense Acquisition Regulatory Council is proposing to add section 215.873 and the related clause at 252.215–7001 to the DFARS. The clause requires the contractor to provide access to certain cost and work measurement data.

DATE: Comments should be submitted by April 27, 1987. Please cite DAR Case 85–219 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD (P) DARS, c/o OASD (A&L) (MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7267.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements 10 U.S.C. 2406 as found in the FY 1987 DoD Authorization Act at section 943. This rule grants the Department access to records on certain contracts.

B. Regulatory Flexibility Act

This rule applies to the award of contracts requiring the submission of cost or pricing data and most awards to small entities are made on a price competitive basis not requiring such data. It does not require contractors to collect or maintain additional data not already collected or maintained. The only potential additional administrative effort imposed is that contractors must retain any data collected or maintained until three years after final payment. This minimal burden does not appear to have a significant impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis has not been prepared. Comments from interested small businesses are invited.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 215 and 252 as follows:

1. The authority citation for 48 CFR Parts 215 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.873 is added to read as follows:

§ 215.873 Availability of Contractor Records.

In accordance with 10 U.S.C. 2406, the contracting officer shall include the clause at 252.215–7001, "Availability of Contractor Records", in solicitation and contracts which—

(a) Require the submission and certification of cost or pricing data; and

(b) Are for the manufacture of end items for a major defense acquisition program, as defined in 10 U.S.C. 2432a.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215–7001 is added to read as follows:

252.215–7001 Availability of Contractor Records.

As prescribed in 215.873, insert the following clause:

Availability of Contractor Records (Feb. 1987)

(a) Upon request by the Contracting Officer, the Contractor shall make available, in a timely manner, to the Contracting Officer or to an authorized representative of the Contracting Officer (who is an employee of the United States or a member of the Armed Forces), records of the contract and of end items under the contract for:

(1) The proposed, negotiated and incurred costs and related profit or fee;

(2) Bills of material; and

(3) Work measurement system data (and any revision to such data), including standard hours of work content. These work measurement system data are those generated from time standard setting, time monitoring and variance analysis, produced for such purposes as planning, cost estimating and productivity improvement. This availability includes access to proposed and negotiated work measurement system data (and any revision to such data).

(b) Nothing in this clause shall require the Contractor to collect or maintain additional data not otherwise collected or maintained nor to maintain data in a form or manner different from that in which the Contractor maintains such data.

(c) Any data covered by this clause shall be available for review until three (3) years after final payment under this contract.

(End of clause)

[FR Doc. 87–4032 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 468]

Review of Railroad Depreciation Studies by Independent Public Accountants

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering a proposal that would alter the manner in which the review of a railroad's depreciation study is conducted. This proposal would require Class I railroads to have an independent public accountant review each

depreciation study and report on the conformity of the study with the Commission's regulations and instructions. The Commission is statutorily required to prescribe depreciation rates for depreciable road and equipment property of major railroads. Presently, railroads perform depreciation studies, which develop proposed rates, and the Commission reviews and approves the rates. Review by independent public accountants would help expedite this process. A more rapid completion of the depreciation study process would provide both railroads and the Commission with better and more current information.

DATES: Comments must be received by April 27, 1987.

ADDRESS: An original and 10 copies of any comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

William F. Moss III, (202) 275–7510
or
Estel C. Hostettler, (202) 275–7357.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, contact the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call 202–275–7428.

This Advance Notice of Proposed Rulemaking (ANPR) will not have a significant economic impact on a substantial number of small entities. This ANPR would have a direct effect only on Class I railroads which have annual revenues of $50 million or more.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

This Advance Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Management and Budget, Office of Informaiton and Regulatory Affairs, Attention: Desk Officer for the Interstate Commerce Commission, Washington, DC 20503.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

This ANPR is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: February 6, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons, joined by Vice Chairman Lamboley, dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3958 Filed 2–25–87; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 52, No. 38
Thursday, February 26, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 20, 1987.

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

• Animal and Plant Health Inspection Service.

Gypsy Moth—Outdoor Household Articles
On occasion
Individuals or households; Businesses or other for-profit; 16,300 responses; 27,221 hours; not applicable under 3504(h)
Cheryl Jenkins (301) 436–5030

• Rural Electrification Administration.

Request for Mail List Data—REA Borrowers
REA 87
Annually
Small businesses or organizations; 1,948 responses; 487 hours; not applicable under 3504(h)
Curtis L. Bryant (202) 382–8940

New

• Agricultural Cooperative Service.

Imports by Agricultural Cooperatives
Every 5 years
Businesses or other for-profit; Small businesses or organizations; 110 responses; 28 hours; not applicable under 3504(h)
Arvin R. Bunker (202) 653–6756

• Agricultural Marketing Service.

Proposed Procedure for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl
Recordkeeping; On occasion
Farms; Businesses or other for-profit; 1,200 responses; 634 hours; not applicable under 3405(h)
Janice L. Lockard (202) 382–8132.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 87–4019 Filed 2–25–87; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Mt. Ashland Ski Development Plan, Rogue River National Forest, Jackson County, OR; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to permit the improvement and further development of the Mt. Ashland Ski Area on the Ashland Ranger District.

A range of alternatives for this area will be considered. One of these will be no further development of the area. Other alternatives will consider projects which will increase capacities ranging from 1200 to 3500 persons at one time. Improvements and/or developments to the lodge, ski runs, parking lots and other facilities will be considered.

Federal, State, and local agencies; and other individuals and organizations who may be interested in or affected by the decision were contacted during the Environmental Assessment scoping process to identify issues. Other than analysis of responses to this Notice, no further scoping activities are planned.

Steven Deitemeyer, Forest Supervisor, Rogue River National Forest, Medford, Oregon, is the responsible official.

The draft environmental impact statement should be available for public review by March 1987. The final environmental impact statement is scheduled to be completed by June 1987.

Written comments, suggestions and questions concerning the nature of the proposed action and the nature of the draft environmental impact statement should be directed to Ronald Waitt, District Ranger, Ashland Ranger District, Ashland, Oregon 97520, phone (503) 482–3333, by March 1, 1987.

Dated: February 9, 1987.

Ronald L. Ketchum,
Deputy Forest Supervisor.
[FR Doc. 87–3677 Filed 2–25–87; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Hayden-Dry Creek Critical Area Treatment RC&D Measure, Colorado

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Hayden-Dry Creek Critical Area Treatment RC&D Measure, Routt County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State

Conservationist, Soil Conservation Service, 2490 West 26th Avenue, Denver, Colorado 80211, telephone (303) 964–0292.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the measure will not cause significant local, regional or national impacts on the environment. As a result of these findings, Mr. Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this measure.

This critical area treatment measure concerns a plan to prevent water erosion along the drainageway through the Town of Hayden. This gully erosion is damaging buildings, streets and public utilities. The planned works of improvement include constructing approximately 400 feet of rock riprap on the channel bank.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single-copy requests. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Sheldon G. Boone. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: February 17, 1987.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 87–4028 Filed 2–25–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–601]

Certain Fresh Cut Flowers From Mexico; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determination on certain fresh cut flowers from Mexico is being postponed until no later than February 24, 1987.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: William D. Kane or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1766, (202) 377–3965.

SUPPLEMENTARY INFORMATION: On October 28, 1986, we made an affirmative preliminary antidumping duty determination that certain fresh cut flowers from Mexico are being, or are likely to be, sold in the United States at less than fair value (51 FR 39896, November 3, 1986). The notice stated that we would issue our final determination by January 12, 1987.

Pursuant to requests of January 12, 20 and 23, by counsel for respondents representing a significant proportion of the merchandise under investigation, we granted extensions for the final determination until not later than February 17, 1987.

On February 17, 1987, cousel for respondent requested a further postponement of the final determination until not later than February 24, 1987, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). If exporters who account for a significant proportion of the exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, the period for the final determination in this case is hereby extended. We intend to issue the final determination not later than February 24, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut standard carnations, standard chrysanthemums and pompon chrysanthemums, currently provided for in item 192.21 of the Tariff Schedules of the United States.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 17, 1987.

[FR Doc. 87–3907 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–DS–M

[C–401–602]

Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Sweden of certain stainless steel hollow products (SSHP) as described in the "Scope of Investigation" section of this notice. The estimated net subsidy for Avesta Sandvik Tube AB (AST) and all other manufacturers, producers, or exporters in Sweden of SSHP is 2.18 percent *ad valorem*. We are not including AB Sandvik Steel (Sandvik Steel) in this determination because the estimated net subsidy on the subject merchandise produced by Sandvik is 0.06, which is *de minimis*. Where a company receives *de minimis* benefits, we consider that to be a "significant differential" warranting company-specific treatment under section 706 of the Tariff Act of 1930, as amended by section 607 of the Trade and Tariff Act of 1984 (Pub.L. 98–573).

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 liquidation of all entries of SSHP from Sweden, except that produced and exported by Sandvik Steel, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice. With respect to Sandvik Steel, the suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated. All cash deposits shall be refunded and all appropriate bonds shall be released with respect to imports of the subject merchandise from Sandvik Steel.

Our notice of initiation in this proceeding indicated that we were investigating more than one class or kind of merchandise. Thus, the notice referred to "investigations" of certain stainless steel hollow products. Based on analysis by the Department's industry experts, we preliminarily determined that SSHP constituted one class or kind of merchandise. After

careful review of the relevant facts and further consultation with the Department's industry experts, we determine that, in fact, the merchandise covered by this proceeding comprises a single class or kind of merchandise.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Carole Showers, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–1785, 377–3217, or 377–0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Sweden of SSHP. For purposes of this investigation, the following programs are found to confer subsidies:

- 1977–1979 Structural Reorganization Fund
- 1983–1984 Specialty Steel Restructuring Program
- Regional Development Incentives

We determine the estimated net subsidy for SSHP to be 2.18 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden except for Sandvik Steel. The estimated net subsidy on the subject merchandise produced by Sandvik Steel is 0.06 percent, which is *de minimis*.

Case History

On September 5, 1986, we received a petition in proper form from the Specialty Tubing Group (STG) and its six member companies filed on behalf of the U.S. industry producing SSHP. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Sweden of SSHP directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate two countervailing duty investigations. We initiated two investigations on SSHP because we believed, at the time, that SSHP constituted two different classes or kinds of merchandise. On September 25, 1986, we initiated these investigations (51 FR 35018, October 1, 1986). We stated that we expected to issue preliminary determinations on or before December 1, 1986.

Since Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Sweden materially injure, or threaten material injury to, a U.S. industry. On October 20, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise (51 FR 44841, December 12, 1986).

We presented a questionnaire concerning the allegations to the Government of Sweden in Washington, DC on October 6, 1986. On November 5, 1986, we received responses to our questionnaires from the Government of Sweden, Sandvik Steel, Sandvik AB (Sandvik), AST, and Avesta AB (Avesta). There are two manufacturers, producers, and exporters of SSHP in Sweden: Sandvik Steel and AST. Sandvik Steel, wholly-owned by Sandvik, produces and exports seamless pipe and tube, hollow bars, and blanks. AST, owned 75 percent by Avesta and 25 percent by Sandvik, produces and exports welded pipe and tube. Both Sandvik Steel and AST exported SSHP to the United States during the review period.

On November 17, 1986, petitioners requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1) of the Act, and 19 CFR 355.28(c) of our regulations. Because this request was not filed in a timely manner, we were unable to extend the deadline for the preliminary determination.

On November 20 and 21, 1986, respondents submitted letters challenging the standing of the Specialty Tubing Group and requesting dismissal of the petition. In response to respondents' contentions, we stated in our preliminary determination:

> [N]either the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major proportion of the domestic industry. *In this case, we have not received any opposition from the domestic industry.*

(51 FR 43950, December 5, 1986 (emphasis added)). See also *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986).

On the basis of information contained in the responses to our questionnaires, we made a preliminary affirmative countervailing duty determination on December 1, 1986 (51 FR 43949, December 5, 1986).

From December 8–10 and 19–20, 1986, we verified the response of the Government of Sweden. From December 10–19, 1986, we verified the responses of Sandvik Steel, Sandvik, AST, and Avesta. We received supplemental information from respondents on January 13 and 14, 1987.

On January 16, 1987, counsel for Sandvik sent the Department two letters from members of the domestic seamless SSHP industry which were originally sent to the ITC. Sandvik characterized these letters as demonstrating opposition to STG's petition. In fact, only one letter arguably expressed opposition to this investigation. For our determination with respect to this issue, see the Department's Position on Respondents' Comment 3.

At the request of petitioners and respondents, a public hearing was held on January 23, 1987, to afford interested parties an opportunity to present views orally in accordance with our regulations (19 CFR 355.35). Petitioners and respondents filed pre-hearing briefs on January 16, 1987, post-hearing briefs on February 4 and 5, 1987, and comments on the verification reports on February 10, 11 and 12, 1987.

On January 29, 1987, we received a letter from petitioners requesting that the petition be amended to add the United Steelworkers of America (USWA) as co-petitioners. On February 9, 1987, we received a letter directly from the USWA confirming its membership in the Specialty Tubing Group and its wish to join petitioners as co-petitioners in this investigation. On February 13, 1987, we denied this request based on the untimeliness of the proposed amendment to the petition.

Scope of Investigation

The products covered by this investigation are certain stainless steel hollow products including pipes, tubes, hollow bars, and blanks therefor, of circular cross-section, containing over 11.5 percent chromium by weight, provided for in items 610.3701, 610.3727, 610.3731, 610.3741, 610.3742, 610.5130, 610.5202, 610.5229, 610.5230, and 610.5231 of the *Tariff Schedules of the United States Annotated*.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. The denominator used for benefits conferred to Avesta (Avesta's 1985 stainless steel sales) was calculated as follows: from Avesta's total sales for the review period we subtracted, (1) the total sales of carbon steel forgings of Bjorneborgs Jernverks (an Avesta subsidiary), (2) the net sales of Avesta, Inc., a U.S. subsidiary of Avesta which produces steel in the United States, and (3) total sales of AST for 1985. We then added 75 percent of AST's sales (the portion attributable to Avesta), adjusted for sales of SSHP produced in the Netherlands plant of AST. Lastly, we added 50 percent of Fagersta Stainless' sales for 1985 (the portion attributable to Avesta). The denominator used for benefits conferred to Sandvik Steel is total steel sales of Sandvik, which includes all sales of Sandvik Steel.

In their pre-hearing brief of January 16, 1987, petitioners made a new allegation regarding the creditworthiness of the Swedish SSHP producers. Due to the untimeliness of this new allegation and due to the complexity of the creditworthiness issue itself, we have not analyzed this allegation. See the Department's Position on Petitioners' Comment 2.

Based upon our analysis of the petition and the responses to our questionnaire, verification, and written comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Sweden of the subject merchandise under the following programs:

A. 1977–1979 Structural Reorganization Fund

Petitioners allege that in 1977 the Government of Sweden established the Structural Reorganization Fund (SRF) to provide loans and loan guarantees to the SSHP industry. Petitioners claim that the loans were made on terms inconsistent with commercial considerations, and that the loan guarantees resulted in borrowing on open capital markets at below commercial market rates. Petitioners further allege that the companies (or their successors) that received these loans and loan guarantees restructured the industry by forming mergers and joint ventures to manufacture the subject merchandise.

The SRF was established by and operated under Government Bill 1977/78:47 and the Swedish Code of Statutes (SFS) 1977:1123. The purpose of the SRF program was to facilitate needed structural change within the specialty steel industry. Assistance was given in the form of loans (investment, conditional, and liquidity) and loan guarantees. At verification, we found that the following loans and loan guarantees were given under this program: long-term investment loans to Avesta, Sandvik, Fagersta, and Nyby Uddeholm (the latter two companies produced SSHP before the restructuring in 1984); long-term conditional loans to Nyby Uddeholm; and government guarantees for commercial loans to Avesta and Nyby Uddeholm. At verification we saw no evidence that liquidity loans had been given under this program to the companies under investigation.

As a part of the 1984 Specialty Steel Restructuring Program (discussed at length in section I.B of this notice), two government actions concerning loans and loan guarantees given under the SRF program occurred. First, certain investment loans provided to Avesta, Fagersta, and Nyby Uddeholm were forgiven. Second, the conditional loans provided to Nyby Uddeholm under the SRF program were transferred to its parent company, Uddeholm, and refinanced. The forgiveness and transfer of these loans is discussed in section I.B. of this notice. The remainder of loans and loan guarantees that were granted under the SRF program can be divided into two groups: (1) those held by companies that continued to exist as stainless steel producers after the 1984 restructuring (*i.e.*, Avesta and Sandvik), and (2) those held by Nyby Uddeholm, which was purchased by Avesta in the 1984 restructuring. Sandvik had one investment loan and Avesta and Nyby Uddeholm had several loan guarantees.

Because the loans and loan guarantees under this program were provided solely to the specialty steel industry, we determine that the SRF program was limited to a specific enterprise or industry, or group of enterprises or industries.

1. Loans: To determine whether the investment loan to Sandvik was given on terms inconsistent with commercial considerations, we compared the amount of interest actually paid in 1985 to the amount of interest the company otherwise would have paid. The investment loan was a long-term, variable-rate loan. Since Sandvik did not have similar loans to use as a benchmark, we used the 1985 national average short-term interest rate to measure what the company otherwise would have paid. This benchmark was compiled from data in the "Riksbank Statistical Yearbook for 1985" (RSY 1985). Based on this comparison, we determine the investment loan to be on terms inconsistent with commercial considerations.

To calculate the benefit conferred by this investment loan to Sandvik, we divided the interest differential (*i.e.*, the difference between interest that would have been paid under our benchmark and the amount of interest Sandvik actually paid) by Sandvik Steel's total sales of all products in 1985. On this basis, we calculate an estimated net subsidy of 0.012 percent *ad valorem* for Sandvik.

2. Loan Guarantees: With respect to the loan guarantees received by Avesta, we were unable to obtain documentation on loan guarantee fees charged by commercial banks from 1978 through 1979, the period in which loan guarantees were received under the SRF program. Therefore, lacking information on a benchmark for loan guarantees, we compared the interest rates charged on the guaranteed loans to an appropriate benchmark.

The loans for which Avesta received government guarantees included both fixed-rate and variable-rate long-term loans. According to our methodology, we prefer to use a company-specific benchmark. Since we do not have specific information on Avesta's long-term loans, either fixed- or variable-rate, given in the same year as the guarantees, we used as a benchmark the effective base rate for 15-year industrial bonds, as published in the RSY 1985. For the variable-rate loans, we used the 1985 national average short-term benchmark, as described above. Based on these comparisons, we find that only the guarantees for the variable-rate loans are on terms inconsistent with commercial considerations.

To calculate the benefit conferred on Avesta by the loan guarantees, we divided the interest differential by Avesta's 1985 stainless steel sales. On this basis, we calculate an estimated net

subsidy of 0.009 percent *ad valorem* for SSHP.

As noted above, Nyby Uddeholm received guarantees under the SRF program for commercial loans taken out in 1978 and 1979. These guaranteed loans were assumed by Avesta when it purchased Nyby Uddeholm in 1984. During verification, we discovered no evidence that the government grant of these loan guarantees to Nyby Uddeholm resulted in Avesta purchasing Nyby Uddeholm six years later for a lower price than Avesta otherwise would have paid. Absent evidence that these guarantees resulted in a lower than arm's-length price, we presume that any potential subsidy to the firm being acquired is reflected in a higher price paid and, hence, does not confer a benefit on the purchaser. Therefore, we find the loan guarantees to Nyby Uddeholm not to confer a benefit on SSHP produced by AST.

B. 1983–1984 Specialty Steel Restructuring Program

A second attempt by the Swedish government and industry to restructure the Swedish stainless steel industry occurred during 1983 and 1984 as a result of the continued poor financial performance of the industry. In 1983, the government, the producers, and the owners in the Swedish stainless steel industry conducted a series of negotiations which culminated in a comprehensive industry restructuring agreement in January 1984.

The Government of Sweden, as a major creditor of the stainless steel producers, played a critical role throughout these negotiations. The government's principal goal was to rationalize and consolidate the Swedish stainless steel and SSHP industry into an entity with a majority shareholder that would assume responsibility for the industry. To accomplish these objectives, the government was willing to forgive some of its loans to the industry, but only if the owners of the industry were willing to rationalize the industry and to consolidate and accept long-term majority ownership of the industry. But for the government's offer of significant financial inducements, the January 1984 industry restructuring agreement would not have occurred.

Under the January 1984 agreement, the Government of Sweden agreed to take two actions which had the effect of relieving the Swedish stainless steel industry of substantial debt obligations. These two actions were authorized by Parliament in May 1984 under Government Bill 1983/84:157. First, the government agreed to forgive Avesta of all repayment obligation for 450 million Swedish kronor (mSEK) of outstanding principal and accrued. but unpaid, interest on long-term investment and localization loans which had been given originally by the government to Nyby Uddeholm, Fagersta, and Avesta, and which subsequently were assumed by Avesta.

Second, the government agreed to transfer repayment responsibility on 668.1 mSEK of conditional loans from Nyby Uddeholm to its parent, Uddeholm, and to adjust Uddeholm's repayment obligations on these loans. The refinancing terms stipulate that Uddeholm's loan payments to the government are to be tied to Avesta's convertible loan payment due Uddeholm for the sale to Avesta of Nyby Uddeholm. According to information in Uddeholm's financial statements, the terms of the refinancing require Uddeholm to repay the government a maximum of 135 mSEK on the 668.1 mSEK of transferred debt. As a consequence. the government forgave repayment of the balance of 533.1 mSEK.

In addition to these government financial inducements, the January 1984 agreement brought about the consolidation of the stainless steel assets of Fagersta and Nyby Uddeholm into Avesta. Avesta purchased the stainless steel assets of Fagersta which consisted of Fagersta's 75 percent ownership of its joint venture with Sandvik, Fagersta Sandvik Tube (FST), and Fagersta's stainless steel plants in Fagersta, Sweden, and Langshyttan, Sweden. Avesta also purchased the stainless steel facilities and assets of Uddeholm. which consisted of Uddeholm's 100 percent ownership of its subsidiary. Nyby Uddeholm. Furthermore, Avesta's owners agreed in the January 1984 agreement to maintain their majority ownership in Avesta for at least 10 years. In June 1984, after purchasing of Fagersta's shares in FST, Avesta changed the name of that company to Avesta Sandvik Tube AB (AST).

Given these facts, the principal issue is whether the government's forgiveness of (1) Avesta's obligations to repay the 450 mSEK in loans Avesta had incurred or assumed from Fagersta and Nyby Uddeholm, and (2) Uddeholm's obligation to repay 533.1 mSEK in loans it had assumed from Nyby Uddeholm, constitute countervailable benefits in the context of this investigation. To be countervailable under the Act, a government's grant of a benefit must be to a "specific enterprise or industry, or group of enterprises or industries." Since both government actions identified above were undertaken to benefit the Swedish stainless steel industry, we find that the "specificity" requirement of the Act has been satisfied.

The Act further requires that a domestic subsidy must fit within one of the four subsections of section 771(5)(B) before benefits provided under the subsidy may be countervailed. We find that the government's forgiveness of loan repayment obligations in the two contexts described above falls within section 771(5)(B)(iv), "the assumption [by the government] of any costs or expenses of manufacturing, production, or distribution."

As we stated in *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Belgium* (47 FR 39304, 39314, September 7, 1982): "Debt forgiveness by the government is an assumption of a company's cost of doing business and, as such, is countervailable." The record clearly shows that, but for the government's willingness to relieve the industry of substantial indebtedness, the restructuring would not have occurred. Specifically, the government's actions made possible the purchase by Avesta of the Fagersta and Nyby Uddeholm assets, which, together with some of Avesta's own assets, were later sold to, and now comprise, AST. Barring the transfer, refinancing, and forgiveness of these loans, the primary long-term goal of the government's restructuring program—rationalizing and consolidating the Swedish stainless steel and SSHP industry into one company with a majority shareholder—could not have been achieved.

Respondents argue that the government's forgiveness of repayment obligations here should be analyzed under section 771(5)(B)(i), which describes domestic subsidies that amount to "the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations." Respondents argue that the government's forgiveness of loans was consistent with commercial considerations, and thus are not countervailable. We determine, however, that even were these actions properly analyzed under section 771(5)(B)(i), they were not consistent with commercial considerations since the record makes clear that a commercial lender would not have extended such forgiveness to the industry under similar circumstances.

We also must determine that benefits provided by the government's forgiveness of loans have benefitted the products under investigation. The government's forgiveness of Avesta's obligations to repay the 450 mSEK in loans clearly benefitted Avesta.

However, Avesta has retained in its immediate corporate organization none of the welded SSHP facilities it purchased in the 1983–1984 restructuring. As noted above, Avesta sold all of its welded SSHP facilities to its joint venture with Sandvik, AST. The Swedish respondents maintain that government benefits bestowed on Avesta cannot be attributed to AST because Avesta and AST are separate entities and Avesta does not exclusively control AST. The respondents point to the fact that Avesta and Sandvik must agree before many important actions can be taken that affect AST.

After careful review of the record, we find that Avesta exerts considerable control and influence over AST. Under the terms of the Shareholders' Agreement between AST and its owners, AST s shares are owned 75 percent by Avesta and 25 percent by Sandvik. Consequently, a majority of AST's board members, including the board chairman, are appointed by Avesta. AST also is required under its Shareholders' Agreement to purchase a large percentage of its raw materials from Avesta, the sole supplier of these raw materials in Sweden after the restructuring. In November 1984, AST purchased the welded SSHP facilities of Avesta, thereby becoming the sole producer of welded SSHP in Sweden. Although the Shareholders' Agreement does stipulate that certain actions undertaken by the company require a unanimous vote by the board, Avesta can exert significant authority over AST as majority shareholder. More important than Avesta's control over AST, is the fact that through the forgiveness of loans held by Avesta and the transfer-refinancing of Nyby Uddeholm's debt (discussed below), the government enabled Avesta to purchase Fagersta's shares in FST as part of the restructuring. Therefore, we conclude that any benefit accruing to Avesta through the restructuring benefits all of Avesta's stainless steel production, including SSHP produced by AST.

To determine the benefit conveyed by the government to the SSHP industry through its forgiveness of Avesta's obligation to repay the 450 mSEK in loans, we treated this forgiveness, consistent with our practice (see *Certain Steel Products From Belgium, supra*), as a grant. We allocated the 450 mSEK grant amount over 15 years (the average useful life of renewable physical assets for the steel industry). Normally, we prefer to use a company-specific weighted-average cost of capital as the discount rate for allocating such benefits. However, adequate information which would enable us to do so is not on the record. Therefore, we used the effective base rate for 15-year industrial bonds, as published in the RSY 1985.

As noted above, the government's forgiveness of Uddeholm's obligation to repay 533.1 mSEK of the loans of its subsidiary, Nyby Uddeholm, was given in connection with Avesta's purchase of Nyby Uddeholm from Uddeholm. Thus, our principal task with respect to this action is to determine (1) whether the seller (Uddeholm), the buyer (Avesta), or both benefitted from the government's forgiveness of Uddeholm's debt, and (2) the amount of benefit received by each.

The government's intervention clearly benefitted Uddeholm. It enabled Uddeholm to sell an operation which had been losing money since its early years and which was burdened with debts, including the 668.1 mSEK. The government's intervention also substantially reduced Uddeholm's debt obligation. Thus, at least some portion of the benefit conveyed by the government's debt forgiveness must be attributed to Uddeholm.

The crucial question, however, is whether Avesta also benefitted from the government's intervention. If the government's intervention reduced the price Avesta would have otherwise paid for Nyby Uddeholm (*i.e.*, the arm's-length price), Avesta can be said to have directly received a benefit equal to the difference between the actual purchase price and the arm's-length price. Despite the extensive record we have gathered in this investigation, we do not know the exact arm's-length price Avesta would have paid for Nyby Uddeholm had the government not intervened as it did. We are reasonably certain, however, that the arm's-length price would have been more than the actual price paid by Avesta. This is because Uddeholm and the Swedish government eagerly sought the transaction's consummation with Avesta, for failure of that transaction would have meant the failure of the restructuring plan. Avesta was thus in a position to force the government to step in and forgive the loan and, thereby, force the sale at a discount below what would have been the arm's-length price. We accordingly conclude that Avesta, like Uddeholm, directly benefitted from the government's intervention.

In addition, Avesta indirectly benefitted from the government's intervention, since that action enabled Avesta to become, (1) the majority owner of AST, the only producer in Sweden of welded SSHP, and (2) one of the two remaining producers of stainless steel products in Sweden.

In light of this analysis, we have concluded that we cannot reasonably attribute all the benefit of the debt forgiveness and refinancing to Uddeholm because Avesta itself gained from the purchase of Nyby Uddeholm Similarly, we cannot attribute all the benefit to Avesta because Uddeholm also gained as a result of government actions. Because we cannot precisely dissect the complex package of transactions to quantify the benefits that accrued individually to Avesta and to Uddeholm, we have attributed half of the 533.1 mSEK loan forgiveness to Avesta and half to Uddeholm. We have treated the 266.55 mSEK loan forgiveness to Avesta in accordance with our grant methodology described above.

To calculate the *ad valorem* benefit conferred on AST by the 450 mSEK loan forgiveness and the 266.55 mSEK loan refinancing, we divided the 1985 benefit by Avesta's total 1985 stainless steel sales of all products. On this basis, we determine the estimated net subsidy to be 2.165 percent *ad valorem*.

C. Regional Development Incentives

The regional development assistance programs provide assistance to promote new employment in regions with high unemployment or retarded development. Asslstance is provided in the form of grants and loans. These are received for location of industry, freight relief, regional investment projects, health care facilities, building and construction, and various employment schemes. The size of the localization grant or loan is determined by several factors, including the number of new jobs created by the investment, the size of the investment, and the area in which it is made.

Based upon our findings at verification, only the following assistance was provided under this program to producers of SSHP: Sandvik received a localization loan for its stainless steel facilities in Sandviken and a localization grant for its saw and tool facilities in Sveg, which do not produce SSHP; Avesta received freight relief and two localization loans, all of which was for its stainless steel facilities in Avesta; Fagersta received several localization loans for its stainless steel facilities located in various designated areas in Sweden; and Nyby Uddeholm received several localization loans for its stainless steel facilities located in various designated areas throughout Sweden.

The localization loans held by Fagersta and Nyby Uddeholm were

transferred to Avesta under the 1984 Specialty Steel Restructuring Program, described in section I.B. above. Some of these were forgiven, along with localization loans taken out by Avesta, as part of the Restructuring Program. We have included the benefits to Avesta from this forgiveness in the subsidy calculations for that program.

Other localization loans held by Fagersta and Nyby Uddeholm that were transferred to Avesta were not forgiven. We have not included these loans in calculating the benefit to Avesta for the reasons stated in section I.A. pertaining to guaranteed loans to Nyby Uddeholm that were transferred to Avesta.

The remaining localization loans are to Avesta and Sandvik. A portion of Avesta's localization loans was forgiven in 1985. Sandvik's loan is still outstanding.

We determine that Sandvik's loan was provided to a specific enterprise or industry, or group of enterprises or industries because receipt of this loan was conditional upon regional location. We further determine that forgiveness of Avesta's loan in 1985 is countervailable because we find that the government's forgiveness of loan repayment obligations falls within section 771(5)(B)(iv), "the assumption [by the government] of any costs or expenses of manufacturing, production, or distribution."

We compared the terms of Sandvik's regional loan with our benchmark interest rate. The localization loan was a long-term, variable-rate loan. Since Sandvik did not have similar loans to use as a benchmark, we used the 1985 national average short-term interest rate to measure what the company otherwise would have paid. This benchmark was compiled from data in the RSY 1985. On the basis of this comparison, we found that this loan was on terms inconsistent with commercial considerations.

To calculate the benefit conferred by the localization loan to Sandvik, we divided the interest differential (*i.e.*, the difference between our benchmark interest rate and the amount of interest Sandvik actually paid) by Sandvik Steel's total sales of all products in 1985. On this basis, we calculate an estimated net subsidy of 0.05 percent *ad valorem* for Sandvik.

Based upon our findings at verification, freight relief is provided in the form of a grant and is contingent upon the location of facilities in designated areas. Because this program is limited to specific regions within Sweden, we determine that it is countervailable. Since freight relief benefits are received yearly by Avesta and are based on the level of its shipments, we consider these benefits to be a recurring grant and expensed the 1985 benefits during the review period.

We divided the sum of the benefits from the forgiveness of the conditional localization loan and freight relief to Avesta by Avesta's total sales in 1985 of all products to arrive at an estimated net subsidy of 0.009 percent *ad valorem*.

II. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Sweden of the subject merchandise under the following programs:

A. 1977–1979 Employment Promotion Grants

The Government of Sweden initially provided employment support benefits under the provisions of Government Bill 1976/77:95. These benefits were later extended through a series of overlapping bills which eventually covered the period 1977 through 1979. This was a temporary employment stabilization program designed to give work and education grants to companies with a dominant employment position in a community. A basic condition for the employment and training grants was that the employees facing dismissal continued to be employed by the company in non-productive activities and that the notice of lay-off was to be withdrawn. The employment grants amounted to either (1) 75 percent of the wages of workers who had been designated for lay-off, but who were kept on the job working on projects unconnected with direct production, or (2) a portion of the costs incurred for training and education classes for affected employees. This program was terminated as of December 1979.

At verification, we found that Avesta and Fagersta were the only producers of SSHP that received grants under this program. We found that the companies were required to contribute either 25 percent of the affected employees' salaries, or a portion of the costs related to the training/education courses. But for this government program, neither of these companies would have been liable for expenses related to these employees who otherwise would have been dismissed. Because we saw no evidence that: (1) The classes were for jobs related to stainless steel production; or (2) that either of these companies was relieved of any expenses it otherwise would have incurred absent this program, we determine that no countervailable benefit was bestowed under this program.

B. Bank Guarantee on 1984 Stock Issuance by Avesta

Petitioners allege that in 1984, as part of the structural reorganization of the specialty steel industry, described in section I.B. of this notice, the government provided guarantees on stock issued by Avesta in 1984. Petitioners assert that the capital raised by this stock issuance was used by Avesta to support its stainless steel operations.

During verification, we found that Avesta's stock issue in 1984 was underwritten and guaranteed by Skandinaviska Enskilda Banken, a commercial bank that is not owned or controlled hy the government. We also found that under Swedish law, a commercial bank is allowed to underwrite a stock issuance for a company. Because we found that a commercial bank guaranteed Avesta's 1984 stock issuance based on its own commercial interests, we determine that no countervailable benefit was bestowed under this program.

C. 1972 and 1976–1978 Inventory Grants

Petitioners allege that the Government of Sweden has provided funding for increases in stainless steel inventories in order to keep surplus personnel employed.

Inventory grants were provided pursuant to the Swedish Code of Statutes (SFS) 1971:1249, ss 1 and 2. The purpose of the program was to maintain existing levels of employment. To receive a grant under this program, the company was required to have at least 20 employees and inventories of finished or semifinished goods increasing from the previous year. If a grant was received, the company had to maintain its current level of employment.

During verification, we found that this program was available to, and used by, a wide variety of Swedish manufacturers. Because this program was not limited to producers of stainless steel products, or otherwise limited to a specific enterprise or industry, or group of enterprises or industries, or to specific regions within Sweden, we determine that no countervailable benefit was bestowed under this program.

D. Government Funding to Companies and Research Organizations for Research and Development

The Swedish Government provides research and development grants to Swedish industries either directly or indirectly through various research and development (R&D) agencies. The Swedish Board of Technical

Development (STU) is Sweden's central agency for funding of R&D grants.

During verification, we found that conditional grants are given for R&D. Upon completion of a project, the results must be reported to STU and thereafter are made publicly available by STU. However, under certain circumstances, a grant recipient may find the results from a research project to be exploitable and decide to have them patented, at which time STU is requested not to release any results arising from the project. In this situation, STU requires that the conditional grant be converted to a loan and be repaid with interest to STU.

We also found during verification that Sandvik received four grants for projects related to SSHP, the results of which have been made publicly available. Avesta received two grants for projects pertaining to SSHP. One of the projects has not yet been completed.

Upon completion of the other project, Avesta decided to patent the project results. Therefore, the grant was converted to a loan which was repaid with interest by 1981. According to the government's response, Nyby Uddeholm received three grants for projects related to SSHP. Because Nyby Uddeholm no longer exists as a company and because we saw no evidence at verification of any R&D grants transferred to Avesta's books after it purchased Nyby Uddeholm in 1984, we assume that these grants were either converted to loans and repaid with interest prior to the review period or the results of the research were made publicly available.

Because the results of the government-funded corporate R&D projects are publicly available, we determine the R&D funds provided under this program are not countervailable.

III. Programs Determined Not to Exist

A. Government Loan to Sandvik for Working Capital

Petitioners allege that an increase in "Interest-Free Trading Debts" shown in Sandvik's 1983 Annual Report was the result of a government transfer of interest-free loans to the company. At verification, we found that this increase was the result of a sale by Sandvik of one of its assets, with no participation on the part of the government. Because this was a commercial transaction, unrelated to any government program or action, we determine that there is no program by which the Swedish government provided interest-free loans to Sandvik.

B. Government Convertible Loan to Avesta for Purchase of Nyby Uddeholm

Petitioners allege that the Government of Sweden provided convertible loans on terms inconsistent with commercial considerations to Avesta for the purpose of financing the acquisition of Nyby Uddeholm's and Fagersta's stainless steel operations.

During verification, we found that the government did not issue convertible loans to Avesta, or any of its subsidiaries, for the purchase of Nyby Uddeholm and Fagersta. Rather, Avesta issued convertible loans in 1984 to Fagersta and Uddeholm as payment for the facilities and assets purchased. Because the Government of Sweden had no involvement in this part of the structural reorganization of the specialty steel industry, we determine that there was no program by which the government provided convertible loans to Avesta.

Petitioners' Comments

Comment 1. Petitioners contend that the Department should countervail the additional benefits that have flowed to the SSHP industry from the forgiven localization loans to Avesta and Fagersta resulting from interest holidays and below-market interest rates. They argue that the amount of interest that should have been paid during the interest holidays should be added as an additional grant to the loan amount forgiven in 1984, and the total amount of additional benefits attributable to the below-market interest rates should be added to the 1984 grant amount.

DOC Position. We disagree. We have treated the amounts forgiven in 1984 as grants and have allocated the benefits over 15 years. Under our standard methodology, any savings that might have occurred in the form of interest holidays or low interest rates prior to 1984 would be attributable to years prior to the forgiveness.

Comment 2. Petitioners contend that a major portion of the SSHP industry was uncreditworthy between the years 1976 and 1983. Therefore, in evaluating and measuring benefits bestowed, the Department should adopt benchmarks and discount rates that reflect the uncreditworthiness of much of the Swedish SSHP industry.

DOC Position. Petitioners' allegation of uncreditworthiness was received by the Department on January 16, 1987, approximately one month before the final determination. Petitioners had access to respondents' annual reports and financial statements as of November 6, 1986, almost two months before any allegation was received by the Department. Given the complexity of the analysis necessary to investigate this allegation, we consider it to be too late to be considered in this investigation. This decision is consistent with past Department practice regarding allegations of uncreditworthiness. *See e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime Oil from Mexico* (49 FR 35627, 35677, September 11, 1984).

Comment 3. Regarding the calculation of the benefit from employment grants made after July 1978 to Avesta, petitioners contend that the Department should use as the cost of capital to Avesta the rate derived by adding a 4.7 spread to the industrial bond rate in 1978, for an estimated cost of capital of 15.03 percent. Petitioners maintain that this rate reflects the relative cost experienced by Avesta in view of its uncreditworthiness in 1978.

DOC Position. We determine that employment grants are not countervailable. See section II.A. of this notice. We have not considered the allegation of uncreditworthiness because of the untimeliness of its filing. See DOC Position on Petitioners' Comment 2.

Comment 4. Petitioners contend that, if the Department finds the inventory grants were limited in Sweden, then it should also find that countervailable benefits have flowed to Avesta and Sandvik under this program.

DOC Position. We determine that inventory grants are not limited to a specific enterprise or industry, or group of enterprises or industries and, thus, are not countervailable. See section II.C. of this notice.

Comment 5. Petitioners contend that the localization loans that had previously provided countervailable benefits to Fagersta and Nyby Uddeholm continue to provide countervailable benefits to Avesta after its acquisition of the loans. Petitioners further contend that benefits from below-market interest rates and interest holidays on these loans have flowed to Avesta and should be countervailed.

DOC Position. We disagree. See section I.C. of the notice and DOC Position on Petitioners' Comment 19.

Comment 6. Petitioners contend that subsidies for the production of the flat-rolled products used to manufacture SSHP have continued to benefit the production of SSHP regardless of the corporate maneuverings in 1984. As an integral part of the Avesta Group, AST has derived a significant benefit from enhanced production of stainless steel plate, sheet, and strip made possible by government preferential loans designed

to improve Avesta's continuous casting facilities.

DOC Position. We agree. See section 1.B. of this notice.

Comment 7. Petitioners contend that, contrary to Sandvik's assertions, the Department properly applied a country-wide rate for purposes of the preliminary determination and should continue to do so in the final determination. In support of this position, petitioners assert that the 1977–78 Structural Reorganization Fund and the government-directed and subsidized 1984 industry reorganization were intended not to benefit a particular company or companies, but, rather, the entire stainless steel industry.

DOC Position. It is our general practice to publish a country-wide countervailing duty rate applicable to all imports of the subject merchandise. However, where a company receives *de minimis* benefits, we consider that to be a "significant differential" warranting company-specific treatment under section 706 of the Act, as amended by section 607 of the Trade and Tariff Act of 1984. Because Sandvik Steel received *de minimis* benefits, we are not including it in this determination.

Comment 8. Petitioners disagree with Sandvik's assertion that it should be given a separate rate because it had *de minimis* margins. Petitioners contend that the benefits from Sandvik's loans under the SRF are substantial. Petitioners further contend that Sandvik and its subsidiary companies benefitted from the government-directed and subsidized reorganization through insured viability and increased competitiveness.

DOC Position. We disagree. See DOC Position on Petitioners' Comment 7 and section 1.B. of this notice.

Comment 9. Petitioners contend that the request for exclusion from any countervailing duty order that may be issued in this investigation, which appeared in the prehearing brief of Sandvik and Sandvik Steel is inappropriate because these companies have not fulfilled the procedural or substantive prerequisites for exclusion from a countervailing duty order. Petitioners contend that given respondents' failure to request exclusion within 30 days"of the notice of initiation, as required by § 355.38 of the Department's regulations, and the evidence of subsidies provided to Sandvik, the Department should not grant respondents' exclusion request.

DOC Position. We agree. However, as we state in response to Petitioners' Comment 7, our investigation of Sandvik revealed that it receives de minimis benefits and, therefore, Sandvik is not included within this determination.

Comment 10. Petitioners allege that Avesta benefitted from below-market interest rates on guaranteed loans from the Swedish government. They argue that such benefits are distinct from the benefits conferred by preferential guarantee fees. In view of Avesta's uncreditworthiness, the benefits to Avesta from its variable-rate loan should be calculated using the highest short-term interest rate in Sweden as a benchmark.

DOC Position. Where the government provides guarantees for loans, a countervailable benefit can arise if the fee paid for the government guarantee is less than what the borrower would otherwise pay for a guarantee. If we have a benchmark guarantee fee, we would not generally examine the interest rate on the guaranteed loan because any benefit to the borrower would be reflected in the difference in the guarantee fees.

Because we lacked a benchmark guarantee fee in this case, we compared the interest rate on the government guaranteed loan to the interest rate the firm would otherwise have paid. This is the best measure of any benefit conferred in the absence of a benchmark guarantee fee.

With respect to Avesta's creditworthiness, see DOC Position on Petitioners' Comment 2.

Comment 11. Petitioners argue that the Department should use Avesta's cost of long-term debt as the basis for the discount rate in calculating benefits from Avesta's guaranteed loans. Petitioners contend that Avesta's weighted-average cost of capital cannot be reliably determined due to the absence of capital infusions into the company from 1979–84.

DOC Position. As discussed above, we examined the interest rates on Avesta's government guaranteed loans because we lacked a benchmark guarantee fee. The guaranteed loans had fixed and variable interest rates. We found that the interest rates on the fixed rate guaranteed loans were not lower than Avesta would otherwise have paid. Therefore, we determined that the guarantees for these loans were not provided on terms inconsistent with commercial considerations.

With regard to the guaranteed variable rate loans, we found that the interest rate paid by Avesta was less than the benchmark rate. Therefore, we found the government guarantees for variable rate loans were provided on terms inconsistent with commercial considerations. To measure the benefit arising from these guarantees, we compared the interest paid in 1985 to the interest that would have been paid under the short-term benchmark. Because of this, there was no need for a discount rate because no benefits were allocated over time.

Comment 12. Petitioners allege that the Government of Sweden provided preferential loans to Bjorneborgs Jernverks (BJ), a subsidiary of Avesta Jernverks, which have directly benefitted the SSHP industry. Petitioners contend that an investment loan and a localization loan, both transferred to Avesta in 1985, conferred two benefits on Avesta: (1) A preferential interest rate, and (2) a three-year interest holiday.

DOC Position. We disagree. BJ produces forged steel products primarily from carbon steel. We did not attribute any benefits accruing to BJ to the SSHP industry and we did not include BJ's sales in Avesta's total steel sales for purposes of calculating a denominator.

Comment 13. Petitioners argue that, in addition to the benefits conferred by the Swedish government's forgiveness of a 52.5 mSEK investment loan to Avesta in connection with the 1984 restructuring, Avesta benefitted by not paying the interest that would have accrued prior to the forgiveness if the loan had been at market rates. Petitioners further argue that Avesta's interest savings should be treated as a grant in the amount of the annual interest saved by Avesta between the year the loan was bestowed and the year it was forgiven. The 1985 benefits from this loan should be calculated by adding the interest that would have accrued over the life of the loan to the amount of the loan principal forgiven, and then treating the sum as a grant.

DOC Position. We disagree. Any benefit from interest savings prior to forgiveness would be attributable to the period before the forgiveness. See also DOC Position on Petitioners' Comment 1.

Comment 14. Petitioners allege that a 35 mSEK government loan to Sandvik was inconsistent with commercial considerations. Petitioners argue that (1) the loan had an interest holiday, (2) Sandvik apparently paid no loan fees, and (3) because the loan has a variable interest rate, the correct benchmark is the 1985 short-term interest rate. If a long-term loan interest rate is used as a benchmark, petitioners argue that the 15-year industrial bond rate is not an appropriate benchmark because it does not reflect long-term loans to the SSHP industry.

DOC Position. We agree that the loan was made on terms inconsistent with

commercial considerations. However, because the loan had variable interest rates, we were not able to apply our methodology for fixed rate, long-term loans, which would have resulted in allocating any benefits from an interest holiday or lack of loan fees over the life of the loan. Instead, because the loan has a variable interest rate, we calculate the benefit that arises in each year and allocate that entire amount to that year. As petitioners suggest, we have used the 1985 short-term interest rate to measure the benefit accruing to Avesta in 1985.

Comment 15. Petitioners allege that the transfer of Nyby Uddeholm's conditional loans to Uddeholm in 1984 provided countervailable benefits to the SSHP industry. By relieving Nyby Uddeholm and Avesta, its successor corporation, of a substantial liability, the Government of Sweden effectively bestowed a grant on Avesta. Petitioners further argue that the loans' below-market interest rate also conferred benefits on Nyby Uddeholm and Avesta.

DOC Position. We disagree that the loan transfer, in itself, conferred benefits on the SSHP industry. However, the government refinancing and partial forgiveness of the loans did provide certain benefits to Avesta. We did not analyze whether the original terms of these loans were inconsistent with commercial considerations because the loans were forgiven or refinanced. Therefore, the original terms of the loans are not relevant to our determination. See section I.B. of this notice.

Comment 16. Petitioners allege that the Swedish government forgiveness of loans to Nyby Uddeholm and Fagersta provided a direct benefit to the SSHP industry. They argue that the loan forgiveness enabled the SSHP industry to restructure and become more competitive, and that this restructuring would have been impossible absent government intervention. The loan forgiveness, recorded in Avesta's 1984 annual report, allowed Avesta to write down the value of its fixed assets. Petitioners further argue that, because neither Avesta nor Sandvik provided any payment or other consideration for the loan forgiveness, the forgiveness cannot be characterized as an arm's-length transaction between the SSHP industry and the Government of Sweden. In addition, petitioners contend that the loans' below-market interest rates and interest holidays directly benefitted the SSHP industry.

DOC Position. We agree that the loan forgiveness cannot be characterized as an arm's-length transaction between any company in the SSHP industry and the government. Debt forgiveness by a government is an assumption of a company's cost of doing business and, as such, constitutes a benefit to the production of the subject merchandise. We do not agree that any interest savings which might have occurred prior to the forgiveness yield a benefit during the review period. See DOC Position to Petitioners' Comment 1.

Comment 17. Petitioners allege that certain Swedish government loans to Nyby Uddeholm and Fagersta carried preferential guarantee fees, below-market interest rates, conditional repayment terms; and interest holidays. Petitioners argue that these benefits flowed to Avesta when Avesta acquired the loans in the 1984 restructuring.

DOC Position. We disagree. See sections I.A. through and I.C. of this notice.

Comment 18. Petitioners allege that the Swedish government's loan forgiveness, as the impetus for the 1984 restructuring, benefitted the entire stainless steel industry, including SSHP. They argue that AST came into existence only because of the government-directed reorganization of the industry. Petitioners cite *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France* (47 FR 39332, September 7, 1982) in which the Department found government restructuring efforts in the French steel industry to be countervailable, as directly analogous to Swedish government actions in this investigation.

DOC Position. We disagree. The government's loan forgiveness provided certain countervailable benefits to Avesta, but not to the SSHP industry as a whole. For example, we did not attribute any benefits to Sandvik from the 1984 loan forgiveness. See section I.B. of the notice.

Comment 19. Petitioners argue that none of the inter- and intra-corporate transfers of assets and debts which occurred during the 1984 steel restructuring were arm's-length transactions. Further, petitioners argue that the creation of FST and AST cannot be considered "commercial" due to the existence of government direction in the form of preferential loan terms, loan forgiveness, and below-market asset purchase agreements.

DOC Position. We disagree. Some of the above-mentioned debt and asset transfers were arm's-length transactions. Only certain portions of the 1984 restructuring were non-commercial: namely, the government's loan forgiveness and loan refinancing. These government actions ultimately allowed the restructuring to occur, but they did not undermine the commercial nature of certain key aspects of the restructuring. The complex set of agreements which comprise the restructuring contain both commercial and non-commercial elements. In section I.B. of the notice, we have identified those elements which conferred countervailable benefits. We have not found a "pass through" of benefits from preferential loan terms when those loans were transferred because the transfers can be considered "commercial" once the government's role in the agreement is accounted for.

We consider that, absent government loan forgiveness and refinancing, any preferential loans sold at arm's-length would cease to be preferential to the new purchaser. In effect, the purchase price of the loan package would reflect the preferential terms of the loan. As such, the loan transfers are not inconsistent with commercial considerations. We have countervailed only those government actions, loan forgiveness and refinancing, which were contemporaneous with the restructuring and which clearly enabled a transaction to take place that otherwise would not have occurred on the same terms.

Comment 20. Petitioners argue that the Swedish government's loan forgiveness and the transfer of debt from Nyby Uddeholm to Uddeholm should be treated as a grant and allocated over total sales of stainless steel. Petitioners cite *Certain Steel Products from France, supra,* Comment 18, in support of their argument.

DOC Position. We disagree. See section 1.B. of this notice.

Comment 21. Petitioners dispute Avesta's contention that any benefits from the Swedish government's loan forgiveness and debt transfers accrued to Fagersta and Uddeholm and did not pass on to Avesta or AST. Petitioners' claim that Avesta was relieved of significant liabilities as a result of government-directed restructuring.

DOC Position. We agree that certain benefits from the government's loan forgiveness and refinancing accrued directly to Avesta and indirectly to AST. See section 1.B. of this notice.

Comment 22. Petitioners argue that Sandvik benefitted from the 1984 restructuring and from preferential localization and investment loans, both as a producer of seamless SSHP and as a joint owner of AST and Fagersta Stainless.

DOC Position. We found Sandvik's localization loan and investment loan to be countervailable, but the benefits received are *de minimis* (see sections I.A. and I.C. of this notice). We disagree that Sandvik received countervailable benefits from the 1984 restructuring.

Those benefits accrued solely to Avesta, AST and their production of stainless steel products.

Comment 23. Petitioners argue that Avesta and AST are not separate entities in any meaningful respect, in view of the highly integrated supply relationships between AST and Avesta and the common ownership responsibility for Avesta, AST and the entire Avesta Group. Petitioners conclude that government benefits to Avesta have also benefitted AST.

DOC Position. We agree. See section I.B. of this notice.

Comment 24. Petitioners argue that the revised figures for Avesta's total steel sales in the Department's verification report are overstated because (1) they include steel products not produced in Sweden, (2) they include sales by marketing entities of products that are not made by Avesta, and (3) they include sales of a variety of fabricated products that are not normally considered part of the steel industry.

DOC Position. We disagree. For an explanation of those Avesta sales included in our denominator, see the "Analysis of Programs" section of this notice.

Comment 25. Petitioners contend that information relating to the government's loan forgiveness remains unverified. Specifically, petitioners note that the Swedish government failed to provide the Department with financial calculations regarding the amount of the loan forgiveness and how that amount was reached. Further, petitioners recommend that the Department conclude, as best information available, that the full amount of the loan forgiveness and debt transfer was intended to benefit the stainless steel and SSHP industry.

DOC Position. We disagree. We are satisfied that all information relied upon in making our final determination has been sufficiently verified. Our calculation methodology for the loan forgiveness and debt transfer is set out in section I.B. of this notice.

Comment 26. Petitioners argue that Avesta's purchase of Fagersta's and Nyby Uddeholm's stainless steel and SSHP operations was not made on commercial terms. Petitioners claim that, when payment for these operations is ultimately made, it will be through convertible debentures with a present value at the time of purchase well below the nominal asset valuation.

DOC Position. We disagree. See section I.B. of this notice.

Respondents' Comments

Comment 1. Sandvik contends that it should be excluded from any final subsidy determination because there is a significant differential, within the meaning of section 706 of the Act between Sandvik Steel and the other companies subject to this investigation and because any benefits received by Sandvik Steel are *de minimis.* Sandvik further contends that, during the initial 30-day period for an exclusion request under § 355.38 of the Department's regulations [19 CFR 355.38], it was not able to make such a request for exclusion because they had participated in certain programs alleged by petitioners to be countervailable. Sandvik, therefore, requests that it be excluded from any countervailing duty order issued in this investigation if the Department finds that this company received no subsidies with respect to SSHP, or if the Department finds that the only subsidy provided to Sandvik Steel arose from the investment loan and that the benefit from such subsidy was *de minimis.*

DOC Position. Because Sandvik Steel failed to request an exclusion within 30 days of the notice of initiation, we did not grant it an exclusion under section 355.38 of our regulations. However, because we found that Sandvik Steel received *de minimis* benefits we are not including it in this-final determination. See DOC Position on Petitioners' Comments 7 and 8.

Comment 2. Sandvik contends that petitioners do not represent a majority of the stainless steel pipe and tube industry, that the countervailing duty law expressly requires that a petitioner must represent the affected industry, and that the Department's position that a petitioner need not establish its standing to bring a petition is without basis.

DOC Position. See the "Case History" section of this notice. Furthermore, the only opposition we received from the entire domestic SSHP industry was one letter from one producer. This letter did not express outright opposition to the Department's investigation, but rather, opposition to any interference with its continued reliance upon foreign sources of SSHP. Therefore, we have determined that this one expression of questionable opposition to an investigation does not present us with a clear indication that we should doubt petitioners' standing.

Comment 3. Sandvik argues that petitioners' request to include the United Steelworkers of America (USWA) as co-petitioner should be rejected by the Department. Sandvik contends that petitioners' attempt at this late stage in the investigation to cure a defect with respect to petitioners' standing to cause this investigation to be initiated is untimely, improper, and has no support in statute or regulation.

DOC Position. We have determined that there is no defect in petitioners' standing. As for petitioners' attempt to amend the petition in order to add the USWA as a co-petitioner, we have sent a letter to petitioners informing them that their request has been denied. In order for a petition to be amended, adequate time must exist for any opposing parties to submit comments and for the Department to consider the relevant arguments.

Given that the Department received no information with regard to the USWA until February 4, 1987, and more fully on February 9, 1987, we have determined that we are unable, at such a late stage in the investigation, to recognize the USWA as a co-petitioner. This determination is consistent with section § 355.26 of the Department's regulations, which permits the Department to reject a proposed amendment if it is submitted in an untimely manner.

Comment 4. Sandvik argues that, in developing a benchmark to compare to long-term government loans to Sandvik, the Department should not derive a benchmark from short-term commercial loans. Sandvik adds that, even if the Department chooses to use short-term rates as benchmarks, the rates reported by the RSY 1985 are inappropriate because they reflect borrowing to all classes of borrowers and exceed those available to a blue chip company like Sandvik. Sandvik also believes that a long-term, floating interest rate loan, with interest tied to the Swedish discount rate (discount plus 4.25 percent) is the appropriate benchmark.

DOC Position. When the loan in question is a long-term variable-rate loan, we will derive a company-specific benchmark if the company has similar variable-rate loans taken out at approximately the same time. Sandvik did not have such loans. Therefore, we used that short-term interest rate reported in the RSY 1985.

Comment 5. Avesta argues that the 450 mSEK loan write-off by the Swedish government did not bestow any countervailable benefits on the production or exportation of any stainless steel product because it was consistent with commercial considerations. Avesta supports this argument by asserting that the loan forgiveness was matched by comparable private interest financial commitments, and that it was the best option available

to the Swedish government for ensuring maximum repayment on outstanding loans and avoiding greater losses.

DOC Position. We disagree. See section I.B. of this notice.

Comment 6. Avesta contends that the amount of loans forgiven 450 mSEK is "commercially negligible" when compared to the value of sales made by the major Swedish stainless steel producers (in 1983).

DOC Position. We disagree. According to our methodology, we treat loan forgiveness as a grant and allocate the benefit to the "grant" recipients. Under this methodology, the benefit of loan forgiveness conferred on the subject merchandise was not negligible. See section I.B. of this notice.

Comment 7. Avesta submits that none of the 450 mSEK loan write-off was tied to the production or exportation of the subject merchandise; rather, it was for the entire stainless steel industry.

DOC Position. We disagree. The 1984 restructuring was directed specifically at improving the Swedish stainless steel industry. SSHP was a beneficiary of the restructuring. Therefore, at a minimum, the restructuring indirectly benefitted the production and exportation of the subject merchandise. See section I.B. of this notice.

Comment 8. Avesta contends that it incurred substantial costs to revitalize the assets it acquired, and that these costs are separate from the write-down in the value of certain worthless assets against the 450 mSEK loan forgiveness.

DOC Position. Any "additional" costs incurred by Avesta do not diminish the benefits conferred by the government through its loan forgiveness.

Comment 9. Avesta argues that the reduction of Nyby Uddeholm's 668.1 mSEK in liabilities conferred a commercial benefit on the seller, Uddeholm AB, not on Avesta. Avesta claims that its purchase of Nyby Uddeholm shares came only after Uddeholm agreed to assume Nyby Uddeholm's liability to the Swedish government. Avesta asserts that the 200 mSEK it paid for Nyby Uddeholm stock was the fair market value and it never would have paid that amount had Nyby Uddeholm retained the liability to the Swedish government.

DOC Position. We disagree. We determine that the benefit arising from the transfer and refinancing of the 668.1 mSEK liability accrued to both Uddeholm and Avesta. See section 1.B. of this notice.

Comment 10. Avesta asserts that it has always been creditworthy and that petitioners' allegation of uncreditworthiness is wrong.

DOC Position. We determined that petitioners' allegation of uncreditworthiness was untimely and, therefore, we have not made a determination regarding the creditworthiness of Avesta.

Comment 11. AST argues that the formation of its precursor, FST, and the acquisition of the mills at Fagersta and in West Germany in 1983 did not result in the bestowal of countervailable benefits to AST because the transactions were made at commercially reasonable prices and entirely without the assistance of the Swedish government.

DOC Position. We agree. We saw no evidence that the Government of Sweden participated in any way in the formation of FST nor in the purchases of the Fagersta and West German mills. We believe that these were arm's-length transactions at commercially reasonable prices.

Comment 12. AST argues that Avesta's purchase of Fagersta's interest in FST did not confer countervailable benefits because the price which Avesta paid was a realistic commercial price and because Avesta was financially able to purchase the shares without government assistance. AST adds that, even if the Department concludes that Avesta's purchase of Fagersta's stock was made possible through government assistance or that the price was not commercially reasonable, there was no benefit that flowed to AST. AST argues that the Department has expressly recognized the difference between the purchase of pre-existing stock, which benefits the seller, and the purchase of newly issued stock, which benefits the issuing company.

DOC Position. We disagree. See section I.B. of this notice.

Comment 13. AST argues that, as a corporation wholly responsible for its own taxes and other debts and liabilities, it is a legal entity separate and distinct from its corporate stockholders. AST argues that its business transactions with Avesta, specifically, the purchases of raw materials and the Storfors and Torshalla plants from Avesta, did not confer countervailable benefits to AST because the Department does not countervail transactions between related companies where there is no government direction or assistance. AST also contends that petitioners' reliance on *British Steel Corporation* v. *United States*, 9 CIT____, 605 F. Supp. 286 (1985) and on *Certain Steel Products from France* (47 FR 39332, September 7, 1982) is misplaced because petitioners have confused the ITA's method for allocating subsidies with the ITA's method for determining whether subsidies exist.

DOC Position. We found that the forgiveness of loans to Avesta, and the transfer and refinancing of Nyby Uddeholm's debt to Uddeholm benefitted Avesta's production of stainless steel, including SSHP produced by AST, which is 75 percent owned by Avesta. We disagree that we need to trace a flow of benefits to AST through its purchase of raw materials or through its purchase of Nyby Uddeholm's welded SSHP plants. As described at length in section I.B., we found these government actions to be a necessary element of the restructuring, and the reconstitution of AST in 1984 was a direct result of that restructuring. Therefore, AST's production, like Avesta's other stainless steel production, benefitted.

Comment 14. AST argues that, even if Avesta received a countervailable benefit, it was not passed through to AST because all transactions conducted between AST and Avesta were on a commercial basis. AST argues that the Department recognizes that funds transferred on a commercial basis between a parent and a subsidiary, even if the parent received its funds in the form of government subsidies, do not confer a countervailable benefit on the subsidiary.

DOC Position. We disagree. See section I.B. of this notice and DOC Position on Respondents' Comment 13.

Comment 15. AST contends that, contrary to statements made in the verification reports, AST made a profit in 1984 and that it had an overall negative result only because it took an extraordinary write-down for the permanent closing of certain productive facilities.

DOC Position. In our verification report we stated that "AST recorded a loss in 1984 for its operations in Sweden (AST Parent) and for its overall operations (AST Group)." We derived this information from the "result before tax" data in the profit and loss statements of the 1984 AST Annual Report. Since the AST 1984 Annual Report is publicly available, we did not attempt to provide an analysis of the 1984 financial data in the verification report.

Comment 16. AST argues that the liabilities of Nyby Uddeholm were not forgiven, but were assumed by Uddeholm in order for it to be able to sell Nyby Uddeholm. AST contends that this was a commercially reasonable act because in the absence of such a transfer, the subsidiary could not have been sold.

DOC Position. We agree that the liabilities were transferred from Nyby Uddeholm to Uddeholm so that Nyby Uddeholm could be sold, but disagree that liabilities were not forgiven and that the government's action was a commercially reasonable one. See section I.B. of this notice.

Comment 17. AST contends that the investment by Avesta and Sandvik in newly-issued equity of AST in late 1984 was consistent in every way with normal commercial considerations and cites as support the *Final Administrative Review: Certain Refrigeration Compressors from Singapore* (51 FR 37055, October 17, 1986), which characterizes increases in equity as normal commercial transactions between a parent company and a subsidiary.

DOC. Position. We agree. Investments in equity by private shareholders typically do not confer benefits on the issuing company unless the government intervenes to provide government funds for such purposes. We determine that Avesta's and Sandvik's investment in AST was independent of the series of transactions facilitated by the government in January 1984, and was not directed or facilitated by government action and provision of benefits.

Comment 18. Sandvik and AST argue that seamless and welded SSHP constitute two separate "classes or kinds" of merchandise within the scope of the countervailing duty law. They contend that the difference in the physical characteristics of the product (*i.e.*, the presence or absence of a weld) reflects a completely different method of manufacture. Furthermore, they contend that this difference in physical characteristics results in separate ultimate uses, channels of trade, cost and expectations of the ultimate user.

DOC Position. We disagree. For purposes of this final determination, we have found that seamless and welded SSHP constitute one "class or kind" of merchandise. Although the Department recognizes that there *may be* physical differences between seamless and welded SSHP (*i.e.*, the presence or absence of a weld), the physical properties with regard to steel grade and ASTI specifications between seamless and welded SSHP can be identical. Therefore, we have determined that seamless and welded tubing manufactured to identical specifications are interchangeable.

Because both seamless and welded SSHP can meet identical technical characteristics, the choice of one over the other is based more on individual customer preference and past experience, rather than the inability of one type of product to fulfill certain specifications. Furthermore, with regard to the remaining criteria, we found that ultimate use and expectations of the ultimate user are directly related to the arguments concerning physical characteristics, and that ultimate use and expectations are based on individual preference, rather than technical criteria. With regard to channels of trade, we found that, contrary to respondents' arguments, both seamless and welded SSHP flow through pipe and tube distributors and that both seamless and welded SSHP are stocked in standard sizes, as well as custom order availability. Lastly, although cost is not a factor that the Department considers in making its class or kind determination, this is not a basis on which to distinguish the two products. Although historically welded tube has been found to have a price differential of perhaps 10 to 20 percent, recent developments in SSHP production (*e.g.*, x-ray inspection), which enable the product to meet the stringent standards previously held for certain types of seamless SSHP, have decreased the price differential so as to render the difference insignificant.

Comment 19. AST contends that the failure of the Department to find two separate "classes or kinds" of merchandise in this investigation would make it virtually impossible for the ITC to fulfill the statutory requirement of linking injury from imports of a "class or kind" of merchandise to subsidization of such merchandise.

DOC Position. We disagree. In its preliminary determination (51 FR–44841, December 12, 1986), the ITC found two "like" products and two domestic industries: seamless and welded SSHP. Should the ITC maintain this distinction in its final determination we see no circumstance which would prevent us from linking injury from imports of the class or kind of merchandise under investigation to subsidization of the merchandise.

It is our practice when the ITC finds more than one industry to exist within a single class or kind of merchandise, to publish a final countervailing duty or antidumping duty order conforming to and coterminous with the ITC's injury and industry determinations. For example, in the *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985), the Department found that the products under investigation constituted one "class or kind" of merchandise. However, the ITC, in its final determination (50 FR 31931, August 7, 1985), found injury on live swine, and found no injury with regard to fresh, chilled and frozen pork products. The Department issued one order which covered only live swine.

The correctness of this approach has been specifically endorsed by the United States Court of International Trade. In *Badger-Powhatan v. United States*, 6 ITRD 2324 (April 29, 1985), a case involving the antidumping statute, the Court held that final orders may only cover merchandise which satisfies both the less than fair value sales criteria and the material injury criteria under section 731 of the Act. A broader coverage, the Court noted, would render the ITC's role in determining the like product, the industry effected, and injury, meaningless:

> If taken to its logical conclusion, plaintiffs' interpretation of [19 USCl 1673 would require an affirmative material injury determination in only one industry for the issuance of an antidumping order covering the entire class or kind of merchandise being sold at less than fair value. Such an incongruous result would violate the basic tenets of antidumping duty law. (footnote omitted).

6 ITRD at 2327. This holding, and the reasoning upon which it is based, are as applicable to a countervailing duty case as it is to an antidumping duty case.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspection of documents and ledgers, and tracing information in the responses to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of SSHP from Sweden, except SSHP produced and exported by Sandvik Steel, which are entered, or withdrawn from warehouse, for consumption on or after December 7, 1986. As of the date of publication of this notice in the **Federal Register**, the Customs-Service will require a cash deposit or bond of 2.18 percent *ad valorem* for each entry of the subject merchandise from Sweden by all manufacturers, producers, or exporters except Sandvik Steel. The estimated net subsidy for Sandvik Steel is 0.062 percent *ad valorem*, which is *de minimis*.

Accordingly, the subject merchandise produced by Sandvik Steel is not included in this determination. The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated with respect to Sandvik Steel. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released for entries of the subject merchandise produced by Sandvik Steel.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary 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 written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation, will be refunded or cancelled. If, however, the ITC determines that such injury does not exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of the subject merchandise from Sweden, except that produced and exported by Sandvik Steel, entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with section 355.34 of our regulations (19 CFR 355.34). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing held on January 23, 1987, in accordance with § 355.35 of our regulations (19 CFR 355.35).

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Dated: February 17, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 87-3908 Filed 2-25-87; 8:45 am]

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[C-201-007]

Pectin From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico. The review covers the period April 1, 1983 through December 31, 1984 and 12 programs.

As a result of the review, the Department has preliminarily determined that the only known exporter of Mexican pectin to the United States, Grindsted de Mexico, S.A. de C.V., has complied with the terms of the suspension agreement. Grindsted took over Pectina de Mexico, S.A., the signatory to the suspension agreement, in January 1984. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18882) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico (47 FR 54987, December 7, 1982). On September 18, 1985, the petitioner, Hercules, Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the agreement. We published the initiation of the administrative review on February 12, 1986 (51 FR 5219). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican pectin, used as an ingredient in food and drugs. Such merchandise is currently classifiable under item 455.0400 of the Tariff Schedules of the United States Annotated.

The review covers the period April 1, 1983 through December 31, 1984 and 12 programs: (1) CEPROFI; (2) FONEI; (3) NDP preferential discounts; (4) CEDI; (5) FOMEX; (6) FOGAIN; (7) state tax incentives; (8) import duty reductions and exemptions; (9) Article 94 of the Banking Law; (10) BANCOMEXT loans; (11) delay of payments on loans, and (12) delay of payment of fuel charges to PEMEX.

The review covers the only known exporter of pectin to the United States, Grindsted de Mexico, S.A. de C.V. Grindsted took over Pectina de Mexico, S.A., the signatory to the suspension agreement, in January 1984.

Analysis of Programs

(1) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates which are used to promote the goals of the National Development Plan and are granted in conjunction with investments in designated industrial activities and geographic regions. CEPROFI certificates can be used to pay a wide range of federal tax liabilities.

Due to an administrative oversight, Grindsted received three countervailable CEPROFI's during the period of review and used them to pay taxes in early 1985. Grindsted repaid the full face value of these CEPROFI's to the Mexican government on December 12, 1985 and an interest penalty on January 13, 1987. By using rates applicable for late payment of taxes to the Mexican government, Grindsted calculated the interest due from the date it used the CEPROFI's to December 12, 1985, when it repaid the face value of the CEPROFI's, as well as an additional amount representing interest on that interest from December 12, 1985 to January 13, 1987. On this basis, we preliminarily determine that Grindsted did not receive any countervailable benefits from this program during the period of review.

(2) FONEI

The Fund for Industrial Development ("FONEI") is a specialized financial development fund, through which the Banco de Mexico grants long-term peso loans at below-market rates. In 1981, Grindsted received a FONEI loan, which was scheduled to be repaid in May 1985. The FONEI program was not included in the original suspension agreement, since we had not yet determined that it was countervailable. On April 27, 1983, we officially notified the firm, pursuant to

section B(1)(e) of the suspension agreement, of our determination that the FONEI program is countervailable. The firm repaid the FONEI loan on May 19, 1983. Therefore, we preliminarily determine that Grindsted did not receive any countervailable benefits from this program during the period of review.

(3) NDP Preferential Discounts

Under the National Development Plan ("NDP"), preferential discounts on energy (natural gas, fuel oil and electricity) and petrochemical products are granted to companies located in specific regions or engaged in certain priority activities.

Grindsted used electricity and fuel oil during the period of review. The company received no discounts for electricity during the period. For fuel oil, with the exception of the months of March and April 1984, the prices Grindsted paid were the PEMEX national prices. The prices paid in March and April 1984 were 10 to 15 percent below the PEMEX national prices. The lower prices, which Grindsted could not explain, do not appear to be the result of a preferential discount program; Grindsted did not apply for any benefits under this program and, as in all months of the review period, simply paid its fuel oil bill in the amount stated on the invoice. We therefore preliminarily determine that Grindsted did not receive countervailable benefits under this program during the review period.

(4) Other Programs

We also examined the following programs and preliminarily determine that Grindsted did not use them during the review period:

(A) Tax Rebate Certificates ("CEDI");
(B) Fund for the Promotion of Exports of Mexican-Manufactured Products ("FOMEX");
(C) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");
(D) State tax incentives;
(E) Import duty reductions and exemptions;
(F) Article 94 of the General Law of Credit Institutions and Auxiliary Organizations;
(G) BANCOMEXT loans;
(H) Delay of payments on loans; and
(I) Delay of payment of fuel charges to PEMEX.

Preliminary Results of Review

As a result of our review, we preliminarily determine that Grindsted has complied with the terms of the suspension agreement for the period April 1, 1983 through December 31, 1984. The agreement can remain in force only so long as shipments covered by it account for at least 85 percent of exports of such merchandise to the United States. Our information indicates that Grindsted was the only exporter to the United States of Mexican pectin during the review period.

Interested parties may submit written comments on these preliminary results within two weeks of the date of publication of this notice and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held on the 14th day after the date of publication of this notice, or the first workday afterwards. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: February 18, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-3999 Filed 2-25-87; 8:45 am]
BILLING CODE 3510-DS-M

[C-357-002]

Wool From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on wool from Argentina. The review covers the period January 1, 1985 through December 31, 1985.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period of review to be 9.67 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 37716) the final results of its last administrative review of the countervailing duty order on wool from Argentina (40 FR 14423, April 1, 1983). On April 5, 1986, an importer, C. Dana Draper Company, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on May 20, 1986 (51 FR 18475). The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1985 through December 31, 1985 and six programs: (1) Incentives for exports from southern ports; (2) the reembolso, a cash rebate of taxes; (3) preferential pre-export financing; (4) multiple exchange rates; (5) government assistance to wool growers in Patagonia; and (6) financial reorganization aids.

Analysis of Programs

(1) Incentives for Exports from Southern Ports

This program provides a payment for goods shipped from the southern ports of Argentina. The payment is an incentive to promote economic development in the regions south of the Rio Colorado and to develop the southern ports as the primary means of transportation from the southern regions of the country.

Law 23.018/83, effective December 21, 1983, provided for payments ranging from 8 to 13 percent of the f.o.b. price depending on the port used. The law also provided for a reduction of one percentage point for each port as of January 1, 1984, and for the rates to remain within the resulting level for a period of eleven years.

The Argentine government did not respond to our questionnaire. Therefore, to calculate the benefit, we used the best information available, which we

consider to be the average of rates for all southern ports during the period of review. On this basis, we preliminarily find the total benefit provided by this program during the review period to be 9.67 percent *ad valorem*.

(2) Reembolso

The reembolso is a cash rebate of taxes paid upon exportation and is calculated as a percentage of the f.o.b. invoice price. On May 5, 1982, Resolution 437 abolished the 5 percent reembolso for washed wool. There is no reembolso for wool in the grease, the only other merchandise included in the order. Therefore, we preliminarily determine that there is no benefit from this program.

(3) Preferential Pre-export Financing

Because exporters of wool are ineligible for this program, we preliminarily determine that there is no benefit from this program.

(4) Other Programs

In the original investigation, we found that the following programs had been terminated or suspended:

A. Multiple exchange rates;

B. Government assistance to wool growers in Patagonia; and

C. Financial reorganization aids.

We therefore preliminarily determine that there is no benefit from these programs.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 9.67 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 9.67 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1985 and on or before December 31, 1985.

The Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 9.67 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held within 55 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: February 18, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-3909 Filed 2-25-87; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. OEE-1-86]

La Physique Appliquee Industrie et al.; Order Renewing Temporary Denial of Export Privileges

In the matter of La Physique Appliquee Industrie, 5 Rue de Pacalaire, 38170 Seyssinet-Pariset, France, and Les Accessories Scientifiques, Varigney, 70800 Conflans-Sur-Lanterne, France, Respondents.

On January 28, 1987, the Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368–399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act), asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to La Physique Appliquee Industrie (LPAI) of Seyssinet-Pariset, France, and Les Accessoires Scientifiques (LAS) of Conflans-Sur-Lanterne, France (hereinafter collectively referred to as respondents). The initial order was issued on April 23, 1986 (51 FR 15955, April 29, 1986) and renewed on June 20, 1986 (51 FR 23256, June 26, 1986), August 21, 1986 (51 FR 30688, August 28, 1986), October 20, 1986 (51 FR 37776, October 24, 1986) and December 19, 1986 (51 FR 46889, December 29, 1986).

Section 388.19(d)(2) of the Regulations provides that LPAI or LAS may oppose renewal of the temporary denial order by filing written submissions with the Deputy Assistant Secretary not later than seven days before the expiration of the Order. Such opposition was received by the Deputy Assistant Secretary on February 10, 1987.

As a result of my review of the record before me, I find that the Department has established that a violation is imminent. In this regard, it is important to note that the matter is still under investigation by the Department. Moreover, the Department advises that French authorities, also, are continuing their investigation into the transactions in question.

The material facts out of which this proceeding arose are not, in my view, seriously disputed by the parties. What is disputed between the parties is the conclusions to be drawn from those facts. Based on the record before me, I find that the Department's continuing investigation is focusing on serious violations which may have been committed by the respondents. The Department's investigation to date has given it sufficient reason to believe that respondents herein may have participated in a scheme to divert highly sensitive U.S.-origin goods and technology to the Union of the Soviet Socialist Republic (U.S.S.R.) and other Eastern bloc countries. Further, there is sufficient reason to believe that respondents may continue to seek to obtain U.S.-origin goods and technology which they may divert to the U.S.S.R. or other Eastern bloc countries.

The evidence presented to me established a very strong basis for the Department's belief that: (1) On at least two occasions, LPAI, acting in response to an order from LAS, purchased U.S.-origin goods; (2) The ultimate destination of those U.S.-origin goods was intended to be the U.S.S.R.; (3) If an export license or reexport authorization request had been requested by either respondent identifying the U.S.S.R. as the country of ultimate destination, which it was not, the Department would not have authorized that export or reexport; (4) Further, LAS currently has a contract with the U.S.S.R. which calls for LAS to supply equipment of a similar type and nature to equipment in the two transactions which are the principal focus of the Department's investigation; (5) Again, export or reexport of this equipment to the U.S.S.R. would not be authorized by the Department; (6) That the respondents have had substantial business experience in import and export transactions involving scientific and technical products; (7) Respondent LAS was a consignee of licensable U.S. technology and commodities under a distribution license in 1978 and, as such,

the respondent would have had considerable experience handling U.S.-controlled commodities and reason to know the requirements of the Regulations; (8) In 1977, respondent LAS, in a statement made by its President in connection with a distribution license application, expressly stated that LAS would "comply with the U.S. Export Administration's Regulations", including the provision pertaining to the general distribution license procedure; (9) The respondents knew or had reason to know the requirements of the Regulations at the time of the occurrence of the alleged illegal reexportation here in question; (10) An investigation by the Department into these alleged violations is ongoing; (11) French authorities are also investigating into the matters which gave rise to the Department's request for this order; and, (12) A violation may be likely to occur in the future unless action is taken to prevent respondents from gaining access to U.S.-origin goods and technical data.

In its renewal request, the Department takes issue with the argument contained in earlier submission by the respondents which says assertions involving the respondents have not been "proven". The Department contends "that such 'proof' is not necessarily in a temporary denial proceeding where OEE has been able to establish . . . that there is a *reasonable basis for its belief* that the violations under investigation are deliberate and covert and are likely to occur again." [emphasis supplied]

A temporary denial order is a preventive enforcement measure and not a punative instrument. Indeed, it is not necessary for the Department to prove that a respondent is in fact guilty of diversion or illegal exportation or reexportation of U.S.-origin controlled goods or technology before a temporary denial order could be issued against him. While evidence of past unlawful export activities is relevant to the question of a respondent's susceptibility or vulnerability to further illegal re-export or diversion conduct, and thus pertinent to the ultimate issue of "imminent violation", whether the Department's evidence is sufficient to show past violation on the part of a respondent, or is likely to make such a showing ultimately, is not dispositive as to whether a temporary denial order is necessary to prevent an imminent violation.

In their opposition to renewal, respondents state they cannot and need not agree to submit documents to the Department in order to "resolve" the TDO issue. Certainly the respondents are under no compulsion to do so, however I find no request nor invitation in the Department's submission for respondents to submit documents. Rather, the Department makes a commitment to review any and all documents if they were submitted by respondents. This promise by the Department indicates to me its attempt to explore all avenues to resolve the questions still pending in the investigation.

Also in their opposition, respondents question the value of certain internal documents submitted by the Department as exhibits to the renewal request. While neither represents new "evidence" regarding possible past violations in the case, both lend support to the Department's statement that the investigation is ongoing and evince the continuing good faith effort on the part of the Department to move forward on its investigation—including requesting the assistance of the U.S. Customs Service. This is an important point to be made, because if the investigation is not shown to be active, I might be led to conclude that the Department no longer perceives the likelihood of an imminent violation, obviating the need for a temporary denial order.

Therefore, based on the record before me, I find that the Department has established a reasonable basis for the belief that renewal of the order temporarily denying export privileges to respondents is necessary in order to prevent an imminent violation and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby Ordered:

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall become effective on February 17, 1987 and shall remain in effect for 60 days.

VIII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order renewing the temporary denial of export privileges shall be served upon the respondents and published in the **Federal Register.**

Dated: February 17, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87–3910 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; University of California; Correction

In FR Document 87–1685 appearing at page 2752 in the **Federal Register** of January 26, 1987, Docket Number: 86–207 is hereby corrected to read:

Docket Number: 86–207. Applicant: University of California, Santa Barbara, CA 93106. Instrument: Surface Forces Apparatus (Mk II). Manufacturer: Anutech Pty., Ltd., Australia. Intended use: See notice at 51 FR 39701. Reasons for this decision: The foreign instrument can measure force-distance relationships between solid surfaces with a force sensitivity of 10.0 nanonewtons and a distance resolution of about 0.1 nanometer.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–3911 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; University of Rochester et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–089. Applicant: University of Rochester, Institute of Optics, Wilmot Building, Rochester, NY 14627. Instrument: Pulfrich Refractometer, Model PR2. Manufacturer: Jenoptik Jena GmbH, East Germany. Intended use: The instrument is intended to be used for studies of fluoride crystals, plastic polymers and monomers and various research glasses to determine the index of refraction of the various materials at multiple wavelengths in order to calculate their relative dispersions. Application received by Commissioner of Customs: January 27, 1987.

Docket Number: 87–090. Applicant: California State University, Long Beach, 1250 Bellflower Boulevard, Long Beach CA 90840. Instrument: Inductively Coupled Plasma/Mass Spectrometer, Model PlasmaQuad. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: Investigate the influence of complex multi-metal exposure regimes that simulate environmental conditions on metal metabolism in marine polychaete worms and bivalves. Similar analyses will be conducted on field collected organisms sampled from areas of exposure to known metal contaminants. Research projects that investigate metal exposure, metabolism, and toxicity will primarily utilize environmental exposures resulting from oil drilling activities, sewage outfall and industrial outfall. Application Received by Commissioner of Customs: January 27, 1987.

Docket Number: 87–091. Applicant: North Carolina Memorial Hospital, Manning Drive, Chapel Hill NC 27514. Instrument: Extracorporeal Shockwave Lithotripter, Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended use: The instrument is intended to be used to study the effects of size, location and chemical composition on the ease of disintegration of urinary tract stones to determine the most efficient method to treat patients with urinary tract stones. The instrument will also be used extensively for training urology residents. Application received by Commissioner of Customs: January 28, 1987.

Docket Number: 87–092. Applicant: Cleveland Research Institute, 2351 East 22nd Street, Cleveland, OH 44115. Instrument: Electron Microscopes, Model CM 12/STEM with Attachments. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument is intended to be used for investigation of early detection and prevention of atherosclerosis. Studies are concerned with the cellular composition of blood vessels from humans and experimental animals which contain atherosclerotic lesions. Application received by Commissioner of Customs: January 29, 1987.

Docket Number: 87–094. Applicant: Hunter College of the City University of New York, 645 Park Avenue, New York, NY 10021. Instrument: Stopped-Flow Apparatus. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended use: The instrument is intended to be used for studies of protein-protein and protein-nucleic acid interactions; these are specific proteins involved in the regulation of cell growth and development. Experiments will be conducted to determine the rate constants and biological mechanism of protein synthesis and MRNA translation. These data will make it possible to elucidate the rate limiting steps and control points for the reaction. Application received by Commissioner of Customs: January 30, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–3912 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; University of Utah et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86–150R. Applicant: University of Utah, Salt Lake City, UT 84112. Instrument: Mass Spectrometer System, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended use: See notice at 51 FR 42125. Reasons for this decision: The foreign instrument

provides a guaranteed internal precision of at least 0.01 °/oo for 10 microliters (STP) of carbon dioxide of 0.02 °/oo for 20 microliters of nitrogen, and 0.2°/oo for 1 milliliter of hydrogen. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86–282. Applicant: Centers for Disease Control, Atlanta, GA 30333. Instrument: Mass Spectrometer, Model MM7070S with Accessories. Manufacturer: VG Instruments Inc., United Kingdom. Intended use: See notice at 51 FR 29149. Reason for this decision: The foreign instrument can quantitate tissue levels of dioxin (2,3,7,8-TCDD) from samples (5 to 50 picograms) with a measurement sensitivity in the 20 to 50 femtogram range at a resolution of 10,000 using selected ion recording model with lock mass correction Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86–283. Applicant: The Research Foundation of State University of New York, Albany, NY 12201–0009. Instrument: Micromanipulator. Manufacturer: Carl Zeiss/Aus Jena, East Germany. Intended use: See notice at 51 FR 29150. Reason for this decision: The foreign instrument provides a sliding plate movement allowing precise control of electrodes by two microelectrodes on a single baseplate. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86–285 Applicant: State University of New York at Stony Brook, Stony Brook, NY 11794–6100. Instrument: Renal Micropuncture System. Manufacturer: Klaus Effenberger, West Germany. Intended use: See notice at 51 FR 29150. Reason for this decision: The foreign instrument can perform renal micropuncture procedures while maintaining constant temperature in small experimental animals. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86–290. Applicant: Boston University, Boston, MA 02215. Instrument: Motion Analysis System. Manufacturer: Northern Digital, Canada. Intended use: See notice at 51 FR 29953. Reason for this decision: The foreign instrument provides 3-dimensional digital recordings for motion analysis with a sampling rate up to 8000 markers per second per camera. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86–296. Applicant: The Johns Hopkins University School of Medicine, Baltimore, MD 21205. Instrument: Micromanipulator, Model MO–103. Manufacturer: Narishige, Japan. Intended use: See notice at 51 FR 29954. Reason for this decision: The foreign instrument provides precise and smooth movements in increments of 2.0 micrometers on any of three axes with a singly controlled variable-ratio hydraulic mechanism. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86–299. Applicant: University of Cincinnati, Cincinnati, OH 45221–0172. Instrument: Plasma Mass Spectrometer for trace element analysis. Manufacturer: Sciex, Canada. Intended use: See notice at 51 FR 30525. Reason for this decision: The foreign instrument provides high sensitivity for trace elements in extremely small samples (1.0 part per billion for 20 milliliters) and can serve as a detector for HPLC. Advice submitted by: National Institutes of Health, December 18, 1986.

Comment: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advises in the respectively cited memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manurfactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–3913 Filed 2–25–87; 8:45 am]

BILLING CODE 3510 DS–M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, March 9–13, 1987, at the Red Lion Motor Inn-Comumbia River, 1401 North Hayden Island Drive, Portland, OR, as follows:

Council—will convene March 9 at 8 a.m. with an executive session (not open to the public) to interview candidates for the position of executive director and to discuss litigation. The general session (open to the public) will convene March 10 at 1 p.m. for consideration of administrative matters, including a report on the recent Council chairmen's meeting; discussions with Mexican fisheries authorities; implications of the most recent Magnuson Fishery Conservation and Management Act amendments, and discussions of the future of foreign fishing and joint ventures. Groundfish matters to be heard or considered include a review of the impact of the undersized sablefish trip limit; a fishery management plan (FMP) progress report; foreign fishing applications, and tribal halibut allocations. There will be a public comment period at 4 p.m.

On March 11, the Council will hear salmon management matters, including a review of the 1986 fisheries and stock projections for 1987; reports from the Pacific Salmon Commission, the Columbia River Fish and Wildlife Authority, and the Klamath River Salmon Management Group, as well as management option recommendations for 1987 by the Salmon Advisory Subpanel (SAS), tribal entities, states, and the public. The Council also will tentatively adopt management options for analysis by the Salmon Plan Development Team (SPDT).

On March 12 the Council will hear a salmon FMP amendment issue update; the SPDT management option analysis, as well as SAS, state, tribal, and public comments on the tentatively adopted management options before adopting final management options for public hearings.

On March 13 the Council will complete any unfinished business and adjourn until April 7, 1987.

SAS—will convene March 9 at 9 a.m. to develop recommendations for 1987 management options and will reconvene March 10–12 as necessary to assist the Council in developing final management options for public hearings.

SPDT—will convene March 9 at 9 a.m. to assist the SAS in the development of management option recommendations and will reconvene March 10–12 as necessary to analyze the Council's action on management options.

Scientific and Statistical Committee—will convene March 9 at 1 p.m. to consider matters on the Council's agenda and will reconvene March 10 to complete their agenda.

Foreign Fishing Committee—will convene March 10 at 9 a.m. to consider foreign fishing applications.

Detailed agendas for all of the above meetings will be available to the public on February 20. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First

Avenue, Suite 420, Portland OR 97201; telephone: (503) 221–6352.

Dated: February 19, 1987.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 87–3968 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The Western Pacific Fishery Management Council and the Council's Scientific and Statistical Committee (SSC) will convene separate public meetings, March 9–11, 1987, at Ala Moana Americana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: 808–955–4811, as follows:

Council—On March 10 at its 56th public meeting, the Council will cover routine fisheries reports from Island and Federal Government Council representatives, as well as from private sector Council representatives. The Council also will hear reports on: (a) World lobster markets; (b) methods of fish distribution in Guam outside of normal market channels; (c) indigenous fishing rights; (d) methods for obtaining detailed relief maps of certain portions of the ocean bottom, as well as (e) discuss a sampling procedure for determining how much catch is actually taken in Hawaii by recreational fishermen. The Council also will discuss issues regarding the bottomfish fishery in the Northwestern Hawaiian Islands (NWHI), including a report from the Plan Monitoring Team on ways to better monitor the fishery; a synopsis of public respnse to the Council's limited entry proposal for the bottomfish fishery in the NWHI, as well as address other issues resulting from public response for progressing with the limited entry proposal.

At the March 11 session, the Council will hear a report on the results of escape research and recommendations for implementing escape gaps in the NWHI trap fishery for lobsters. A recommendation on a minimum legal size for slipper lobsters will be made also. A report also will be made on the status of a proposed rule change to prohibit commercial fishing for lobsters in certain designated refuge areas. Means to better coordinate the timing and content of State/Federal regulations pertaining to lobster fishing also will be discussed. A decision regarding the approvability of the Council's Fishery Management Plan (FMP) for pelagic fisheries will be announced, together with a synopsis of comments received from the Japanese and from local fishermen regarding changes to the FMP. The Council also will hear a report regarding monitoring of various pelagic fisheries in the region.

The Council will convene a closed session (not open to the public) to discuss personnel matters.

SSC—On March 9 at its 39th public meeting, the Council's SSC is scheduled to hear reports on agenda items (a), (b), (c) and (e) as indicated above in the Council's March 10 agenda. The SSC will also hear reports on how the bottomfish fishery in the NWHI can be better monitored; a synopsis of public response to the Council's limited entry proposal for the bottomfish fishery in the NWHI, as well as discuss issues in order to progress with the limited entry proposal.

On March 11 the SSC will discuss the results of escape gap research and recommendations for implementing escape gaps on the NWHI trap fishery for lobsters. The SSC will also review the methods employed in establishing a recommendation for a minimum legal size requirement for slipper lobsters. After discussing lobsters, the SSC will be apprised of the decision on the pelagic species FMP made by the National Marine Fisheries Service's Washington Office, and a method will be presented for monitoring the various pelagic fisheries in the Region.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: February 19, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3969 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Correlation; Textile and Apparel Categories with Tariff Schedules of the United States Annotated

February 19, 1987.

The Committee for the Implementation of Textile Agreements (CITA) announces the availability of the *Correlation*, as revised through January 1, 1987.

The *Correlation*, Textile and Apparel Categories with the Tariff Schedules of the United States Annotated, provides for placement of numbers from the Tariff Schedules of the United States (TSUSA) in the textile category system. This publication sets forth the system used by the United States to implement bilateral textile agreements and Article 3 restraints under the Agreement Regarding International Trade in Textiles and unilateral restraints under Section 204 of the Agricultural Act of 1956.

This edition incorporates all changes that were made to the *Correlation* during 1986 and published separately in the **Federal Register**, which include breakouts for shirts with two or more colors, woolen and worsted fabrics, infants' breakouts and the placement of silk blends and other vegetable fiber textiles and textile products in the Textile Category System. Additional changes for 1987 include breakouts for cotton yarn, man-made fiber yarn blended with wool, pillowcases and bolster cases, towels and wash clothes, other man-made fiber underwear, garments for rainwear, and gloves.

To obtain a copy of the *Correlation*, send a $30.00 check or money order, payable to the U.S. Department of Commerce, to: U.S. Department of Commerce, Office of Textiles and Apparel, Room H 3100, 14th and Constitution Avenue, NW., Washington, DC 20230. Attn: Correlation

For Further Information Contact: Shirley Hargrove, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–3904 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 19, 1987.

The USAF Scientific Advisory Board Committee on Software Expertise and Ada will meet at Space Division, Los Angeles Air Force Station, CA on March 25, 1987 from 8:00 a.m. to 5:00 p.m. and at the USC Information Sciences Institute, Marina Del Rey, CA on March 26, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force and

the success of implementing the Ada computer language on space systems.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–4029 Filed 2–25–87; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet March 12, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 20, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–3939 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet March 16–17, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda for the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 20, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–3940 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.)., notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Capabilities Task Force will meet March 25–26, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's future needs and balance of strategic offensive/defensive forces, potential initiatives to enhance strategic capabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 20, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–3941 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Industrial Base and National Security Task Force will meet March 31, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's policies in several broad areas, including mobilization readiness, production surge capacities, weapon system acquisition strategies, potential resource vulnerabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executve order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601,

Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–3942 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Constrained Resources Task Force will meet April 2–3, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's approaches to maritime operations and readiness in the management of resources, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 20, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–3943 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–AE–M

Academic Advisory Board to the Superintendent, United States Naval Academy; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on March 25, 1987, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 8:15 a.m. and terminate at 2:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him im improving education standards and in solving Academy problems. The meeting will be open to the public for observation to the extent that space is available.

For further information concerning this meeting, contact: Major S. E. Leitch, USMC, Military Secretary to the Academic Advisory Board, Office of the Academic Dean, United States Naval Academy, Annapolis, MD 21402–5000, Telephone No. (301) 267–2500.

Dated: February 20, 1987.

H. L. Stoller,

CDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 87–3945 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet on March 22–26, 1987. The meeting will be held at the Office of Naval Research, Arlington, Virginia and the Naval Air Station, Keflavik, Iceland. The meeting will commence at 4:00 p.m. and terminate at 7:00 p.m. on March 22; commence at 7:00 a.m. and terminate at 7:00 p.m. on March 23; commence at 8:00 a.m. and terminate at 4:45 p.m. on March 24; commence at 8:30 a.m. and terminate at 4:00 p.m. on March 25; and commence at 9:30 a.m., and terminate at 12:00 p.m. on March 26, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and tours for the Committee members on ground and air system capabilities for detection, identification and tracking of surface, air and submarine contacts. The agenda will include technical briefings, tours and discussions addressing anti-submarine warfare operations. These briefings, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: February 20, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–3946 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser Weapons will meet on March 10–11, 1987. The meeting will be held at the Singer Corporation, 1725 Jefferson Davis Highway, Arlington, Virginia. The meeting will commence at 9:30 a.m. and terminate at 4:00 p.m. on March 10; commence at 9:00 a.m. and terminate at 3:30 p.m. on March 11, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide for the Navy an assessment of the potential military value of laser technology for weapon applications. The agenda will include technical briefings and discussions addressing military laser weapon programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: February 20, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87-3947 Filed 2-25-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Applications for Review

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) on December 30, 1986. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, DC 20202. Telephone: (202) 732-1756.

SUPPLEMENTARY INFORMATION: Under section 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most grant programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED-administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees.

Regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Application Accepted

Appeal of North Rose-Wolcott Central School, Docket No.: 35(235)86

North Rose-Wolcott Central School (North Rose) appealed a fiscal year 1986 funding decision of the Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) to deny a third year continuation grant under the Bilingual Education Act. The Secretary has designed the Education Appeal Board as the forum for this appeal under 20 U.S.C. 1234(a)(4).

The Director of OBEMLA concluded that North Rose had failed to satisfactorily complete the previous two budget periods by failing to serve the numbers of Limited English Proficient (LEP) students approved in the first and second year applications. North Rose was also advised that its annual performance report did not satisfy the parent advisory committee requirements of the Bilingual Education Act. (20 U.S.C. 3231(e)).

Appeal of Mendocino County Office of Education, Docket No.: 36(236)86

Mendocino County Office of Education (Mendocino) appealed a fiscal year 1986 funding decision of the Director of OBEMLA to deny a third year continuation grant under the Bilingual Education Act. The Secretary has designated the Education Appeal Board as the forum for this appeal.

The Director of OBEMLA concluded that the principal basis for the funding decision was the failure of Mendocino's third year continuation application to meet the applicable statutory and regulatory requirements of a transitional bilingual education program designed to serve LEP students (20 U.S.C. 3223(a)(1) and (4), and 34 CFR 500.4).

Intervention

Regulations establishing intervention procedures for the Education Appeal Board in 34 CFR 78.43 provide that an interested person, group, or agency may, upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6) Washington, DC 20202. Telephone (202) 732-1756.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: February 24, 1987.

Peter R. Greer,

Deputy Under Secretary, Intergovernment and Interagency, Affairs.

[FR Doc. 87-4075 Filed 2-24-87; 10:55 am]

BILLING CODE 4000-01-M

[CFDA No. 84-116G]

Inviting Applications for New Awards Under the Lectures Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1987

Purpose: Provides grants to or enters into cooperative agreements with institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities through the development and presentation of lectures on key issues in postsecondary education at conferences and educational institutions.

Deadline for Transmittal of Applications: April 16, 1987.

Applications Available: March 2, 1987.

Available Funds: $30,000.

Estimated Size of Awards: $5,000.

Estimated Number of Awards: 6.

Project Period: 12 months.

Program Priorities: Under 34 CFR 75.105(c)(1), "Annual priorities," the Secretary invites applicants to submit proposals that address the issues listed below. However, proposals that address other significant issues in postsecondary education are also eligible for support. Proposals are solicited that address the following issues:

(1) What has been the social and economic impact of the dramatic increase since 1960 in the proportion of American young people attending college, and what has been the impact on the nature and quality of college education itself?

(2) How can postsecondary education best respond to changes in the country's racial and ethnic composition? What can we learn from earlier educational responses to previous demographic shifts?

(3) What are the most important changes in colleges' curricular offerings and students' curricular choices during the past decade? Are there significant similarities in the way the particular disciplines have evolved during this period?

Applicable Regulations: (a) The priority for the FIPSE Lectures Program published as a final priority in the **Federal Register** on December 23, 1986, 51 FR 45938, (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78 with the exceptions noted in 34 CFR 630.4(b), and (c) the Fund for the Improvement of Postsecondary Education program regulations, 34 CFR Part 630.

For Applications or Information Contact: Russell Y. Garth, U.S. Department of Education, 400 Maryland avenue, SW., (Room 3100, ROB–3), Washington, DC 20202. Telephone (202) 245–8091.

Program Authority: 20 U.S.C. 1135a–3.

Dated: February 20, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–4038 Filed 2–25–87; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Publication of Approved Systems of Need Analysis for the Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs

AGENCY: Department of Education

ACTION: Notice of Approved Systems of Need Analysis for Academic Year 1987–88; Correction.

On January 30, 1987, the Secretary of Education published in the **Federal Register**, a notice of approved systems that institutions of higher education must use in calculating a student's financial need or expected family contribution during academic year 1987–88 under the Perkins Loan, College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG) and Guaranteed Student Loan (GSL) Programs (52 FR 3091).

This notice corrects item number 26 in the third column of page 3091 to read "Financial Aid System Technologies, Inc., Fresno, California."

Dated: February 20, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–4037 Filed 2–25–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Solicitation of Cooperative Agreement Proposals; Load Temperature Analyzer System for Industrial Furnaces

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Proposals (SCAP) No. DE–SC07–87ID12674 for the development of a load temperature analyzer system for industrial furnaces.

SUMMARY: The Idaho Operations Office of the U.S. Department of Energy is seeking to support the design, fabrication, and testing of an advanced, cost effective, and reliable analyzer system to make remote, nonintrusive, on-line, and continuous internal temperature determination of furnace load. The analyzer should be applicable to applications such as: metals, ceramic and clay processes, and others. The analyzer development is sponsored by the DOE Office of Industrial Program's Combustion Improvement Program, which seeks to improve combustion efficiency in industrial processes. Two phases are anticipated: Phase I is sensor development through the laboratory verification stage and includes analysis of the projected design and economics of full-scale systems. Phase II would include full-scale industrial testing and verification. DOE reserves the right to proceed with the second phase or stop with completion of the first phase based upon the results of Phase I and complimentary work conducted by DOE. Cost sharing will be encouraged and will be part of the evaluation criteria. DOE will have approximately $220,000 available funding for this solicitation. It is expected that this award will result in one cost-share cooperative agreement with an anticipated project period of 18 months for Phase I.

DATES: SCAP No. DE–SC07–87ID12674 is expected to be issued during late February 1987 with a closing date approximately 45 days from the issue date.

Contacts: Potential proposers desiring to receive a copy of the SCAP should request it in writing within ten calendar days from the date of this notice from: Elaine M. Richardson, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402. Telephone No. (208) 526–1699.

Issued at Idaho Falls, Idaho, on February 11, 1987.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 87–3935 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Solicitation of Cooperative Agreement Proposals Water-Jet-Assist Mechanized Oil Shale Mining Technology Development

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Proposals (SCAP) No. DE–SC07–87GJ12676 for evaluating the potential of water-jet-assist mechanical cutting of oil shale.

SUMMARY: The U.S. Department of Energy, Grand Junction Projects Office, desires to receive and consider for support, proposals to enter into a Cooperative Agreement to evaluate the technical and economical feasibility of water-jet-assist mechanical cutting of oil shale under actual mining conditions and to establish the technological basis necessary for subsequent private sector development and commercialization of water-jet-assist mechanized mining equipment. The total amount of anticipated DOE funding for this three-phase program is $750,000. The offeror is expected to cost-share at least 25% of the total proposed project cost. In-kind contributions, such as capital equipment use, can be applied to the 25% offeror's share of the proposed cost. The research effort will be divided into three phases: (1) The design of a water-jet-assist cutting system to be retrofitted to an existing mechanical cutting machine for use in oil shale; (2) the modification of an existing water-jet-assist cutting machine; and (3) the collection of data from actual cutting tests at an oil shale mine approved by the DOE. DOE expects a major oil shale resource holder to contribute to the project by providing access to an oil shale mine in Western Colorado and electrical power and limited support services for the in-mine test phase. The proposal is to cover all three phases of the project. The period of performance for the entire three-phase project is estimated at 24 months. Proposals shall demonstrate: (1) Experience in water-jet-assist mechanized cutting and mechanical excavation; (2) the existing capability of using data and experience gained through this agreement to design and manufacture commercial-sized mining equipment; (3) the ability to provide in-house maintenance and support from U.S. based facilities; and (4) include a

cost-share plan. The requirements can be satisfied by the offeror or by the combined capability of team members.

DATES: It is anticipated that the SCAP will be issued during April 1987. A pre-proposal conference will be held with the time and place to be determined. Proposals will likely be due in late May 1987.

Contacts: Potential offerors desiring to receive a copy of the SCAP should request it in writing from: U.S. Department of Energy, Grand Junction Projects Office, Post Office Box 2567, Grand Junction, CO 81502, ATTN: Robert E. Ivey, Contracting Officer. Telephone No. (303) 242–8621.

Issued at Grand Junction, CO, on February 12, 1987.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 87–3934 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award (Grant); Electric Power Research Institute

AGENCY: Department of Energy, San Francisco Operations Office.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The Department of Energy, San Francisco Operations Office, in accordance with 10 CFR Part 600.7(b), hereby announces its intention to restrict grant award eligibility for the Advanced Light Water Reactor Program (ALWR), to the Electric Power Research Institute (EPRI) of Palo Alto, California. The Department considers such a restriction necessary and justified in light of the existing agreement between it and EPRI for close cooperation and coordination in meeting common development goals for utility requirements documents and conceptual small plant design for Advanced Boiling Water Reactors (BWR's) and Pressurized Water Reactors (PWR's). The research and development efforts of EPRI, under this agreement have afforded it certain expertise and technical resources which are unique to the Advanced Light Water Reactor Program. Accordingly, and so as to avoid duplication and to foster a DOE-industry consensus on the approach to the ALWR program, the Department intends to award a financial assistance grant (DE–FG03–87SF16711) to EPRI to facilitate the development of a five year program to define the best nuclear power plant technology for small advanced BRW's and PWR's. The aggregate amount of the grant award is intended to be $4,900,000.

FOR FURTHER INFORMATION CONTACT: Aundra Richards, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA January 14, 1987.

Donald W. Pearman,

Acting Manager.

[FR Doc. 87–3936 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket Nos. 86–44–NG; 86–45–NG; 86–46–NG; 86–48–NG; 87–02–NG]

Brooklyn Union Gas Co. et al.; Application To Import Natural Gas, Amendments to Pending Applications, and Consolidation of Dockets

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of an application to import natural gas from Canada, Amendments to pending applications, and consolidation of dockets.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 14, 1987, of a joint application to import natural gas, and of amendments to four import applications currently pending before the ERA. The application, filed in ERA Docket No. 87–02–NG, is the fifth of five applications relating to imports of Canadian natural gas to be transported through the proposed Iroquois Gas Transmission System (IGTS). The five applications involve gas purchase contracts with different Canadian gas suppliers but are otherwise substantially identical. The first four applications were filed simultaneously on August 1, 1986, in ERA Docket Nos. 86–44–NG, 86–45–NG, 86–46–NG, and 86–48–NG; the amendments are to those four applications. The ERA issued one notice of the four applications on September 10, 1986 (51 FR 33108, September 18, 1986). The applicants have requested that ERA consolidate those four applications and this fifth application.

The ERA hereby consolidates the four previously filed applications and the current application. Protests, interventions, comments, responses, or any other filings, filed in any of the previous dockets, will be deemed to have been filed in all of those dockets and in the current docket, 87–02–NG. A party/intervenor in any of the earlier dockets is considered an intervenor in this docket and is not required to file an additional notice of intervention or a motion to intervene. Any protestor, intervenor, commentor, or other respondent, who wishes to participate in a specific docket or dockets only, may do so by expressly requesting such limited participation in its filing.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments should be filed no later than 4:30 p.m., on March 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The applicants (herein called the "Repurchasers") are The Brooklyn Union Gas Company, Connecticut Light and Power Company, Connecticut Natural Gas Corporation, Southern Connecticut Gas Company, Long Island Lighting Company, Consolidated Edison Company of New York, Inc., New Jersey Natural Gas Company, South Jersey Gas Company, and New York State Electric and Gas Corporation (NYSEG). These nine natural gas distribution companies seek authority to import 17,500 Mcf per day of natural from Canada for a period of fifteen years. The natural gas would be exported from Canada and sold to the Repurchasers by Alberta Northeast Gas, Ltd. (ANE), a Canadian corporation established by the Repurchasers. The gas would be sold to ANE by Alberta Energy Corporation (AEC), and transported to the Repurchasers through the proposed IGTS, which will extend from a yet to be established export point on the international border near Iroquois, Ontario through the States of New York and Connecticut.

The border price of the imports will be indexed to the price of competing fuels, including natural gas, in the market served by the Repurchasers. Each Repurchaser will be entitled to receive a predetermined percentage of the imported gas but would be authorized to purchase additional gas, not to exceed the total amount authorized at 17,500 Mcf per day for this contract, if any of the Repurchasers takes less than their

alloted share. As in the previously filed Brooklyn Union applications the border price includes both demand and commodity charges. The minimum bill is the monthly demand charge and there are no take-or-pay requirements.

In order to provide assurance to ANE that it will meet its gas supply obligations, AEC has entered into a backstop agreement with ATCOR Limited (ATCOR). The backstop agreement provides that, if AEC is unable to supply gas as required under its purchase contract with ANE, ATCOR will make up the deficiency. Additionally, if in two consecutive years AEC fails to deliver more than 10% of the gas required under the purchase contract, then either ATCOR or AEC may elect to transfer, from AEC to ATCOR, AEC's rights and obligations under the purchase contract up to the amount of the deficiency.

In support of the application the Repurchasers maintain that the import transactions are fully consistent with the Secretary of Energy's import policy because the purchase contracts (1) were negotiated at arms-length to meet the discrete requirements of the Repurchasers' markets and (2) are flexible with respect to both volume and price, and thus assure that the gas supply can be marketed competitively over the life of the contracts. The Repurchasers state further that the marketability and flexibility of the arrangement are enhanced by allowing gas not taken by one Repurchaser to be sold to other Repurchasers. This allows for a reduction of individual Repurchasers' minimum bills and for seasonal load balancing by the Repurchasers.

After the four ERA applications were filed on August 1, 1986, NYSEG decided to become a repurchaser from ANE, electing to take 17,000 Mcf per day of natural gas. As a consequence, ANE and ATCOR agreed to increase the daily contract quantity under the ANE/ATCOR purchase contract from 18,000 Mcf per day to 35,000 Mcf per day. The authorization to import gas pursuant to the ANE/ATCOR purchase contract is requested in the application filed in ERA Docket No. 86-46-NG. The amendments add NYSEG, as a Repurchaser, to the applications filed in ERA Docket Nos. 86-44-NG, 86-45-NG, and 86-46-NG, and increase the authorization sought in ERA Docket No. 86-46-NG from 18,000 Mcf per day to 35,000 Mcf per day.

Pursuant to the backstop agreement between AEC and ATCOR, the application filed in ERA Docket No. 86-46-NG is further amended to allow the authorization to increase if, and to the extent that, AEC does not meet its natural gas supply obligations to ANE and ATCOR undertakes to supply the gas to ANE according to the terms of the backstop agreement. At no point would the natural gas imported pursuant to the applications filed in ERA Docket No. 86-46-NG and in the current application, ERA Docket No. 87-02-NG, exceed the 52,500 Mcf per day total authorization sought in the two applications.

The decision on these applications to import natural gas will be made consistent with the DOE's import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose the applications should address their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that the arrangements are competitive. Parties opposing these arrangements bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. However, since this application has been consolidated with ERA Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG, and 86-48-NG, any person who is an intervenor in one or more of those dockets is deemed an intervenor in the instant application and does not need to submit a new filing in this docket. All persons submitting filings in the current docket, even if they did not file in the earlier applications, will, nevertheless, be deemed to have submitted filings in each of those dockets unless they expressly request that their participation be limited to a specific docket or dockets. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A RG-23 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. March 30, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 19, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-4040 Filed 2-25-87; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. Last notice published Wednesday, January 28, 1987.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB DOE desk officer of your intent as early as possible.

The energy information collections submitted to OMB for review were:

1. Energy Information Administration/ Coal, Nuclear, Electric and Alternate Fuels and the Federal Energy Regulatory Commission.
2. EIA–714.
3. 1905–0161 and 1902–0140.
4. Annual Electric Power System Report.
5. Revision.
6. Annually.
7. Mandatory.
8. Business or other for profit, State of local governments, Federal agencies, and other non-profit institutions.
9. 350 respondents.
10. 350 responses.
11. 39,900 hours (900 hours for OMB number 1905–0161; 39,000 hours for OMB number 1902–0140).
12. Major electric utilities will provide this data which will be used to facilitate electric power systems reliability and adequacy analyses, to prepare status reports, to monitor utility forecasts of loads and systems expansion and to obtain a comprehensive picture of energy generation, transfers, and load distribution.

Statutory Authority

(Sec. 5(a), 5(b), 13(b), and 52), Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, February 18, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–3928 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EL87–9]

Electric Consumers Protection Act, Section 8(d) Study; Scoping Meetings and Request for Comments

February 20, 1987.

On January 16, 1987, the Federal Energy Regulatory Commission issued a notice of intent to prepare an environmental study and conduct a scoping session, Docket No. EL87–9, required by section 8(d) of the Electric Consumers Protection Act (ECPA). The study was outlined in the Commission's notice, which has appeared in the **Federal Register** on January 22, 1987.

To afford the public an opportunity to identify issues and alternatives to be examined in the section 8(d) study the following scoping sessions have been scheduled. The first scoping session will be held at 9:00 a.m. on March 18, 1987, in the Federal Energy Regulatory Commission's Hearing Room A at 825 North Capitol Street NE., in Washington, DC. The second scoping session will be held at 9:00 a.m. on March 20, 1987, in the Portland Public Library at 5 Monument Square in Portland, Maine. The third scoping session will be held at 9:00 a.m. on March 24, 1987, in the Portland Building's second floor Hearing Room at 1120 Southwest Fifth Avenue, in Portland, Oregon. The fourth scoping session will be held at 9:00 a.m. on March 26, 1987, in the Department of Water Resource's main floor Conference Room at 1416 Ninth Street, Sacramento, California.

All interested federal, state and local agencies, tribal representatives, public utilities, private developers, and other interested parties are invited to participate in the scoping process. At the scoping sessions the Commission's staff will describe and take comments on the ECPA section 8(d) study and will explain the schedule for completion of the study. Participants are requested to address and identify the significant issues that should be included in the ECPA section 8(d) study; identify and eliminate from detailed study the issues that are not significant; and to identify completed studies, assessment methods, or other information that are related to the study. A transcript of each scoping session will be taken and all comments either oral or written will be included in the public record.

Participants wishing to reserve time in which to speak at the meetings or obtain information about the scoping process should contact either Mr. S. Ronald McKitrick at (202) 376–9065 or Ms. Patricia E. Aspland at (202) 376–9623.

All written comments regarding the scope of the section 8(d) study will be accepted during the scoping session, or may be filed on or before April 30, 1987. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The following caption should be affixed to all comments. Electric Consumers Protection Act, section 8(d) study, Docket No. EL87–9.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3923 Filed 2–25–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87-249-000]

L'Energia Inc.; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 20, 1987.

On February 3, 1987, L'Energia Inc. (Applicant), of Rural Route No. 2, Box 85, Route 127, West Hopkinton, New Hampshire 03229, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on Andrew Street in Lowell, Massachusetts. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used at an adjacent food manufacturing plant. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 36.540 kW. Installation of the facility is scheduled to begin in the summer of 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4020 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-251-000]

PPG Industries, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 20, 1987.

On February 5, 1987, PPG Industries, Inc. (Applicant), of One PPG Place, Pittsburgh, Pennsylvania 15272, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Applicant's Natrium chemical plant in New Martinsville, West Virginia 26155. The facility consists of three steam generators, one extraction/ condensing steam turbine generator, one extraction/ back pressure steam turbine generator, and two back pressure steam turbine generators. Thermal energy recovered from the facility is used for various processes at Applicant's chemical plant. The primary energy source is coal. The electric power production capacity of facility is 123 MW. Most of the facility was installed between 1943 and 1966.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4021 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-308-000]

ARCO Oil and Gas Co.; Application

Issued: February 20, 1987.

Take notice that on February 12, 1987, ARCO Oil and Gas Company, a Division of Atlantic Richfield Company (ARCO) filed an application requesting the Federal Regulatory Commission (Commission) to modify (on an expeditious basis) its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates, issued October 29, 1985, as follows: (1) Provide for an extension of authorization to at least March 31, 1990; (2) expand the authorization to include gas categorized under section 104, 106(a), and 109 of the Natural Gas Policy Act of 1978 (NGPA); and (3) expand the authorization to include released gas that is attributable to other owners having an interest in the same wells as ARCO, to the extent that such co-owners agree to same.

ARCO states that the circumstances that led to ARCO's application filed on October 15, 1985, and supported issuance of the Commission's October 29, 1985 Order will continue past the March 31, 1987 termination date prescribed in Paragraph (A) of the October 29, 1985 Order as extended March 31, 1986. If the limited-term abandonment and certificate authorization granted by the October 29, 1985 Order is extended past March 31, 1987, ARCO states that it could continue any existing spot market sales and make additional sales. ARCO also states that expanding thc authorization: (1) To include gas categorized under sections 104, 106(a) snd 109 of the NGPA; and (2) to include released gas produced from various interests and attributed to other owners having an interest in the same wells as ARCO would increase the flexibility of producers and purchasers to move supplies to meet customer demands.

Any person desiring to be heard or to make any protests with reference to said application should on or before March 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4024 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-245-000]

Bay County, FL; Application for Commission Certification of Qualifying Status of a Small Power Production

February 12 1987.

On January 29, 1987, Bay County, Florida (Applicant), of P.O. Box 1818, Panama City, Florida 32402, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on U.S. Route 231 in the Panama City Port Authority Industrial Park, near Panama City, Florida. The facility will consist of two rotary combustors with two heat recovery steam generators and a steam turbine generator. The primary energy sources will be biomass in the form of municipal solid waste. The power production capacity of the facility will be 12 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3924 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-10-000]

East Columbia Basin Irrigation District et al., Petition for Declaratory Order

February 20, 1987.

Take notice that on March 9, 1983, the East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District, and South Columbia Irrigation District (Districts) filed a petition pursuant to 18 CFR 385.207(a)(2) requesting that the Commission issue an order declaring that the Grand Coulee Project Hydroelectric Authority (Authority) is a municipality as defined in section 3(7) of the Federal Power Act (Act). 16 U.S.C. 796(7). Section 3(7) of the Act defines municipality as "a city, county, irrigation district, or other political subdivision or agency of a state competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power".

The Districts state in their petition that the Authority is a legal entity authorized by the Washington State legislature and established for the purpose of developing hydroelectric facilities on behalf of the Districts. The Districts intend to transfer to the Authority all of their rights, title and interest in the Districts' hydroelectric facilities located within the U.S. Department of the Interior, Bureau of Reclamation's Columbia Basin Irrigation Project. The proposed transfer would also entail applications to the Commission for the transfer to the Authority of the Districts' licenses for various facilities. The Districts are currently the licensees of Project Nos. 2840, 2926, 2937, 3295, 3842, and 3843.

Comments, Protests, and Motions to Intervene

Anyone may submit comments, protests, or a motion to intervene in this proceeding in accordance with the requirements of Rules 210 (comments), 211 (protests) or 214 (intervention) of the Commission's Rules of Practice and Procedures, 18 CFR 385.210, 385.211, and 385.214.

In determining what appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before March 20, 1987, and must be mailed to Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The petition is on file with the Commission and is available for inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4022 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-265-000]

Mesa Operating Limited Partnership; Application for Limited-term Blanket Abandonment and Limited-term Blanket Certificate With Pre-granted Abandonment

Issued: February 20, 1987.

Take notice that on February 3, 1987, Mesa Operating Limited Partnership (Mesa) filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 and § 2.77 of the Regulations, requesting: (1) Limited-term blanket authorization to abandon sales by Mesa (or its co-owners in the same production) of certificated gas released by the original pipeline-purchaser; and (2) limited-term blanket certificate authorization with pre-granted abandonment for sales for resale in interstate commerce of gas released by the original pipeline-purchaser and covered by such blanket limited-term abandonment. The authorizations requested would be for a two year term without supply or market restrictions and without limitation on vintage of gas, as more fully described in the Application which is on file with the Commission and open for public inspection.

Similar authorizations were granted to Mesa in Docket No. C186-12-001 and are due to expire March 31, 1987. Mesa states that the authorizations sought herein, if granted, will enable Mesa (and its co-owners) to sell on a short-term and spot basis natural gas that remains subject to the Commission's NGA jurisdiction, but has been released by the original pipeline-purchasers. The authorizations requested in this proceeding, it is alleged, would enable Mesa to continue and to expand its ability to sell gas on an expeditious basis to meet market needs. Sales volumes, prices, purchasers and delivery points will vary from sale to sale.

Further, Mesa has requested a waiver of Commission rules and regulations to the extent necessary to implement the authorizations requested, including without limitation filings required under §§ 154.94(h) and 154.94(k) and Part 271 of the regulations.

Mesa asserts that the authorizations requested herein are consistent with the Commission's recent orders in *NICOR Exploration Company*, Docket No. C187-708-000 (issued December 22, 1986); *Sonat Exploration Company*, Docket No. C186-403-000 (issued December 29, 1986); and *ANR Pipeline Company, et al.*, Docket Nos. CI86-637-000, *et al.* (issued January 21, 1987).

Any person desiring to be heard or to make any protest with reference to said application should, on or before March 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 386.211, 385.214). All protests filed with

the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4026 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-*307*-000]

MidCon Marketing Corp.; Application of Midcon Marketing Corp. for Blanket Certificate of Public Convenience and Necessity and for Abandonment and Pre-Granted Abandonment Authorization

February 20, 1987.

Take notice that on February 12, 1987, MidCon Marketing Corp. ("MidCon Marketing"), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717-717(z) ("NGA"), and § 2.77 and Part 157 of the regulations of the Federal Energy Regulatory Commission ("Commission") filed an application for a blanket certificate of public convenience and necessity (i) authorizing, for a three-year period, sales for resale of all Natural Gas Policy Act categories of gas by MidCon Marketing and the producers from which MidCon Marketing purchases gas, and (ii) granting partial abandonment and pregranted abandonment of certain sales for resale as described more fully in MidCon Marketing's application.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 9, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered by it in determining the appropriate actions to be taken but will not serve to make the protestants parties to the proceedings. 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.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4027 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-55-000 and -001]

Mountain Fuel Resources, Inc.; Tariff Filing

February 19, 1987.

Take notice that Mountain Fuel Resources, Inc. (MFR) on February 17 1987, tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 as follows:

Seventh Revised Sheet No. 12
Eighth Revised Sheet No. 12

Seventh Revised Sheet No. 12 reflects a change in MFR's Unrecovered Purchased Gas Cost Adjustment of $(0.11923)/Dth from ($0.02157)/Dth, currently in effect, to $(0.14080)/Dth. MFR proposes that this adjustment be effective for the period February 1, 1987, through May 31, 1987. MFR states that the purpose of this adjustment is to provide a more orderly reduction in its gas-cost rates through 1988.

Eighth Revised Sheet No. 12 reflects the removal of the $0.02/Dth Moxa Arch surcharge, approved by the Commission's May 20, 1986, letter order in Docket Nos. RP85-208-000 and CP80-274-011. The surcharge was to be effective from May 1, 1986, through the earlier of April 30, 1987, or until MFR has accumulated $1,400,000 by virtue of applying the surcharge. MFR has requested an effective date of May 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 26, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3925 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-1-001]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

February 19, 1987.

Take notice that on February 13, 1987, Natural Gas Pipeline Company of America tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective March 18, 1987:

Third Revised Sheet No. 137
Seventh Revised Sheet No. 402
Eighth Revised Sheet No. 403
Ninth Revised Sheet No. 502
Tenth Revised Sheet No. 503

Natural states that the above listed tariff sheets are submitted pursuant to §284.10 of the Commission's Regulations. Natural also states that the sheets reflect the changes necessary to effectuate a 15% reduction in the firm Sales Entitlement Quantities of Iowa Southern Utilities Company (Iowa Southern) and Iowa Electric Light and Power Company (Iowa Electric). Natural requested that the above listed tariff sheets be accepted for filing to be effective March 18, 1987. The requested effective date is 150 days from the close of the 45 day period provided for in § 284.10(c)(2)(i)(A) of the Commission Regulations.

In addition, Natural submitted Substitute Twenty-fourth Revised Sheet No. 301 and Substitute Twenty-third Revised Sheet No. 303 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective April 1, 1987. The Daily and Monthly Quantity Entitlements on these sheets were changed, where required to reflect the changes in Entitlements by Natural concerning service for Iowa Southern and Iowa Electric for the service year beginning April 1, 1987. With the exception of the necessary changes made to Iowa Southern and Iowa Electric, Natural states that these tariff sheets are identical to the corresponding sheets currently pending Commisison approval at Docket No. RP87-1-000. Natural requested that the Commission's Regulations be waived to the extent necessary to permit these tariff sheets to become effective on April 1, 1987.

A copy of this filing has been mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before February 26,

1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3926 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-4-37-000, 001]

Northwest Pipeline Corp.; Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment

February 19, 1987.

Take notice that on February 17, 1987, Northwest Pipeline Coporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of (1) reflecting changes in Northwest's estimated cost of purchased gas; (2) reflecting the change in unrecovered purchased gas costs since Northwest's PGA filing dated February 14, 1986; and (3) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resale customers pursuant to Order No. 49.

The current PGA adjustment, for which notice is given herein, aggregates to a decrease of .231¢ per therm (including the elimination of the special surcharge credit of 0.319¢ [not applicable to Rate Schedule PL-1]) in the commodity rate for all rate schedules, unless noted above, affected by and subject to the PGA. There is no change in the demand rate. The annual jurisdictional change in the Northwest's rates is a decrease of approximately $4,881,061. Northwest proposes to refund through its twelve-month surcharge, the adjusted balance of $15,983,452 which is the balance in FERC Account No. 191 as of December 31, 1986. The proposed rate changes have been reflected on Thirty-Third Revised Sheet No. 10.

Northwest also tendered for filing and acceptance Fourteenth Revised Sheet No. 10-B reflecting revised projected incremental surcharges. Northwest requests an effective date of April 1, 1987 for all tendered tariff sheets.

A copy of this filing has been mailed to all parties of record in Docket No. RP72-154-000 to all jurisdictional customers, and to affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3927 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-16-000]

Sierra Pacific Power Co.; Filing of Petition for Declaratory Order

February 20, 1987.

Take notice that on February 12, 1987, Sierra Pacific Power Company (Sierra), acting pursuant to section 5(e) of the Administrative Procedure Act and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, filed a petition asking the Commission to issue a declaratory order to remove uncertainty and resolve controversy regarding the Commission's jurisdiction over the regulation of transmission facilities and agreements in and affecting interstate commerce. The petitioning company asserts that the Public Service Commission of Nevada (PSCN) has ordered Sierra not to terminate a wheeling agreement between Sierra and the Bonneville Power Administration (BPA) without prior approval by PSCN. Sierra asserts that PSCN has no jurisdiction over the transmission of electricity in interstate commerce, so that to this extent the order of the PSCN is void. Sierra requests that the Commission issue a declaratory order holding that the portion of the PSCN order cited by Sierra is null and void. Sierra also requests that the Commission declare that ownership by a third party of a transmission line described by Sierra in its petition would subject that third party to the jurisdiction of the Commission.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4023 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-695-003]

TXP Operating Co.; Application

February 20, 1987.

Take notice that on February 12, 1987, TXP Operating Company ("TXPO" or "Applicant"), P.O. Box 1396 Houston, Texas 77251 filed an Application requesting that the Commission modify its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates, issued on October 29, 1985 in Docket No. C185-695 and extended for one (1) year by Order Granting Extension of Limited Term Abandonments and Blanket Sales Certificate issued on March 31, 1986 in such docket (LTA Order), to extend the term thereof through March 31, 1990 and to expand the authorizations granted therein to cover all categories of gas under the Natural Gas Policy Act of 1978 subject to Natural Gas Act jurisdiction. TXPO further requests that the Commission handle this Application on an expedited basis to avoid disruption in the spot market.

Any person desiring to be heard or to make any protest with reference to said Application should on or before March 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and 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 petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4025 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-001-M

Office of Hearings and Appeals

Cases Filed; Week of January 2 Through January 9, 1987

During the Week of January 2 through January 9, 1987, the appeal and the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 18, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 2 through January 9, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jan. 5, 1987	Atlantic Oil & Heating Company, Macungie, PA	KEE-0107	Exception to the reporting requirements. If granted: Atlantic Oil & Heating Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 5, 1987	B&R Oil Company, Inc., South Bend, IN	KEE-0108	Exception to the reporting requirements. If granted: B&R Oil Company, Inc. would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 5, 1987	Good Hope Refineries, Inc./Kerr-McGee Corporation, Oklahoma City, OK.	RR189-1	Request for modification/rescission. If granted: The December 10, 1986 Decision and Order (Case No. RF189-1) issued to Kerr-McGee Corporation would be modified regarding the firm's Application for Refund submitted in the Good Hope Refineries, Inc. refund proceeding.
Jan. 5, 1987	Painting & Drywall Work Preservation Fund, Inc., Oakland, CA.	KFA-0070	Appeal of an Information request denial. If granted: The December 18, 1986 Freedom of Information Request Denial issued by the Office of Classification and Technical Information Division would be rescinded, and the Painting & Drywall Work Preservation Fund, Inc. would receive access to copies of certified payroll records submitted by all contractors and subcontractors performing work in the painting and drywall crafts on Contract #DE-AC04-76DP-03533.
Jan. 5, 1987	Rob-Lu Oil Company, Inc., Clarksburg, WV	KEE-0109	Exception to the reporting requirements. If granted: Rob-Lu Oil Company, Inc. would not be required to file Form EIA-821, "Annual Fuel Oil & Kerosene Sales Report."
Jan. 8, 1987	Ackerman Oil Company, Jasper, IN	KEE-0110	Exception to the reporting requirements. If granted: Ackerman Oil Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

Refund Applications Received

[Week of Jan. 2 through Jan. 9, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
08/08/86	Amoco/Wisconsin	RQ21-354, RQ251-355
11/26/86	Tillie Gertz	RF276-10
11/26/86	Junius Gertz	RF276-11
11/26/86	Raymond A. Gertz	RF276-12
11/26/86	Benson Pool & Patio Center.	RF276-13
01/02/87	Wallack Freight Lines, Inc.	RF270-2457
01/02/87	Onka's Charter Bus Service.	RF270-2458
01/02/87	Amcan Transport, Inc./Becker.	RF270-2459
01/05/87	Grover Trucking Company.	RF270-2460
01/05/87	Sather Trucking Corp.	RF270-2461
01/05/87	Charter Express, Inc.	RF270-2462
01/05/87	Doyle's Yellow Checker Cab.	RF270-2463

Refund Applications Received—Continued

[Week of Jan. 2 through Jan. 9, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/07/87	Lawson's Marathon	RF250-2683
01/07/87	R.H. Smith District Co.	RF259-21
01/07/87	Enterprise Products Co.	RF263-27
01/07/87	General Electric Co	RF269-10
01/07/87	Parker Fuel Corp	RF284-3
01/08/87	United Oil Marketers	RF7-168
01/08/87	Huffy Gas, Inc	RF40-3627
01/08/87	H & W Oil Co	RF40-3628
01/08/87	Sands Propane, Inc.	RF40-3629
01/08/87	Huffy Gas, Inc	RF250-2684
01/08/87	Commonwealth of Massachusetts.	RF284-4

Refund Applications Received—Continued

[Week of Jan. 2 through Jan. 9, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/08/87	Amoco, Vickers & Coline/North Dakota.	RQ251-350, RQ1-351, RQ2-352
01/09/87	Ellas Oil Company, Inc.	RF40-3630
01/09/87	Gaeta Bros. Oil, Inc.	RF40-3631
01/09/87	Arlington Marathon	RF250-2685
01/09/87	Simonik Moving & Storage, Inc.	RF270-2465
01/09/87	Town of Westborough	RF284-5
01/02/87 through 01/09/87	Getty Oil Refund Applications.	RF265-56 through RF265-98

Refund Applications Received—Continued

[Week of Jan. 2 through Jan. 9, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/02/87 through 01/09/87	Mobil Refund Applications.	RF225–10492 through RF225–10531

[FR Doc. 87–4041 Filed 2–25–87; 8:45 am]
BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of January 5 through January 9, 1987

During the week of January 5 through January 9, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Burt A. Braverman, 1/9/87; KFA–0067

Burt A. Braverman filed an Appeal from a denial by the Office of Procurement Operations of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the proposal involved a contract that had not yet been awarded, and that the entire proposal was thus exempt from mandatory release pursuant to Exemption 4 of the FOIA. Accordingly, the Appeal was denied.

Remedial Order

National Distillers and Chemical Corporation, 1/7/87; BRO–1384

National Distillers and Chemical Corporation (National Distillers) objected to a Proposed Remedial Order alleging that it violated the price rule for natural gas processors at 10 CFR Part 212, Subpart K, by treating its sales of propane and butanes as "net-back sales," when they should have been treated as "first sales". The DOE rejected National Distillers' contention that its sales were "net back sales", finding that the language and stated regulatory purpose of the price rule clearly precluded net-back treatment of sales of fractionated products by gas plant operators to marketers, where the gas plant operator had paid a fixed price for the natural gas liquids that it processed. In addition, the DOE rejected the firm's contentions that the PRO's interpretation of the Subpart K price rule represented an improperly promulgated substantive rule and that the PRO was required to show that National Distillers' pricing practices resulted in harm to a third party or to the general public. The DOE modified the PRO to require a lump sum payment of overcharges totalling $65,565,237 plus interest, and further provided that this sum would be disbursed pursuant to Subpart V Special Refund Procedures.

Request for Exception

Telzrow Oil Company, 1/7/87; KEE–0084

Telzrow Oil Company filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the firm had not experienced a significantly greater burden in filing Form EIA–782B than other reporting firms. Accordingly, the Telzrow exception application was denied.

Request for Modification and/or Rescission

Economic Regulatory Administration (RFB Petroleum Inc.), 1/8/87; KRR–0014

The Economic Regulatory Administration moved for reconsideration of a Remedial Order that was issued to RFB Petroleum, Inc. The Remedial Order held that RFB had violated the layering rule applicable to crude oil resellers, but found that because the ERA had not convincingly matched the firm's purchases and sales, the overcharge amount should be $1,965,473.67, the firm's gross profits from its layering activities. In its Motion, the ERA asked that this determination be reconsidered, and that the overcharge amount specified in the Proposed Remedial Order, $3,450,436.25, which was based upon individual transactions as specified by the ERA's matching of the firm's purchases and sales, be restored. The DOE first rejected REB's contention that the agency lacked jurisdiction to reconsider Remedial Order determinations, noting that administrative agencies have inherent authority to reconsider their decisions and that the firm's filing of an appeal of the Remedial Order to the Federal Energy Regulatory Commission did not divest the agency of jurisdiction to reconsider the decision. In considering the merits of the ERA's Motion, the DOE found that the ERA had provided no explanation of how it matched RFB's purchase and sale transactions and that there were numerous instances where the ERA's matching appeared to be incorrect. Under these circumstances, the DOE found that the Remedial Order was correct in finding that RFB's refund liability should be the amount of its gross profits from its layering activities, plus interest. Accordingly, the ERA Motion for Reconsideration was denied.

Refund Applications

Apco Oil Corp./Madden Oil Co., et al., 1/8/87; RF83–26, et al.

The DOE issued a Decision and Order concerning applications for Refund filed by Madden Oil Company and four other purchasers of refined petroleum products from Apco Oil Corporation, each seeking a portion of the settlement fund obtained by the DOE through a consent order with Apco. Since no refund claim exceeded $5,000, each applicant was eligible to receive a refund based on the small claims refund procedures set forth in the Order implementing the *Apco* special refund proceeding. After examining the applications, the DOE concluded that each of the five firms should receive a refund based on a volumetric methodology. The total amount of refunds granted was $19,007, including $13,498 in principal and $5,509 in interest.

Gulf Oil Corporation/Coleman Oil Co., Inc., City Coal Co. of New London, Inc., 1/5/87; RF40–2762, RF40–3072

The DOE issued a Decision and Order concerning the Applications for Refund filed by Coleman Oil Co., Inc. and City Coal Co. of New London, Inc., resellers of Gulf middle distillates. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 84,048 (1984), each applicant demonstrated that it would not have been required to reduce selling prices to its customer by an amount equal to the refund claimed. The DOE therefore concluded that the claimants should receive a total refund of $17,759 in principal and $4,076 in interest.

Gulf Oil Corporation/Puerto Rico Office of Energy, 1/7/87; RF 40–2608

The DOE issued a Decision and Order concerning an Application for Refund filed by the Puerto Rico Office of Energy (PROE) in the Guld Oil Corporation special refund proceeding. The DOE rejected PROE's refund claim based on purchases of Gulf products by agencies of the government of Puerto Rico, because PROE was unable to provide actual or estimated volume information for these purchases, as required by *Gulf Oil Corp.* 12 DOE ¶ 85,048 (1984). The DOE also found that in a first stage refund proceeding PROE was not eligible for refund on behalf of motorists in Puerto Rico. Accordingly, PROE's Application was denied.

Gull Industries, Inc./Fred Wambaugh, et al., 1/9/87; RF258–2, et al.

The DOE issued a Decision and Order concerning six Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). Each applicant was a reseller who was listed in the Appendix to that Decision as being eligible for a specified refund amount from the Gull consent order fund. Since each applicant's claim was for $5,000 or less, no further proof of injury was required. The refunds approved in the Decision totaled $9,106.54, including $5,557.77 in principal and $3,548.77 in interest.

La Gloria Oil & Gas Company/Columbia Lng Corp., et al., 1/5/87; RF263–1, et al.

The DOE issued a Decision and Order concerning twelve Applications for Refund in the La Gloria Oil & Gas Company special refund proceeding. Ten of the applicants were resellers, one was a public utility, and one was an end-user of refined petroleum products. All of the applicants presented evidence that they purchased refined petroleum products from La Gloria during the consent order period. The reseller claims fell below the $5,000 small claims threshold. The public utility applicant certified that it would pass along any refund to its customers. The end-user was presumed to have absorbed the alleged LaGloria overcharges. Consequently,

none of the applicants was required to provide a detailed showing of injury. Accordingly, all twelve applications were approved. The refunds approved in this Decision totaled $55,718, including $31,244 in principal and $24,474 in interest.

Mobil Oil Corp./A.S.P.C.A., et al, 1/8/87; RF225–8579, et al.

The DOE issued a Decision and Order granting 41 Applications for Refund from the consent order fund made available by Mobil Oil Corporation. Each applicant was an end-user who presented evidence that it purchased refined petroleum products directly from Mobil during the consent order period. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. The refunds approved in the Decision totaled $7,124 ($5,907 in principal and $1,235 in interest).

Mobil Oil Corporation/Alvin L. Vyhnalek, et al, 1/9/87; RF225–7389, et al.

The DOE issued a Decision granting 49 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,330 (1985). The refunds granted in this proceeding totaled $33,947 ($28,083 in principal, plus $5,864 in interest).

Mobil Oil Corporation/Archer's Mobil, et al, 1/9/87; RF225–6376, et al.

The DOE issued a Decision granting 50 Applications for Refund from the Mobil Oil Corporation escrow account. Each applicant was a reseller or retailer of Mobil refined petroleum product that elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The refunds granted in this proceeding totaled $21,643 ($17,944 principal plus $3,699 in interest).

Mobil Oil Corporation/Cowley County, et al, 1/7/87; RF225–2080, et al.

The DOE granted ten Applications for Refund from a consent order fund made available by Mobil Oil Corporation. All of the applicants were end-users who purchased refined petroleum products directly from Mobil. The claimants were therefore eligible for refunds equivalent to their full allocable shares, based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $12,518, representing $10,354 in principal and $2,164 in interest.

Post Petroleum Company/Joe Valine, Gill Livestock Company, 1/5/87, RF229–2, RF229–3

The DOE issued a Decision and Order concerning two Applications for Refund from a consent order fund made available by Post Petroleum Company. Since both of the applicants were end users of Post motor gasoline, they were found to have been injured by Post's alleged overcharges after examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive refunds totaling $156, representing $111 in principal and $54 in accrued interest.

St. James Resources Corporation/Marvo Oil Company, L&A Fuel Company, Walters' Oil, Inc., 1/5/87, RF180–18, RF180–32, RF180–33

The DOE issued a Decision and Order concerning three Applications for Refund from a consent order fund made available by St. James Resources Corporation. The applicants were purchasers of St. James No. 2 heating oil. Since all of the applicants claimed refunds of less than $5,000, they were presumed to have been injured by St. James' alleged overcharges. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive refunds totaling $13,695, representing $6,886 in principal and $6,809 in accrued interest.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/William Schaus & Son, Inc., Lewis LP Gas, Inc., 1/9/87, RF26–54, RF26–55

The DOE issued a Decision and Order granting refunds from the Sid Richardson Carbon and Gasoline Company and Richardson Products Company deposit fund escrow account to William Schaus & Son and to Lewis LP Gas, Inc., two reseller-retailers of Sid Richardson propane. Because the applicants claimed purchases below the small claims threshold level of 720,000 gallons of annual purchases, the DOE did not require the firms to submit detailed showings of injury. The refunds granted to the applicants totalled $7,287 ($3,780 principal plus $3,507 interest).

Standard Oil Co. (Indiana)/Colorado, Coline Gasoline Corp./Colorado, OKC Corp./Colorado, Standard Oil Co. (Indiana)/West Virginia, 1/7/87, RQ251–336, RQ2–337, RQ13–338, RQ251–339

The DOE issued a Decision and Order concerning the second-stage refund plans submitted by the States of Colorado and West Virginia for use of funds made available pursuant to consent orders entered into with Coline Gasoline Corporation, OKC Corporation and Standard Oil Company (Indiana). West Virginia's plan to use $129,321 for three traffic light synchronization projects was approved on the grounds that the programs would benefit injured consumers. Colorado's plan to use $368,466 for traffic light synchronization and transportation services was approved on similar grounds. However, the DOE did not approve Colorado's proposal to install ice sensors on certain roadways, because the project failed to provide adequate energy-related benefits.

Standard Oil Co. (Indiana)/(Indiana, 1/8/87, RQ251–330, RM21–56

The DOE issued a Decision concerning the second-stage refund application and Motion for Modification filed by the State of Indiana in the Standard Oil Co. (Indiana) refund proceeding. Indiana's plans to use $1,669,623 for small business energy audits, the Indiana Energy Information Center, workshops on energy-efficent housing, oil furnace efficiency programs, farm energy analyses, energy saving kits, and loan subsidies for residential conservation measures were approved on the grounds that the programs would benefit injured consumers. The DOE did not approve energy audits for government buildings, a boiler efficiency program that also promoted the use of Indiana coal, a research project to develop a computer "expert" program for electrical management, and clinics to train car mechanics. The DOE granted Indiana's Motion for Modification, allowing the state to use previously approved OHA funds to weatherize buildings constructed after January 1, 1980.

Tenneco Oil Company/Riverside Oil Co., Et Al., 1/7/87, RF7–140, Et Al.

The Department of Energy issued a Decision and Order granting refunds from the Tenneco deposit fund escrow account to 14 resellers and retailers of Tenneco refined petroleum products. Each applicant purchased less than 600,000 gallons of product per year from Tenneco and was therefore presumed to have been injured by those purchases. The refunds granted totaled $13,042 ($10,569 in principal plus $2,473 in interest).

Dismissals

The following submissions were dismissed:

Name and Case No.

American Linen Supply Co.; RF225–7656
Anocad Plating Co.; RF225–7617, RF225–7618
Blackburn Propane; RF52–6
Blackburn Propane Service; RF58–3
Boston Sand & Gravel Co.; RF225–7657
Charles F. Wilson, Inc.; RF225–7968
City of Brookings; RF6–1
City of Crookston; RF225–7693,RF225–7694
CPI Oil & Refining, Inc.; RF6–17
Eastern Seaboard Petroleum; RF6–49, RF6–50
Elkay Manufacturing Co.; RF225–6978
Farmers Petroleum Coop.; RF6–77
Foxon Packaging Corp.; RF225–7662
Fuller Butane Co.; RF267–1
Gas City, Ltd.; RF274–1
General Mechatronics Corp.; RF225–7917
George A. Milton Can Co.; RF225–9181
Glenville Gaga Co., Inc.; RF225–7574
Hudson and Odom Tire Co.; RF225–7581
Ivan Walker, Inc.; RF225–8692
L. J. Quebedeaux Trucking; RF225–6830, RF225–6931,RF225–6932
Lance, Inc.; RF225–6882
M & G Convoy, Inc.; RF225–7667
Midland Coop., Inc.; RF6–60
Nutrilite Products, Inc.; RF225–7594
Pabst Brewing Co.; RF225–1661
Pennzoil Company; KRO–0310
Philadelphia Elec. Co.; RF6–63
Portland Stone Ware Co.; RF225–7964
Reed & Barton; RF225–7998
Regal Ware, Inc.; RF225–6895
Rodgers Oil Company; RF225–8421
Satellite Eng. & Mfg. Inc RF225–7970
Southwest Products Co.; RF225–7634, RF225–7635

Star Moving & Storage, Inc.; RF225–7925
Sterling Oil & Gas Co.; RF113–7
The Specialty Packaging Group, Inc.; RF225–7966
The West End Brewing Co., Inc.; RF225–4166
Toyota of Pasadena; RF225–7703,RE225–7704,RF225–7705
United Refining Co.; RF6–40
Village of Mamaroneck; RF225–6874
Vulcan Asphalt Refining Co.; RF6–39
Western Screw Products, Inc.; RF225–7710, RF225–771
Westvaco Corp.; RF225–7999

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 18, 1987.

[FR Doc. 87–4042 File 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decisions and Orders; Week of February 2 through February 6, 1987

During the week of February 2 through February 6, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objection within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: February 13, 1987.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

Spreeman Oil Co., Downer's Grove, Illinois; KEE–0080, Reporting Requirements

Spreeman Oil Company filed an Application for Exception from the reporting requirements of the EIA. If granted, the firm would no longer be required to file Form EIA–782B. In considering the exception request, the DOE determined that the firm had not shown that the filing requirement imposed an inordinate burden. Accordingly, on February 3, 1987, the DOE issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

Taylor Oil Co. Inc., Blair, Nebraska; KEE–0100, Reporting Requirements

The OHA issued a Proposed Decision and Order to the Taylor Oil Co., Inc., which tentatively determined that the firm's Application for Exception from the requirement to file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report," should be denied.

Torch Oil Co., Rockford, Illinois; KEE–0079, Reporting Requirements

Torch Oil Company filed an Application for Exception from the reporting requirements of the EIA which if granted, would relieve the firm of the requirements to file Form EIA–782B. In considering the exception request, the DOE determined that the firm had not shown that the filing requirement imposed an inordinate burden. Accordingly, on February 2, 1987, the DOE issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

Webb Oil Co., Mt. Pleasant, Michigan; KEE–0085, Reporting Requirements

Webb Oil Company filed an Application for Exception from the reporting requirements of the EIA which, if granted, would relieve the firm of the requirements to file Form EIA–782B. In considering the exception request, the DOE determined that the firm had not shown that the filing requirement imposed an inordinate burden. Accordingly, on February 3, 1987, the DOE issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

[FR Doc. 87–3931 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Minority Economic Impact

[DE–PI05–87MI10111]

Minority Educational Institution Assistance Program

AGENCY: Office of Minority Economic Impact, DOE.

ACTION: Notice of program interest.

GENERAL INFORMATION: The Department of Energy (DOE), Office of Minority Economic Impact, through Oak Ridge Operations, desires to encourage the submission of unsolicited proposals in support of the Department's Minority Educational Institution Assistance Program at minority educational institutions. Such support is authorized by 42 U.S.C. 7141(d) and 7256(a); Pub. L. 95–619, Part 3, section 2.11(d), which states that the Director of the Office of Minority Economic Impact may provide technical assistance to minority educational institutions. It is intended in particular to obtain proposals from qualified educational institutions, or from teams of organizations including minority educational institutions. For purposes of this notice, a qualified minority educational institution is a school of higher learning (such as a college or university) that is a non-profit entity with more than 50 percent total minority enrollment. This notice describes the principal scope of the activity and provides some guidance on submitting proposals.

Nature of proposals sought: With this notice, it is DOE's intent to encourage the submission of proposals for minority educational institution assistance that would address the following program objectives:

1. Initiate collaborative research and development clustering at minority institutions.
2. Develop energy-related science and technology research centers at minority educational institutions.
3. Identify and institute arrangements between minority institutions that expand the private sector support provided to these institutions.
4. Develop linkages between minority community, technical, and junior colleges and minority four-year institutions to increase the pool of minorities engaged in science and technology.
5. Support the development of joint activities between minority educational institutions and the private sector.

Eligibility

Institution. To be eligible to participate in this program, an institution must have more than 50

percent minority enrollment, and award a masters degree or doctoral degree in the physical sciences or engineering. This program is open only to institutions within the United States and its territories. Institutions having more than one eligible component may choose whether to apply on behalf of the institution as a whole or to submit freestanding applications on behalf of one or more components. Individual components of a university, university system, or other institution are separately eligible.

Principal Investigator. The Principal Investigator should be the President/Chancellor of the applicant institution or another high-ranking official designated as the surrogate for the purpose of this award. The Principal Investigator is the representative and spokesperson for the institution in matters concerning the award. The Principal Investigator should be available for consultation with the DOE Program Manager and assist in resolving issues or problems encountered by the DOE Program Manager during the tenure of the project.

Award size and duration: The FY 1987 budget for this program is $1,200,000. It is estimated that these funds will support awards in each of the following categories:

1. Infrastructure Support—Awards in this area are to improve the competitiveness of minority educational institutions in energy related research by strengthening the administrative support provided to principal researchers at these institutions.

2. Private Sector Interrelationships—Awards in this area will support activities to strengthen linkage between minority educational institutions and the private sector and facilitate support and cooperation between these entities.

It is estimated that up to two new awards over a 24-month period will be made under the Infrastructure Support category and up to five awards over an 18-month period will be made in the Private Sector category. Also, supplemental funds may be provided to previous grant recipients under this program if proposal justifies such action. However, these are estimates and do not bind the U.S. Department of Energy to a specific number of awards. Renewal of the awards may be negotiated not to exceed 24 months subject to availability of funds.

Evaluation process and selection criteria: Proposals may be subjected to external review following preliminary screening based on the criteria listed below. Projects will be selected for funding based on their quality as determined by DOE staff evaluation on the merit of the proposal using the following general criteria as required by the Department of Energy Financial Assistance Regulations, 10 CFR Part 600, and the specific evaluation criteria outlined in the "Guide for the Preparation of Proposals for Infrastructure Support and Private Sector Interrelationships."

- The potential contribution which the proposed effort is expected to make to the program's objectives, if pursued at this time.
- Evidence of overall merit.
- Unique capabilities, related experience, facilities, techniques of the university staff, or combinations of these, as integral factors for achieving the scientific, technical, or socioeconomic objectives of the proposal.
- Use of unique, innovative, or meritorious methods, approaches, or ideas.
- Qualifications, capabilities, and experience of the proposed principal university investigator and key personnel who are considered to be critical in achieving proposal objectives.

More specific evaluation criteria and their relative importance will be available in the "Guide for the Preparation of Proposals for the Infracture Support and Private Sector Interrelationships."

Proposal preparation guidelines: Unsolicited proposals submitted in response to this notice shall contain the information required in the "Guide for the Preparation of Proposals for the Infrastructure Support and Private Sector Interrelationships," Notice of Program Interest Number DE–PI05–87MI10111. Copies of the guide are expected to be ready for mailing by March 2, 1987. Qualified applicants may obtain a copy of the guide by writing to the U.S. Department of Energy, Oak Ridge Operations, Procurement and Contracts Division, ATTN: Marlena Clark, 200 Administration Road, P.O. Box E, Oak Ridge, TN 37831; Telephone Number (615) 576–7599. DOE assumes no responsibility for any costs associated with proposal preparation under this announcement.

Closing date for submission of proposals: To be eligible, proposals must be received by the Department of Energy at the Oak Ridge, Tennessee, address in the preceding section by 4:30 p.m., April 24, 1987.

For further information: All questions concerning this Notice of Program Interest should be directed to Ms. Marlena Clark, Contract Specialist, Oak Ridge Operations Office, U.S. Department of Energy, Procurement and Contracts Division, P.O. Box E, Oak Ridge, TN 37831; Telephone (615) 576–7599.

Dated: February 9, 1987.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 87–4039 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Southwestern Power Administration

1987 Final Allocation of Additional Power (7.5 MW)

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of 1987 Final Allocation of Additional Power (7.5 MW).

SUMMARY: The Southwestern Power Administration (SWPA), Department of Energy, markets Federal hydroelectric power and energy from projects constructed and operated by the Corps of Engineers and located in the States of Arkansas, Missouri, Oklahoma and Texas, under the provisions of Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as amended. In 1980, SWPA adopted final power allocations which allocated then-existing and then-anticipated Federal hydroelectric power (capacity) to preference customers in SWPA's marketing area which includes the above-mentioned states, plus Kansas and Louisiana. The 1980 Final Power Allocations (1980–1988) (FPA) were published March 24, 1980 (45 FR 19032).

A Notice of Intent to Allocate Additional Power was published in the Federal Register January 28, 1986 (51 FR 3505). The Notice announced SWPA's intent to allocate an additional 7.5 MW of power (capacity) which has become available subsequent to the 1980 FPA. The allocation was to be made in accordance with the FPA; consequently, preference entities (customers) in Kansas and Louisiana would have received proportionate quantities of the additional power since no apparent changes in operating conditions had occurred in Texas subsequent to the FPA, that would allow additional allocations into the Electric Reliability Council of Texas (ERCOT) area. Customers and interested parties were invited to comment on the Notice of Intent before February 27, 1986.

Comments were received from three parties in response to the first Notice; two customers and one group of prospective customers. One customer (Cajun Electric Power Cooperative, Inc., of Baton Rouge, Louisiana) expressed

support for the allocation procedure and encouraged its implementation. The group of prospective customers, all U.S. Air Force Bases located in Kansas and Louisiana, requested the allocation of power to such bases. The other customer, Brazos Electric Power Cooperative, Inc., of Waco, Texas (Brazos), proposed a method by which Brazos and the non-interconnected part of Texas, could receive the benefits of the additional power allocation in spite of the continuing operating conditions in Texas which effectively limit the direct transfer of power to or from the ERCOT area. Brazos noted that approximately 5 percent of its load is located in the interconnected part of Texas (outside ERCOT) and arrangements can be developed such that the allocation can be delivered to the Brazos load outside ERCOT with 95% of the resulting benefits flowing to the non-interconnected area (ERCOT) by virtue of a "rolled-in" (postage stamp) rate which is the same for Brazos customers both inside and outside ERCOT.

As a result of this new information, SWPA published a request for Data and Comments Regarding the Allocation of Additional Power in the **Federal Register** May 9, 1986 (51 FR 17229). SWPA also sent copies of both **Federal Register** Notices to all customers and known interested parties. These additional data and comments were requested to enable SWPA to evaluate the feasibility of Brazos' suggestion and its applicability to any other entities operating under similar circumstances.

Data and comments were received from seven parties in response to the second Notice; six customers and one customer agency. Two cooperative customers in Kansas (Kaw Valley Electric Cooperative Company, Inc., and Nemaha-Marshall Electric Cooperative Association, Inc.) requested allocations, preferring the initially proposed procedure which would have allocated the additional power in Kansas and Louisiana, and suggested consideration in the allocation be given under special circumstances such as a commitment to peak demand conservation, rather than following the 1980 Final Power Allocation procedure which sets allocations on a prorata share basis. A cooperative customer (Kansas Electric Power Cooperative, Inc., (KEPCo)) and the municipal customer agency (Kansas Municipal Energy Agency (KMEA)) in Kansas support SWPA's ultimate decision whether it is to allocate in Kansas and Louisiana, or to allocate in Texas as deemed appropriate by SWPA. The Department of the Army suggested that any additional allocation in the State of Texas should serve to replace power generation lost as a result of water supply diversion. The remaining parties commenting were three cooperative customers in Texas (Tex-La Electric Cooperative of Texas, Inc. (Tex-La of Texas), Rayburn Country Electric Cooperative, Inc. (Rayburn Country), and Brazos Electric Power Cooperative, Inc. (Brazos)), each of which requested an allocation and provided data to support their request and show their ability to receive power in the non-ERCOT area for the benefit of consumers in the ERCOT area.

After considerable analysis and in response to the information and comments received as a result of the Federal Register Notice published May 9, 1986, SWPA published a "Proposed Allocation of Additional Power" in the **Federal Register** November 14, 1986 (51 FR 41413), and provided an additional opportunity for public comment through December 15, 1986. In this notice, SWPA concurred with the method by which a customer with loads located both inside and outside ERCOT, which can receive and utilize a power allocation to meet the non-ERCOT load and can pass the majority of the benefits of the power allocation through to ERCOT area consumers by means of a "rolled in" (postage stamp) rate to all customers. The Notice published November 14, 1986, included a proposed 7.5 MW power allocation of 5.2 MW to Brazos, 1.6 MW to Rayburn Country and 0.7 MW to Tex-La of Texas to reduce the allocation deficiency in the ERCOT area. SWPA received written comments from the three proposed allottees and Kansas Power Cooperative, Inc. (KEPCo), in response to the Federal Register Notice.

The parties commenting indicated their general agreement with the proposed power allocation with some exceptions. One comment was that customers which can pass on a significant majority (75% or more) of the benefits to ERCOT customers should be considered for an allocation and that SWPA should verify that prior to SWPA customers receiving an allocation, they should have in place a "rolled in" (postage stamp) rate which is the same for both ERCOT and non-ERCOT customers. It is SWPA's objective to provide the benefits of Federal hydropower to customers in ERCOT through postage stamp rates. The three cooperatives which will benefit from the 7.5 MW power allocation serve a majority of their customers' loads in ERCOT. If any of those three cooperatives were excluded from the 7.5 MW allocation, there would be customers served by those cooperatives in ERCOT who would be deprived of receiving the benefits of the Federal hydropower allocation. The postage stamp rate concept provides an equitable method of distributing the benefits of Federal hydropower to customers in ERCOT achieving wide spread use of a limited resource.

We also received a comment that SWPA should refuse any part of the 7.5 MW allocation to customers who intend to make load shifts that will cause significant economic benefits from the allocation to be transferred out of ERCOT, and furthermore, should in the future revoke any such allocation made when an SWPA customers ceases to pass on a significant majority of the benefits to ERCOT customers. SWPA intends for the benefits of the 7.5 MW allocation to be provided to ERCOT to mitigate that area's deficiency in Federal hydropower. We recognize that some non-ERCOT loads must exist for all the recipients to receive the allocated power by January 15, 1988, which is the date that arrangements for receipt of power must be finalized. Consequently, certain load shifts are necessary to facilitate the concept designed to provide the benefits of Federal hydropower into the ERCOT area. We also recognize that loads and financial circumstances are dynamic requiring decisions that lead to the most cost effective operations and consequently the lowest cost of power for the ERCOT customers. Since Federal hydropower is marketed on a non-profit basis, its economic benefits are apparent, and are generally highly valued to those entitled to them. As a result, it is our opinion that beneficiaries of Federal hydropower will protect their allocations by using them as they were intended, i.e. to achieve wide spread use through efficient and cost effective operations.

One customer indicated that new peak load data (1986) should be used in the allocation process or old peak load data (1985) should be adjusted to allow for new customers that were not customers in 1985, but who have contributed to 1986 peak loads. SWPA began an extensive public participation process to allocate the additional 7.5 MW of power by notice published in the **Federal Register** January 28, 1986 (51 FR 3505). SWPA published a second notice in the **Federal Register** May 9, 1986 (51 FR 17229), and received additional data and comments including 1985 peak load data from Brazos, Rayburn Country and Tex-la of Texas. We subsequently contacted those three cooperatives in September to ensure that the 1985 peak

load data were consistent. Brazos had provided such 1985 peak load data by delivery point, and like data were obtained form Rayburn Country and Tex-la of Texas. The prposed allocation published in the **Federal Register** November 14, 1986 (51 FR 41413), was based on consistent 1985 non-interconnected (ERCOT) peak load data which required a significant amount of time to gather and analyze for consistency. We recognize that loads fluctuate as a result of many factors including elapsed time, the economy, whether, population trends, and service area expansions. These fluctuations are continuous, so a cut off point must be established in order to finalize the 7.5 MW power allocation. Further time allocated to the process of accumulating additional data would not facilitate finalization of this power allocation, be warranted by any minor potential changes that could occur in the power allocation, or enhance the objectives of reducing the deficiency of allocations in ERCOT. Consequently, we have determined the cut off point to be the 1985 peak load data originally requested and verified, which we consider to be as fair for one customer as for another.

Lastly, we received a comment that the one-year period allowed by SWPA to finalize contractual arrangements is extremely long and that no extension should be granted. We concur that the one-year period should be adequate to accomplish the contractual arrangements, and we have included additional wording in the conditions of the final 7.5 MW power allocation to enforce this time requirement.

Final Additional Power Allocation

Based on the opportunities for public participation published in the **Federal Register** January 28, 1986 (51 FR 3505), May 9, 1986 (51 FR 17229), and November 14, 1986 (51 FR 41413), and the comments received as a result of those opportunities, SWPA has determined that the proposed 7.5 MW power allocation as published November 14, 1986, will accomplish the objective of encouraging the most widespread use of power and energy marketed by SWPA, will implement the intent of the 1980 FPA to allocate power to areas receiving less than their fair share of SWPA power, and will provide a means of overcoming the restrictive operating conditions which have limited the delivery of power into the ERCOT area of Texas and, hence, limited the allocations and benefits of Federal power.

Therefore, SWPA hereby adopts the proposed allocation as final and allocates the entire 7.5 MW of additional power to the three Texas cooperatives (Brazos, Rayburn Country and Tex-La of Texas) which requested the allocation and provided information which indicates their abilities to receive and utilize such allocations in the non-ERCOT area and their use of "rolled-in" (postage stamp) rates, thus passing the majority of the financial benefits into the ERCOT area through such rates. The allocations will be made in acordance with the 1980 FPA. The distribution among those three cooperatives (Brazos, Rayburn Country and Tex-La of Texas) requesting an allocation will be made on the basis of the ratio that each customer's "fair share", after adjusting for Federal Power under contract, bears to the state's (or area's) total fair share.

This procedure is also called the deficiency allocation. Calculation of each customer's fair share is based on non-interconnected (ERCOT) 1985 peak load data. The following table entitled "Allocation of Additional Power (1987)—Texas (non-interconnected)" shows the detail of the deficiency allocation to the non-interconnected Texas system:

ALLOCATION OF ADDITIONAL POWER (1987); TEXAS (NON-INTERCONNECTED)

Amount to be Allocated: 7.5MW	
State's (Area's) Fair Share of SWPA Capacity	[3] 485 MW
Amount Capacity Under Contract	−100 MW
Deficiency	385 MW

	1985 peak load [1] (kW)	Percent of total	Fair share (MW)	Amount under contract [2] (MW)	Deficiency (MW)	Deficiency (percent)	Allocation (MW)
Cooperatives:							
Brazos	811,663	61.4	297.8	30.0	267.8	69.6	5.2
Rayburn Country	332.029	25.1	121.7	38.5	83.2	21.6	1.6
Tex-la of Texas	179,143	13.5	65.5	31.5	34.0	8.8	0.7
Total	1,322,835	100.0	[3] 485.0	100.0	385.0	100.0	7.5

[1] From 1985 non-interconnected (ERCOT) Peak Load Data provided by Customers.
[2] Breakdown of 70 MW combined sale to Rayburn Country and Tex-La of Texas from contract allocation percentages (55.5/44.5).
[3] Total State (Area) Fair share from 1980 FPA, Tables 1 and 2, (45 FR 19037) March 24, 1980.

This Final 7.5 MW Allocation of Additional Power is subject to the following conditions:

1. The power allottee will accept and agree to purchase the amount allocated, under contract terms and conditions applicable to the sale of Hydro Peaking Power by SWPA, not later than January 15, 1988, with the power sale commencing at the beginning of the month following the contract execution, but in any event not later than 12:01 a.m., February 1, 1988.

2. The power allottee will provide transmission facilities and/or contractual arrangements with others as may be necessary to receive and transmit this allocated power to its load centers, coincidental with condition 1 above.

3. If any power allottee does not agree to purchase or cannot arrange to receive its allocation so as to satisfy conditions 1 and/or 2 above, or refuses its allocation, such allocation will be redistributed in accordance with the deficiency allocation procedure used in this allocation to those allottees remaining.

4. The power allottee will not distinguish between its customers located inside or outside of the non-interconnected Texas system (ERCOT) with regard to rates or charges for the sale of wholesale power and energy and will provide written certification to this effect to SWPA on request. Failure to abide by this condition may be cause for revocation of the allocation.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

Issued in Tulsa, Oklahoma, this 29th day of January, 1987.

Ronald H. Wilkerson,

Administrator Southwestern Power Administration.

[FR Doc. 87-3966 Filed 2-25-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00236; FRL-3160-1]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Thursday, March 19, 1987, beginning at 10:15 a.m. and ending at 3:30 p.m.

ADDRESS: The meeting will be held at: Hyatt-Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT: By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115C, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

SUPPLEMENTARY INFORMATION: The tentative agenda for the meeting thus far includes the following topics:

1. Action items from the December 1986 meeting of the full Group.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may have arisen during the March 16-18, 1987, meeting of the Association of American Pesticide Control Officials.

Dated: February 9, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-3844 Filed 2-25-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180720; FRL-3159-9]

Virginia Department of Agriculture and Consumers Services; Receipt of Applications for Emergency Exemptions to use Pursuit™; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Subject: EPA has received requests for two emergency exemptions from the Virginia Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[4, 5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit™) to control broadleaf weeds on 500 acres of lima beans and 8,000 acres of snap beans in Virginia. Pursuit™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

DATE: Comments must be received on or before March 13, 1987.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180720" should be submitted by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for 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: By mail: Libby Pemberton, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue two specific exemptions to permit the use of an unregistered herbicide, (±)-2-[4, 5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl)-5-ethyl-3-pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit™, by American Cyanamid Company, on lima beans and snap beans in Virginia. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Late in 1986 all labeled uses of the herbicide dinoseb were suspended. According to the Applicant, dinoseb was used to control annual broadleaf weeds on almost all the acreages of lima beans and snap beans grown in Virginia. The Applicant states that other products that are labeled either do not control a broad spectrum of broadleaf weeds consistently or cannot be used in Virginia without causing crop injury.

The Applicant indicates that weeds in bean fields reduce yields by competing with the crop and cause additional problems. Weeds reduce harvest efficiency and result in field abandonment when weed problems are severe. Weeds interfere with insecticide applications and may result in increased insect problems or additional insecticide applications.

The Applicant indicates that without adequate control a 45% value loss of snap beans due to weeds will occur. This would amount to approximately $2.25 million. Losses in the past four years, with use of dinoseb have not exceeded 7%. Projected losses were unavailable for lima beans, but are expected to be similar.

Pursuit™ will be applied preemergence to the crop at a maximum rate of 0.047 pounds active ingredient per acre. A single application will be made sometime between March 1 and July 31, 1987 to approximately 8,000 acres of snap beans and 500 acres of lima beans.

This notice does not consitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 13, 1987, and should bear the identifying notation "OPP-180720 ." All written comments filed pursuant to this notice will be available

for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Virginia Department of Agriculture and Consumer Services.

Dated: February 11, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-3845 Filed 2-25-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Third Meeting of the National Public Safety Planning Advisory Committee

The third meeting of the National Public Safety Planning Advisory Committee has been rescheduled from March 26, 1987, to March 24, 1987, and will continue on March 25, 1987, if necessary. The meeting will be held in Room 856 (the Commission Meeting Room), 1919 M Street, NW., Washington, DC, and will start at 9:30 a.m. (Original notice of the meeting was never published in the **Federal Register**).

All interested parties are invited to attend the meeting. Since this is a technical advisory committee, attendees should be prepared for technical discussions. The agenda for the third meeting will consist of:

1. Approval of the minutes of the last meeting;
2. Status reports from the Chairman and from the Task Group Facilitators;
3. Discussion of additional work for Task Groups or deletion of work from Task Groups; and
4. Discussion of appropriate date and tentative agenda for future meetings.

Any questions regarding the meeting should be directed to Mr. William R. Torak at (202) 632-7025.

Federal Communications Commission.

William Tricarico,

Secretary.

[FR Doc. 87-3850 Filed 2-25-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Life Savings of America, F.S.B., Rockford, IL; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Life Savings of America, F.S.B., Rockford, Illinois on February 13, 1987.

Dated: February 19, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-3974 Filed 2-25-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006200-029.

Title: U.S. Atlantic & Gulf/Australia-New Zealand Conference.

Parties:

Columbus Line Pacific American Container Express

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202-010776-014.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Lines
Mitsui O.S.K Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would prohibit a party who has given notice of its withdrawal from the agreement, from participating in certain agreement activities or receiving certain information.

Agreement No.: (1) 224-011068, (2) 224-011069.

Titles: (1), (2) Portland Terminal Agreement.

Parties:

(1) The Port of Portland (Port), Evergreen Marine Corp. (Taiwan) Ltd.
(2) The Port of Portland (Port), Japan Line (U.S.A.), Ltd. (Party)

Synopsis: The proposed amendments would permit the Port to provide 6 acres at its Terminal 6 to the Parties until March 30, 1990. The Port will perform all vessel stevedoring and terminal services at the premises and will share dockage and wharfage revenues with the Parties.

Dated: February 20, 1987.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 87-3990 Filed 2-25-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Thursday, March 19, and Friday, March 20. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The March 19 session is expected to begin at 1:00 p.m. and to continue until 5:00 p.m. The March 20 session is expected to begin at 9:00 a.m. and to continue until 3:00 p.m., with a lunch break from 12:00 to 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Truth in Savings.* Discussion of federal truth-in-savings legislative initiatives designed to facilitate consumer shopping for savings instruments.
2. *Credit Card Disclosures.* Discussion of federal legislative proposals that mandate additional disclosures of terms and conditions for credit card plans.
3. *Home Equity Lines of Credit:* Discussion of issues related to the increased availability

and use of home equity lines as a source of credit for consumers.

4. *APR Demonstration Project.* Briefing by Board staff on the results of a demonstration project that involved publication of shoppers guides to credit in three metropolitan areas; and a report by the Council's Consumer Education Committee on its collection and analysis of shoppers guides and other consumers education material available to the public.

5. *Reduced-Rate Financing Update.* Update by a Council subcommittee which has been exploring issues related to reduced-rate financing programs that have been offered by automobile companies.

6. *Basic Banking Efforts.* Status report by several Council members concerning activities of the financial trade groups in encouraging their members to offer basic banking services to individuals at low or no cost.

7. *Committee Reports.* Reports from various Council committees on their plans for the upcoming year.

8. *Regulatory Update.* Report by Board staff on the status of recent Board actions in the areas of consumer financial services.

Others matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, March 13, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452–3305; Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users, may contact Earnestine Hill or Dorothea Thompson (202) 452–3544.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 87–3916 Filed 2–25–87; 8:45 am]

BILLING CODE 6210–01–M

James F. Boyd et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 11, 1987.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *James F. Boyd,* Sterling, Virginia, O.K. Makela and Ronald R. Vail, both of Leesburg, Virginia, Leslie L. Peters and Michael M. Vlahos, both of Falls Church, Virginia, and Harold O. Miller, Reston, Virginia; to acquire up to 41.1 percent of the voting shares of Community Bank and Trust Company of Virginia, Sterling, Virginia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Michael L. Ryan,* Heartwell, Nebraska; to acquire 14.29 percent of the voting shares of First Central Nebraska Co., Broken Bow, Nebraska, and thereby indirectly acquire Nebraska State Bank, Broken Bow, Nebraska.

2. *Timothy M. Brennan,* Michael J. Morrison, Robert E. Myers, Stephen G. Sheppard, P.J. Morgan, Timothy J. McReynolds, and John J. Rickette, all of Omaha, Nebraska; Brad Merchant and James C. Hupp, both of Norfolk, Nebraska, James I. Black, Pierce, Nebraska, and Kenneth T. Nordlund, York, Nebraska; to acquire 100 percent of the voting shares of The Pierce Corporation, Pierce, Nebraska, and thereby indirectly acquire Cones State Bank, Pierce, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dalles, Texas 75222:

1. *Stites Corporation,* Corsicana, Texas; to acquire 20.26 percent of the voting shares of Corsicana Bancshares, Inc. Corsicana, Texas, and thereby indirecty acquire Corsicana National Bank.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *James E. Burney,* Los Altos, California; to acquire up to 24.99 percent of the voting shares of Area Financial Corporation, Redwood City, California.

2. *Gary S. Goss,* Portola Valley, California; to acquire up to 24.99 percent of the voting shares of Area Financial Corporation, Redwood City, California.

3. *Michael R. Goland,* Beverly Hills, California; to acquire 67.2 percent of the voting shares of San Clemente Bancorp, San Clemente, California.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–3917 Filed 2–25–87; 8:45 am]

BILLING CODE 6210–01–M

Citizens State Bank Employee Stock Ownership Trust et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 17, 1987.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **Citizens State Bank Employee Stock Ownership Trust,** Trenton, Tennessee; to become a bank holding company by acquiring 27.97 percent of the voting shares of Citizens State Bank, Trenton, Tennessee.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Waconia Bancorporation, Inc.,* Waconia, Minnesota; to become a bank holding company be acquiring 88.96 percent of the voting shares of Waconia State Bank, Waconia, Minnesota.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3918 Filed 2-25-87; 8:45 am]

BILLING CODE 6210-01-M

David Hill et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to Federal Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 12, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *David Hill,* Ellsworth, Iowa; to acquire 56 percent of the voting shares of Agri-Bank Corporation, Webster City, Iowa, and thereby indirectly acquire Farmers National Bank of Webster City, Webster City, Iowa.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco; California 94105:

1. *Young Ook Kim,* Garden Grove, California; to acquire at least 76.49 percent but not more than 88.36 percent of the voting shares of New City Bancorp, Orange, California, and thereby indirectly acquire New City Bank, Orange, California.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3919 Filed 2-25-87; 8:45 am]

BILLING CODE 6210-01-M

Republicbank Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 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. 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 outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 1987.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *RepublicBank Corporation,* Dallas, Texas; to acquire the successor by merger of InterFirst Corporation, Dallas Texas, and thereby indirectly acquire InterFirst Bank Delaware, New Castle, Delaware; InterFirst Bank Abilene, N.A., Abilene, Texas; InterFirst Bank South Abilene, Abilene, Texas; InterFirst Bank Addison, Addison, Texas; InterFirst Bank Alamo Heights, N.A. Alamo Heights, Texas; InterFirst Bank SW Arlington, N.A. Arlington, Texas; InterFirst Bank, Arlington, N.A., Arlington, Texas; Interfirst Bank Northwest, N.A., Austin, Texas; InterFirst Bank Westlake, N.A., Austin, Texas; InterFirst Bank Austin, N.A., Austin, Texas; InterFirst Bank North Austin, N.A., Austin, Texas; InterFirst Bank Baytown, Baytown, Texas; InterFirst Bank, Beaumont, Beaumont, Texas; Interfirst Bank SW-Houston, N.A., Bellaire, Texas; InterFirst Bank Brownwood, Brownwood, Texas; InterFirst Bank Carrollton, Carrollton, Texas; InterFirst Bank Cleburne, N.A., Cleburne, Texas; InterFirst Bank Clifton, Clifton, Texas; InterFirst Bank Conroe, N.A., Conroe, Texas; InterFirst Bank Corsicana, N.A., Corsicana, Texas; InterFirst Bank Oak Cliff, Dallas, Texas; InterFirst Bank Dallas, N.A., Dallas, Texas; InterFirst Bank Pleasant Grove, Dallas, Texas; InterFirst Bank Galleria, N.A., Dallas, Texas; InterFirst Bank Park Cities, Dallas, Texas; InterFirst Bank Denison, N.A., Denison, Texas; InterFirst Bank El Paso, N.A., El Paso, Texas; InterFirst Bank Chelmont, N.A., El Paso, Texas; InterFirst Bank Ennis, N.A., Ennis, Texas; InterFirst Bank Forney, Forney, Texas; InterFirst Bank Fort Worth, N.A. Fort Worth, Texas; InterFirst Bank Gateway, N.A., Fort Worth, Texas; InterFirst Bank River Oaks, Fort Worth, Texas; InterFirst Bank South Fort Worth, Fort Worth, Texas; InterFirst Bank University, Fort Worth, Fort Worth, Texas; InterFirst Bank Galveston, N.A., Galveston, Texas; InterFirst Bank Greenville, N.A., Greenville, Texas; Interfirst Bank Harlingen, N.A., Harlingen, Texas; InterFirst Bank Hillsboro, Hillsboro, Texas; InterFirst Bank Fannin, Houston, Texas; InterFirst Bank Post Oak, Houston, Texas; InterFirst Bank East Houston, Houston, Texas; InterFirst Bank Greenspoint, Houston, Texas; InterFirst Bank Houston, N.A., Houston, Texas; InterFirst Bank San Felipe, N.A., Houston, Texas; Interfirst Bank Hutchins, Hutchins, Texas; InterFirst Bank D/FW Freeport, N.A., D/FW Freeport, Texas; InterFirst Bank Las Colinas, Irving, Texas; InterFirst Bank Irving, Irving, Texas; InterFirst Bank Malakoff, Malakoff, Texas; InterFirst Bank Mount Pleasant, N.A., Mount Pleasant, Texas; InterFirst Bank Nassau Bay, N.A., Houston, Texas; InterFirst Bank Nederland, Nederland, Texas; InterFirst Bank Richland, N.A., Richland Hills, Texas; InterFirst Bank Oak Hill, N.A., Oak Hill, Texas; InterFirst Bank Odessa, N.A., Odessa, Texas; InterFirst Bank Paris, Paris, Texas; InterFirst Bank Pasadena, Pasadena, Texas; InterFirst Bank San Antonio, N.A., San Antonio, Texas; InterFirst Bank Stephenville, N.A., Stephenville, Texas; InterFirst Bank SW Temple, N.A., Temple, Texas; InterFirst Bank Temple, N.A., Temple, Texas; InterFirst Bank Tomball, Tomball, Texas; InterFirst Bank Tyler,

N.A., Tyler, Texas; InterFirst Bank Victoria, Victoria, Texas; InterFirst Bank Waco, N.A., Waco, Texas; and InterFirst Bank Wichita Falls, N.A., Wichita Falls, Texas.

In connection with this application, RB–IF Merger Company, Dallas, Texas, has applied to become a bank holding company by merging with InterFirst Corporation, Dallas, Texas.

RepublicBank has also applied to acquire InterFirst Funding Corporation, InterFirst Mortgage Company, InterFirst Financial Corporation, and InterFirst Leading Corporation, all of Dallas, Texas, and thereby engage in commercial, consumer, and mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y; InterFirst Investment Management, Inc., Dallas, Texas, and thereby engage in investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y; InterFirst Services Corporation, and InterFirst Services Corporation in Houston, both of Dallas, Texas, and thereby engage in data processing pursuant to § 225.25(b)(7) of the Board's Regulation Y; InterFirst Insurance Company, InterFirst Life Insurance Company, InterFirst Finance Company, all of Dallas, Texas, and thereby engage in insurance agency and underwriting activities related to extensions of credit made by the banks and the bank holding company pursuant to § 225.25(b)(8) of the Board's Regulation Y; and InterFirst Securities Company, Dallas. Texas, and thereby engage in discount brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–3920 Filed 2–25–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, April 16–17, 1987, in Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland, from 9 a.m. to recess on April 16 and from 9 a.m. to adjournment on April 17, 1987.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Marie Nylen, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone 301/496–7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121–Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122–Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845–Dental Research Institutes, National Institutes of Health)

Dated: February 13, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–3949 Filed 2–25–87; 8:45 am]

BILLING CODE 4140–01–M

Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Research Support Subcommittee of the General Research Support Review Committee, Division of Research Resources, National Institutes of Health, March 30, 1987, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 30, from 9 a.m. to adjournment to discuss program policies, the Minority High School Student Research Apprentice Program, planning for the Biomedical Research Support Grant Program, and the Biomedical Research Support Shared Instrumentation Grant Program. Attendance by the public will be limited to space available.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Dr. John A. Beisler, Executive Secretary, Biomedical Research Support Subcommittee of the General Research Support Review Committee, (301) 496–6743), will furnish substantive program information upon request, and will receive any comments pretaining to this announcement.

(Catalogue of Federal Domestic Assistance Program No. 13.337, Biomedical Research Support, National Institutes of Health)

Dated: February 13, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–3950 Filed 2–25–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Wyoming; Casper District Office; Casper District Grazing Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Casper District Grazing Board meeting.

SUMMARY: The Casper District Grazing Board will meet on Thursday April 2, 1987 in the conference room of the Casper District Office, 951 North Poplar, Casper, Wyoming. The meeting will begin at 10:00 am MST.

The meeting agenda will include rangeland monitoring, discussions on range projects, weed control, management plans and comments from the public. Other topics may be considered as suggested by board members or the public.

Meetings are open to the public. Persons who desire to address the board are asked to contact Runore Wycoff at (307) 261–5101 in advance of the meeting.

Dated: February 17, 1987.

James W. Monroe,

District Manager.

[FR Doc. 87–3965 Filed 2–25–87; 8:45 am]

BILLING CODE 4310–22–M

[CA–940–07–4212–13; CA 17640]

California; Exchange of Public and Private Lands in San Diego and San Bernardino Counties and Order Providing for Opening of Public Lands; Correction

The notice of issuance of land exchange conveyance document and order providing for opening of public lands published in the **Federal Register** for Wednesday, January 21, 1987, Vo. 52, No. 13, pages 2299 and 2300, is hereby corrected as follows:

On page 2299, second column, fifth paragraph, the following described lands are hereby added to the list of public lands described in the conveyance document to the Southern Pacific Land Company:

San Bernardino Meridian, California

T. 12 S., R. 1 W.,
Sec. 4, S1/2SW1/4;

T. 13 S., R. 1 E.,
Sec. 1, NE1/4SE1/4 and S1/2SE1/4;
Sec. 12, NE1/4;
T. 13 S., R. 2 E.,
Sec. 7, Lots 1 and 2;
and in the sixth paragraph, change the acreage to 560.69.

On page 2300, first column, second paragraph, third line, remove the words "and Two."

On page 2300, first column, third paragraph, third line, after "Parcel One," insert the words "except those lands described under Parcel Two,".

Dated: February 17, 1987.

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 87-3964 Filed 2-25-87; 8:45 am]

BILLING CODE 4340-40-M

[OR-930-07-4212-12; GP7-114; OR 39641]

Realty Action; Exchange of Public Lands in Deschutes, Harney, Lake, and Malheur County, OR; Correction

Summary: This notice corrects a legal description previously published in the **Federal Register**, January 26, 1987. On page 2771 under Lakeview District, Lake County, T. 28 S., R. 23 E., the entry for Sec. 2: Lots 1, 2, 3, 4, S½N½, N½S½, SE¼NW¼, S½SE¼ should read Sec. 2: Lots 1, 2, 3, 4, S½N½, N½S½, SE¼SW¼, S½SE¼.

Dated: February 13, 1987.

Jerry E. Asher,

Lakeview District Manager.

[FR Doc. 87-3963 Filed 2-25-87; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-712134

Applicant: Ginger Rickards, Mickleton, NJ

The applicant requests a permit to purchase one pair of nene geese (*Nesochen* (=*Branta*) *sandvicensis*) from Charles Nugent, Kimbolton, OH in interstate commerce for the purpose of propagation.

PRT-715347

Applicant: Great Ape Protection Project, Fillmore, CA

The applicant requests a permit to harass one captive born male orangutan (*Pongo pygmaeus*) in captivity for the purposes of language and behavioral studies. The organgutan is to be purchased from the Cheyenne Zoo, Colorado Springs, Colorado.

PRT-715094

Applicant: Tallahassee Junior Museum, Tallahassee, FL

The applicant requests a permit to obtain two red wolves (*Canis rufus*) from the Red Wolf Recovery Team in Tacoma, Washington for the purpose of education and exhibit. The applicant agrees to cooperate with the Red Wolf Recovery Program and the disposition of any offspring will be handled in accordance with the Red Wolf Recovery Program.

PRT-715479

Applicant: Donald R. Steurer, Evansville, IN

The applicant requests a permit to purchase in interstate commerce one male and one female Hawaiian (=nene) goose (*Nesochen* (=*Branta*) *sandvicensis*) from Marc K. McKay, 550 East Jackson Street, Ridgeland, Mississippi for the purpose of captive breeding.

PRT-711457

Applicant: Wood Family Shows, Sarasota, FL

The applicant requests a permit to export and reimport one male and two female captive born Bengal tigers (*Panthera tigris*) for the purpose of conservation education and maintain such tigers in captivity at applicant's facilities.

Applicant: Patuxtent Wildlife Research Center PRT-678870 Laurel, MD

The applicant requests an amendment to their existing permit to conduct the following activities:

(1) Sacrifice of four captive born Andean condors (*Vultur gryphus*) for a study of the susceptibility and physiological effects of lead ingestion on cathartids;

(2) Attach radio transmitters to Hawaii creepers (*Oreomystis* (=*Loxops*) *mana*), palila (*Loxioides* (=*Psittirostra*) *bailleui*), and Hawaii akepas (*Loxops coccineus coccineus*) to determine movements of the birds in prime and low density areas and recapture of such birds:

(3) Hold Hawaii creepers and palilas in captivity for periods exceeding 24 hours for testing of radio transmitter attachments prior to use in field; and

(4) Use of emetics on Hawaii creepers, palilas, Hawaii akepas, and akiapolaaus (*Hemignathus wilsoni*) for analysis of food habits.

PRT-715472

Applicant: Dr. John C. Avise, University of Georgia, Athens, GA

The applicant requests a permit to import eggs, hatchlings and incidental mortalities of the following sea turtle species to obtain mitochondrial DNA for genetic studies: green sea turtle (*Chelonia mydas*), Pacific green sea turtle (*C. m. agassiszi*), hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempi*), olive ridley (*L. olivacea*) and leatherback turtle (*Dermochelys coriacea*). Researchers will collect specimens from nesting beaches throughout the turtles' ranges.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 20, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-3933 Filed 2-25-87; 8:45am]

BILLING CODE 4310-55-M

National Park Service

Golden Gate National Recreation Area; Public Hearing

Section 460bb-2(i) of the legislation establishing the Golden Gate National Recreation Area ("GGNRA"), 16 U.S.C. 460bb-2(i), prescribes limitations on new construction or development at the Presidio of San Francisco, which is located entirely within the boundaries of the GGNRA. The legislation also requires that a public hearing conducted by the Secretary of the Interior or his designated representative be held in connection with any proposed new construction or development.

Accordingly, notice is hereby given that a public hearing will be conducted by the Superintendent of the GGNRA on Thursday, March 26, 1987, in order to present to the public and solicit its views on: A new branch exchange facility; enlisted barracks without dining, operations and supply; and enlisted barracks with dining, operations, supply, and parking, all at the Presidio of San Francisco. The hearing will commence at 7:30 p.m. (PST) at Building 201, Fort Mason, San Francisco, California.

The new branch exchange will be a small (4,916 square foot) convenience store operated by the Army and Air

Force Exchange Service (AAFES). This store is planned to be opened longer hours than the post exchange at the Presidio and will provide active and retired military and family members a store to purchase certain necessities locally. The overall height of the structure is expected to be approximately 18 feet. The site for this project will be east of the intersection of Gorgas Avenue and Marshall Street, adjacent to the Richardson Avenue bridge. This project will replace a portion of the old Four Seasons store which is presently used for this activity and which will be demolished to clear the site for a new commissary. Three temporary buildings will be demolished to clear the construction site.

The enlisted barracks without dining facilities will be safe, modern barracks for 167 single, enlisted officers assigned to Letterman Army Hospital Medical Center and Letterman Army Institute of Research. Total square footage of this project is 62,540. The two buildings of this project are each three stories and 47 feet tall. Parking will be located between the buildings and the Doyle Drive elevation. The site selected for this project is currently vacant. It is located midway between Lincoln Blvd. and Gorgas Avenue, 100 yards east of Halleck Street. This project replaces old barracks which do not meet current seismic codes or standards for safety, security, and privacy. The present historic barracks will not be demolished but will be converted to administrative uses for the Presidio command activities.

The enlisted barracks with dining will be a project for single, enlisted soldiers assigned to the Presidio (Garrison Units). This project also includes space for operations and supply activities associated with these units. Plans call for ten three-story barrack modules of 8,584 square feet each, one 8,617 square foot separate one-story dining facility, and one 9,604 square foot one-story operations and supply area. The total square footage of the complex is 104,065. The barracks will house 313 soldiers; the dining facility will serve 400. This project will be built north of Lincoln Blvd. in the vicinity of the Thompson Hall Guest House, which will be demolished. Girard Road will be abandoned and used as part of the construction site. All proposed structures and a small parking lot will be located on the north side of Lincoln Blvd. The majority of the parking for the project will be located south of Lincoln Blvd. This project is a replacement for old barracks which do not meet current seismic codes or standards for safety, security and privacy. The present barracks will not be demolished since they are historic. They will be converted to administrative and Army Reserve facilities after they are seismically upgraded and safety standards are met for their converted use. Former enlisted barracks and other related structures which had occupied the area east of the old Crissy Field runway have been demolished. These demolished buildings comprise a total of 104,747 square feet.

A fact sheet and environmental documents on the branch exchange facility, enlisted barracks without dining facility, and the enlisted barracks with dining facilities are available by request from the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123, telephone (415) 556–4484.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public hearing. Those not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Area on this construction project. Statements will be accepted until April 9, 1987.

This meeting will be recorded for documentation and transcribed for dissemination.

Dated: February 18, 1987.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 87–3971 Filed 2–25–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Mitsubishi Electric Corporation and Mitsubishi Electronics America, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 17, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: February 17, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3981 Filed 2–25–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories Components Thereof, and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: OKI Electric Industry Company, Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 17, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: February 17, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3982 Filed 2–25–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–253]

Certain Electrically Resistive Monocomponent Toner; Commission Decision To Review and Reverse in Part and Affirm in Part an Initial Determination Granting the Federal Trade Commission Leave To Intervene as a Party

AGENCY: International Trade Commission.

ACTION: Review and partial affirmance and partial reversal of an initial determination (ID) granting the Federal Trade Commission (FTC) leave to intervene as a party.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and to affirm in part and to reverse in part the ID (Order No. 9) in the above-captioned investigation granting the FTC leave to intervene as a party in the investigation.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr. Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0148.

SUPPLEMENTARY INFORMATION: On December 22, 1986, the FTC filed a request (designated Motion No. 253–6) to intervene and become a party in this investigation. The motion stated that the FTC wished to intervene because the complaint was based primarily on antitrust allegations and the FTC, as an agency enforcing the antitrust laws, had a strong interest in seeing that these laws are interpreted consistently. The FTC stated that it had no interest in the specific factual details of the investigation and thus had no wish to conduct discovery in the case.

The Commission investigative attorney (IA) filed a response to the FTC request to intervene on December 30, 1986, stating that he had no objection to the FTC's intervention in the investigation, provided that the FTC was not permitted access to confidential information under protective order and provided that the FTC was not permitted to take discovery.

Complainant Aunyx Corporation (Aunyx) opposed the request to intervene, stating that the Commission was competent to determine whether the activity complained of violated section 337, and that the FTC's intervention was unnecessary. Aunyx also contended that if the presiding administrative law judge (ALJ) allowed the intervention by the FTC, the FTC should not be allowed access to confidential business information under protective order because such access would have a chilling effect on the litigants, potential third parties, and future litigants.

Respondents Canon, Inc. and Canon U.S.A., Inc. filed a reply to the FTC request to intervene on January 5, 1987, stating that they did not object to the FTC's intervention, and proposing that the ALJ permit limited access to confidential data under an appropriate protective order.

The FTC, pursuant to leave granted by the ALJ, responded to the responses of Aunyx and the IA on January 9, 1987. The FTC asserted that the case involved a number of antitrust issues. Moreover, the FTC stated that it did not at that time seek access to confidential information under protective order, but essentially urged the ALJ to leave the question open.

On January 12, 1987, the ALJ issued an ID granting the FTC's request to intervene and become a party provided that the FTC (a) agreed to abide by the terms of a protective order (attached to the ID) in the event it seeks access to confidential materials and (b) did not conduct discovery in the investigation.

Both complainant Aunyx and the IA filed petitions for review on January 21, 1987. Aunyx's petition for review argued that the ID constituted an abuse of discretion and affected Commission policy. Aunyx argued that the Commission is capable of adjudicating the investigation, with the assistance of the FTC's comments pursuant to section 337(b)(2) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(2)), without the necessity of permitting the FTC's intervention as a party, with all the additional burden on the existing parties such intervention would entail. Moreover, Aunyx argued that granting the FTC access to confidential information under the protective order would have a chilling effect on third-party discovery in the investigation. The IA argued in his petition for review that the portion of the ID granting the FTC leave to obtain access to confidential information under the protective order should be reversed as contrary to Commission policy and as having a chilling effect on voluntary compliance with discovery requests by third parties. On January 27, 1987, the Canon respondents filed a response to the petitions for review stating that the ID set suitable terms for intervention by the FTC and that respondents opposed the petitions for review. On January 28, 1987, the FTC filed a response to Aunyx's petition for review, arguing that

intervention was appropriate under the Commission's rules given the antitrust-based nature of the investigation, and denying that granting the FTC access to confidential information under protective order would have a chilling effect on discovery.

The Commission determined to review the ID as a determination affecting Commission policy. The Commission also determined to reverse that portion of the ID that grants the FTC access to confidential information under protective order and to affirm that portion of the TD that allows the FTC to intervene on the condition that the FTC not engage in any discovery. The FTC's intervention is limited to the issue of the consistent application of the antitrust laws and the FTC's participation in this investigation is analogous to that of an amicus curiae.

The basis for the Commission's reversal of the part of the ID that grants the FTC access to confidential information under protective order is that, as a matter of Commission policy, granting the FTC access to confidential information, even under protective order, would hinder the Commission's investigations under section 337 of the Tariff Act of 1930 by having a chilling effect on voluntary compliance with discovery requests.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules §§ 210.53 through 210.56. (19 CFR 210.53 through 210.56).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: February 18, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3983 Filed 2-25-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-270 (Final) and 731-TA-313, 314, 316, and 317 (Final)]

Certain Brass Sheet and Strip From France, Italy, Sweden, and West Germany

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] 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 France (investigation No. 701-TA-270 (Final)) of certain brass sheet and strip,[3] provided for in item 612.39 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be subsidized by the Government of France.

Further, the Commission determines,[4] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is materially injured by reason of imports from France (investigation No. 731-TA-313 (Final)), Italy (investigation No. 731-TA-314 (Final)). Sweden (investigation No. 731-TA-316 (Final)), and West Germany (investigation No. 731-TA-317 (Final)) of certain brass sheet and strip,[5] provided for in item 612.39 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted investigation No. 701-TA-270 (Final) effective June 9, 1986, following a preliminary determination by the Department of Commerce that imports of certain brass sheet and strip from France were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). 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 2, 1986 (51 FR 24237).

The Commission instituted investigations Nos. 731-TA-313, 314, 316, and 317 (Final) effective August 22, 1986, following preliminary determinations by the Department of Commerce that imports of certain brass sheet and strip from France, Italy, Sweden, and West Germany were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations 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 Commision, Washington, DC, and by publishing the notice in the **Federal Register** of September 10, 1986 (51 FR 32255).

The hearing on the investigations was held in Washington, DC, on December 1, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 19, 1987. The views of the Commission are contained in USITC Publication 1951 (February 1987), entitled "Certain Brass Sheet and Strip from France, Italy, Sweden, and West Germany: Determinations of the Commission in Investigation No. 701-TA-270 (Final) and Investigations Nos. 731-TA-313,

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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] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from France that are being subsidized.

[3] For purposes of these investigations, the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section, over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

[4] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from France, Italy, Sweden, or West Germany that are being sold at less than fair value.

[5] For purposes of these investigations, the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section, over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

314, 316, and 317 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: February 19, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-4004 Filed 2-24-87; 10:55 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-255]

Certain Garment Hangers; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Hangers Unlimited, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 17, 1987.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: February 17, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3984 Filed 2-25-87; 8:45 am]

BILLING CODE 1020-02-M

[Investigation No. 337-TA-243]

Certain Luggage Products; Commission Decision to Review Portions of Initial Determination

AGENCY: International Trade Commission.

ACTION: The U.S. International Trade Commission has determined to review portions of an initial determination (ID) finding no violation of section 337 in the above-captioned investigation. The portions of the ID that will be reviewed are the presiding administrative law judge's (ALJ's) determinations regarding secondary meaning, the definition of the domestic industry, and the effect or tendency to substantially injure the domestic industry. The parties to the investigation and interested Government agencies are requested to file written submissions addressing the issue of secondary meaning and the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

SUMMARY: On December 29, 1986, the ALJ issued an ID finding that there is no violation of section 337 in the importation and sale of certain luggage products. Complainant Lenox, Incorporated, on behalf of its division Hartmann Luggage Company, filed a petition for review of the ID insofar as the ALJ determined that comnplainant had not established common law trademarks in the overall appearances of its products at issue because the marks were not inherently distinctive and had not acquired secondary meaning. Respondent Star Leather Products, Ltd., and the Commission investigative attorney filed repsonses to the petition. No agency comments were received.

Having examined the record in this investigation including the ID, the petition for review, and the responses thereto, the Commission has determined to review portions of the ID. Specifically, the Commission has decided to review the issue of secondary meaning and is especially interested in the weight and effect that should be given to Finding of Fact (FF) 311 of the ID and the testimony underlying FF 311. Because the Commission's review of the issue of secondary meaning may affect the ultimate disposition of the issues of industry and injury, the Commission is reviewing those issues as well, but only to the extent that such review may be required by its review of the issue of secondary meaning.

No other issues will be reviewed.

SUPPLEMENTARY INFORMATION: If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates that some form of relief is appropriate, it must consider the effect of that relief upon the public health and welfare, competitive conditions in the U.S. economy, the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission finds that a violation of section 337 has occurred and orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation and interested Government agencies are requested to file written submissions on the issue of secondary meaning and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Written submissions on the issue under review and on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on February 23, 1987. Reply submissions on all issues must be filed not later than the close of business on March 2, 1987. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on February 23, 1987. No further submissions will be permitted

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the ALJ. All such requests should be directed to the Secretary of the Commission and must include a statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's office.

Authority. This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.54–210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54–210.56).

Notice of this investigation was published in the **Federal Register** on March 27, 1986 (51 FR 10580).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary; U.S. International Trade Commission, 701 E Street NW., Washington; DC 20436, telephone 202–523–0161. Hearing-imprinted individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3985 Filed 2–25–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731–TA–341, 342, 344, 345, and 346 (Final)]

Tapered Roller Bearings and Parts Thereof, and Certain Housings, Incorporating Tapered Rollers from Hungary, Italy, The People's Republic of China, Romania, and Yugoslavia

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–341, 342, 344, 345, and 346 (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 Hungary (inv. No. 731–TA–341), Italy (inv. No. 731–TA–342), The People's Republic of China (inv. No. 731–TA–344), Romania (inv. No. 731–TA–345), and Yugoslavia (inv. No. 731–TA–346) of tapered roller bearings and parts therefor provided for in Tariff Schedules of the United States (TSUS) items 680.30 and 680.39; flange, take-up, cartridge, and hanger units incorporating tapered roller bearings, provided for in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, provided for in item 692.32 or elsewhere in the TSUS, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless there investigations are extended, Commerce will make its final LTFV determinations on or before April 18, 1987, and the Commission will make its final injury determinations by June 5, 1987 (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 these investigations, 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: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Maria Papadakis (202–523–0439), 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 Commissions's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers from Hungary, Italy, the People's Republic of China, Romania, and Yugoslavia 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 investigations were requested in a petition filed on August 25, 1986, by the Timken Company, Canton, OH. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 36874).[1]

Participation in the investigations.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in

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[1] The petition and the Commission's preliminary affirmative determinations also covered imports of the subject products from Japan. However, the Department of Commerce has determined that the investigation involving Japan is "extraordinarily complicated" and, accordingly, extended the date for its preliminary less-than fair value determination to March 23, 1987. In the event that Commerce's preliminary determination concerning imports from Japan is affirmative, the Commission will institute an investigation at that time.

§ 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 Chairman, 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 these investigations 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 investigations msut be served on all other parties to the investigations (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.

Staff report.

A public version of the prehearing staff report in these investigations will be placed in the public record on April 28, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on May 12, 1987, 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 April 16, 1987. 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 9:30 a.m. on April 21, 1987 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 8, 1987.

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 May 19, 1987. 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 subjct of the investigation on or before May 19. 1987.

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 of the Commission.

Any business information for which confidential treatment is desired msst 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: These invetigations are 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).

Issued: February 17, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3986 Filed 2-25-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-279 (Sub-No. 1X)[1]]

Canadian National Railway Co.; Abandonment Exemption; Cumberland County, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Canadian National Railway Company of 3,740 feet of track in the City of Portland, Cumberland County, ME, subject to standard labor protection.

DATES: This exemption is effective on March 26, 1987. Petitions to stay must be filed by March 6, 1987 and petitions for reconsideration must be filed by March 20, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-279 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Joan Rector McGlockton, Hamel & Park, 888 16th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

This proceeding embraces Docket No. AB-268 (Sub-No. 1X), *Portland Terminal Company—Abandonment Exemption—Cumberland County, ME,* notice of exemption published at 51 *Fed. Reg.* 31178 (September 2, 1986). At the request of the Portland Terminal Company, that exemption is vacated except for that portion of track lying in Commercial Street from the Intersection of Union Street to the eastern sideline of State Street extended. In all other respects, the exemption is affirmed.

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: February 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3961 Filed 2-25-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30953]

Consolidated Rail Corp.; Trackage Rights; Illinois Central Gulf Railroad Co.; Exemption

The Illinois Central Gulf Railroad Company (ICG) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail)

[1] Docket No. AB-268 (Sub-No. 1X), *Portland Terminal Company—Abandonment Exemption—Cumberland County, ME,* has been consolidated with this proceeding.

between Granite City, IL and East St. Louis, IL (the eastern track) and to establish new terms and conditions with Conrail for continuance of existing trackage rights over a contiguous ICG track (the western track). The combined distance of the eastern track and western track is 5.31 miles. The trackage rights agreement became effective on February 10, 1987.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: February 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3962 Filed 2-25-87; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Third Floor Conference Room, 227 Public Ledger Building, 6th and Chestnut Streets, Philadelphia, Pennsylvania on March 31, 1987, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S.C. 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirements set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: February 20, 1987.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 87-3967 Filed 2-25-87; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-85]

Everett S. Coleman, M.D.; Revocation of Registration

On November 4, 1986, the Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration, (DEA) issued an Order to Show Cause to Everett S. Coleman, M.D. (Respondent) of Main Street, Sacramento, Kentucky 42372. The Order to Show Cause sought to revoke his DEA Certificate of Registration AC3002312 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was based on two statutory grounds. First, Respondent was convicted of a controlled substance-related felony offense. 21 U.S.C. 824(a)(2). Second, Respondent is not currently authorized to handle controlled substances in the state in which he practices. 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(3).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. Judge Young issued an Order for Prehearing Statements. On November 24, 1986, the Government filed a motion for summary disposition. The Administrative Law Judge then provided Respondent an opportunity to respond to the motion for summary disposition. Respondent did not file such a response. In an Order dated February 4, 1987, the Administrative Law Judge terminated the proceedings before him. The Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on June 23, 1986, Respondent was convicted in the McLean Circuit Court, Commonwealth of Kentucky, of trafficking in a Schedule II controlled substance in violation of Kentucky Revised Statutes 218A.140(1) and 218A.990(1). Respondent was sentenced to five years incarceration and a $5,000.00 fine.

In an Order dated April 29, 1986, the Kentucky State Board of Medical Licensure temporarily suspended Respondent's license to practice medicine in the Commonwealth of Kentucky. Subsequently, in an Order dated June 2, 1986, the Board reinstated Respondent's license to practice medicine. The Board also ordered that Respondent could not prescribe, dispense or administer controlled substances. Therefore, Respondent is without authority to handle controlled substances in Kentucky, the state in which he is registered.

The Administrator finds that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See, 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See, *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *George S. Heath, M.D.*, Docket No. 86-24, 51 FR 26610 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); *Agostino Carlucci, M.D.*, Docket No. 82-20 49 FR 33184 (1984).

The Administrator also finds that the motion for summary disposition must be granted. When no fact question is involved, or when the facts are agreed, there is no requirement that an agency convene a plenary, adversarial administrative proceeding, even though the pertinent statute prescribes a hearing. Congress does not intend administrative agencies to perform meaningless tasks. See, *United States v. Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

Having considered the facts and circumstances in this matter, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the Commonwealth of Kentucky. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration AC3002312, previously issued to Everett S. Coleman, M.D., is hereby revoked. In addition, the Administrator orders that any pending applications of Everett S. Coleman, M.D., for registration under the Controlled Substances Act, are hereby denied. This order is effective February 26, 1987.

Dated: February 20, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3976 Filed 2-25-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-61]

Geoffrey A.W. DiBella, M.D.; Revocation of Registration

On December 5, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Geoffrey A.W. DiBella, M.D. (Respondent) at 20 East 9th Street, New York, New York 10003 and 227 East 19th Street, New York, New York 10013, proposing to revoke his DEA Certificates of Registration AD6591843 and AD1452767 and deny the outstanding applications for renewal of those registrations. The statutory basis for the Order to Show Cause was that Respondent's registration with DEA was inconsistent with the public interest in that Dr. DiBella had, from November, 1981 through June, 1982, issued prescriptions for methaqualone, then a Schedule II controlled substance, outside the scope of professional practice and for other than a legitimate medical purpose, and that he had been found guilty, after a jury trial, in the U.S. District Court for the Southern District of New York of illegal distribution of controlled substances.

The Order to Show Cause was sent to Dr. DiBella by registered mail. In a letter dated December 7, 1985, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. A hearing was held in New York City on June 16, 17, and 19, 1986. On November 21, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent filed exceptions to the opinion of the Administrative Law Judge which were dated December 11, 1986. Government counsel filed a response to those exceptions dated December 29, 1986. On January 5, 1987, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in March, 1981, an organization named Jorum Associates formed a New York corporation with its stated purpose being the operation of a clinic for treatment of insomnia. The clinic's treatment of choice was the drug Quaalude. Quaalude was at that time a Schedule II depressant controlled substance. Since August, 1984, it has been a Schedule I controlled substance, not available for prescribing by physicians.

During the period March, 1981 through August, 1981, Jorum Associates employed three physicians. In October, 1981, the triplicate prescription privileges of one of the physicians, Dr. Martin Feit, were revoked by the New York State Department of Health. The result was that Dr. Feit could no longer prescribe Schedule II controlled substances. Toward the end of October, 1981, Jorum Associates placed an advertisement in the *New York Times* for part-time or full-time physicians. As a result of this ad, Doctors Margaret and Albert Chioffi, both psychiatrists, responded to the advertisement. Both doctors worked for Jorum Associates for a few days and then left, stating that they were uncomfortable with a situation where large numbers of individuals were receiving prescriptions for Quaalude. The Chioffis later stated that they doubted the legitimacy of the operation. A Dr. Binkhorst also responded to the advertisement. She worked one day, was paid $2,000, and did not return because of the large number of Quaalude prescriptions being written.

Respondent also responded to the *New York Times* advertisement and first worked at Jorum Associates for a half-day beginning November 10, 1981. He returned about December 3, 1981, and woked one day a week at the clinic until mid-February, 1982.

An investigation of the clinic and the physicians' prescribing practices was conducted by DEA Diversion Investigators and Special Agents. This investigation included an analysis of Respondent's patient charts at the Jorum clinic, and in his subsequent private practice. It also included a review of triplicate prescription records and visits by DEA undercover agents. The analysis of the patient charts and prescription records showed that from November, 1981 through February, 1982, the Respondent wrote 649 prescriptions for Quaalude. From March, 1982 through June, 1982, in his private practice he wrote 122 such prescriptions. The total number of Quaalude tablets prescribed was 39,542. The Respondent was working only one day a week during this period. For the thirty actual days that Respondent worked, he refused to prescribe Quaalude to only eight of 779 patients. On one day alone, December 30, 1981, he wrote 96 prescriptions for Quaalude. Respondent was paid $3,000 per day when working at Jorum Associates.

Three visits by undercover DEA agents were made to the Respondent. One DEA Special Agent went to the Jorum clinic and saw the Respondent on December 3, 1981. He went again, utilizing a different undercover name on December 17, 1981. Each time he received a prescription for 45 tablets of Quaalude and paid $200. He was given a physical examination by a physician's assistant. Neither the Respondent or the physician's assistant recognized the agent on December 17, 1981 as being the same individual who came to the clinic on December 3, 1981.

On May 15, 1982, another DEA Special Agent made an undercover visit to Respondent's practice at 60 East 42nd Street in New York City. The agent completed the necessary forms, informed the Respondent that he had trouble sleeping, and received a physicial examination followed by a prescription for 45 Quaalude tablets. The agent paid the Respondent $180.

Three physicians reviewed selected medical charts of individuals who Respondent saw at the Jorum clinic and in private practice. All three physicians concluded that there was no legitimate practice of medicine by Respondent at the Jorum clinic or in his private practice. They concluded that the operation was a sham to cover the illegal distribution of prescriptions.

Respondent was indicted along with three other physicians and four lay persons by a Federal Grand Jury in the United States District Court for the Southern District of New York of conspiracy to illegally distribute the controlled substance Quaalude, and of two counts of illegal distribution of Quaalude. On August 7, 1985, he was found guilty by a jury of the two counts of illegal distribution of controlled substances, but not guilty of conspiracy to illegally distribute Quaalude. On July 2, 1986, two weeks after the hearing was conducted in this matter, Respondent was sentenced, in the United States District Court for the Southern District of New York, to two years imprisonment, two years special parole, and fined $5,000.

During the hearing, and on his renewal application dated May 8, 1986, Respondent continued to maintain that he dispensed controlled substances in good faith. He stated that he was unaware that Jorum was a front for dealing drugs.

The Administrative Law Judge found that Respondent's conviction of two controlled substance-related felonies provides a lawful basis for revocation of his DEA Certificates of Registration and denial of the pending applications. He

also found that the evidence in the record as to Respondent's experience in dispensing controlled substances clearly demonstrates that his continued registration would be inconsistent with the public interest.

The Administrative Law Judge recommended that Respondent's DEA Certificates of Registration be revoked, and that the applications for renewal of those registrations be denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. The Administrator finds Respondent's arguments in the Exceptions to the Opinion of the Administrative Law Judge to be unpersuasive. If Respondent was so naive and unsophisticated that he was unaware that the large-scale dispensing of Quaalude at the Jorum clinic was for other than legitimate medical purposes, then he should not be entrusted with a DEA registration. Respondent has been convicted of a felony relating to the illegal distribution of Quaalude. He participated in an operation whose purpose was to distribute Quaalude under the guise of medical practice. Respondent's DEA registrations must be revoked and any pending applications denied.

Having concluded that there is a lawful basis for the revocation of Respondent's registrations and denial of pending applications, and having further concluded under the facts and circumstances presented in this case that the registrations should be revoked and any applications denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AD6591843 and AD1452767, previously issued to Geoffrey A.W. DiBella, M.D., be, and hereby are, revoked. The Administrator orders that any pending applications for renewal of those registrations are hereby denied. This order is effective March 30, 1987.

Dated: February 19, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3977 Filed 2-25-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-66]

Frank Riforgiato, M.D.; Denial of Application

On August 13, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration [DEA] directed an Order to Show Cause to Frank T. Riforgiato, M.D., 35 Nottingham Terrace, Buffalo, New York 14216 (Respondent), seeking to deny an application for registration executed by Respondent on March 20, 1986. The statutory predicate for the Order under 21 U.S.C. 824(a)(2) was the conviction of Respondent on February 11, 1982, in the United States District Court for the Western District of New York, of furnishing false and fraudulent material information in a record required to be made and kept as required by 21 U.S.C. 827(a)(5) and 827(c)(1)(B), in violation of 21 U.S.C. 843(a)(4)(A). This is a felony relating to controlled substances.

Respondent, through counsel, requested a hearing on the issues raised by the Order To Show cause. The matter was docketed before Administrative Law Judge Francis L. Young. On September 5, 1986, Judge Young entered an order for prehearing statements to be filed by both parties by October 7, 1986. By letter dated November 12, 1986, counsel for Respondent requested an extension for the filing of Respondent's prehearing statement until November 24, 1986. No prehearing statement has been received from Respondent or his counsel. On December 2, 1986, Judge Young *sua sponte* terminated the proceedings before him. He found that Respondent had no evidence to present which would call for an evidentiary hearing, and had waived his opportunity for a hearing. The Administrative Law Judge found there was no reason why the matter should not be presented to the Administrator for a final order as in a case in which no hearing was requested under 21 CFR 1301.54(d) and (e).

The Administrator also finds that Respondent has waived his opportunity for a hearing by failing to file a prehearing statement as ordered. Accordingly, the Administrator enters this order on the record as it appears. 21 CFR 1301.54(e).

The Administrator finds that Respondent pled guilty on February 11, 1982, to furnishing false and fraudulent material information in a record required to be made and kept, in violation of 21 U.S.C. 843(a)(4)(A). This plea was the culmination of an investigation of Respondent's controlled substance dispensing habits that began in 1979. Respondent maintained a weight control practice and ordered tens of thousands of dosage units of stimulants such as phentermine and phendimetrazine, far more than any other physician in the Buffalo area. He was unable to account for thousands of dosage units of these drugs.

The Administrator further finds that two DEA Special Agents, an Erie County Sheriff's Department Deputy and a Buffalo Police Department Officer made 16 undercover purchases of stimulants from Respondent between January, 1980 and July, 1980. The undercover purchase by a DEA Special Agent on January 16, 1980, is typical. The Agent told Respondent that he was a bartender, and he needed something to stay awake. Respondent placed a stethoscope partially on a cigarette lighter in the Agent's left breast pocket, and partially on the Agent's chest. Respondent prescribed Ionamin (phentermine, a Schedule IV controlled substance) and gave the Agent a quantity of phendimetrazine until he could have the Ionamin prescription filled. The physical examination conducted by Respondent during these visits never consisted of more than his taking the officer's blood pressure (often without rolling up the officer's sleeve), weighing the officer, and listening to the officer's heartbeat through clothing, or other obstructions. Respondent never took a medical history. Several times Respondent discussed "speed" (amphetamine) and declined to prescribe amphetamine, saying the "Government" was "watching" this drug. The officers were not obese.

The Administrator finds that controlled substances ordered by Respondent found there way into illicit channels. In 1979, a New York Bureau of Controlled Substances investigator arrested Respondent's son who was in possession of a quantity of stimulants. The son told New York State investigators that he had stolen drugs from his father's office.

The Administrator finds further that the Commissioner of Education of the State of New York, the official ultimately responsible for licensing of physicians in New York, entered an order on October 30, 1984, revoking Respondent's medical license, staying the revocation, and placing Respondent on probation for three years. Respondent admitted a specification of professional misconduct based on his conviction in the United States District Court for the Western District of New York.

The Administrator finds further that on October 4, 1982, Respondent and the Drug Enforcement Administration entered into a memorandum of agreement based on an Order to Show Cause issued April 19, 1982, to revoke a Certificate of Registration previously held by Respondent. The agreement revoked the earlier registration, and permitted Respondent to use the

registration of the Buffalo Columbus Hospital to prescribe or administer controlled substances to hospital patients. Apparently Respondent is abiding by the terms of the agreement.

Finally, the Administrator finds that Respondent applied again for DEA registration on October 21, 1986. Respondent indicated on that application that he pled "guilty to keeping improper records of controlled substances. Specifically I dispensed $20 of phendimetrazine a Class 4 drug and my record showed that I recoreded (sic) only $10." On his application dated March 20, 1986, Respondent indicated that he surrendered a previous DEA registration "as part of his penalty for conviction." The Administrator finds that the surrender was the result of an agreement between Respondent and DEA, and, while based on DEA's statutory authority, not a penalty for Respondent's conviction.

Based on the investigative record in this case, the Administrator hereby denies the applications for registration executed by Dr. Riforgiato. It is clear that Respodent is unable to handle the responsibilities imposed by DEA registration. It is also clear that Respondent willfully violated the law and dispensed considerable quantities of stimulants without legitimate medical need. Respondent's records were such that he was unable to detect diversion from his supply. The comments on the applications cannot give the Administrator hope to believe that Respondent will not violate the law again were he to be registered.

Accordingly, under the authority given the Attorney General in 21 U.S.C. 824(a)(2) and delegated to the Administator in 21 U.S.C. 871 and 28 CFR 0.100 *et seq.*, the Administrator hereby denies the applications for registration executed by Frank T. Riforgiato, M.D., on March 20, 1986, and October 21, 1986, and any other applications for registration executed by Dr. Riforgiato. The denials are effective March 30, 1987.

Dated: February 18, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3978- Filed 2-25-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-30]

Rudolfo Torres, M.D.; Denial of Application

On April 7, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rudolfo Torres, M.D. (Respondent) at 25 Garfield Street, Madison, Maine 04950, proposing to deny his application for a DEA Certificate of Registration which was executed on July 16, 1985. The statutory basis for the Order to Show Cause was that Respondent's registration with DEA would be inconsistent with the public interest as evidenced by three factors. The first factor was Dr. Torres' voluntary relinquishment of his license to practice medicine in the State of Florida because of a pending action by the Florida Department of Professional Regulation based upon inappropriate prescribing and self-administering of controlled substances. The second factor was Dr. Torres' prescribing of controlled substances for individuals outside the course of professional practice and for no justifiable purpose. The third factor was that Dr. Torres continued to prescribe controlled substances after he relinquished his medical license in Florida.

The Order to Show Cause was mailed to Dr. Torres by registered mail. In a letter dated April 23, 1986, Dr. Torres' counsel requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. A hearing was held in Boston, Massachusetts, on August 14, 1986. On December 2, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent, through counsel, filed exceptions dated December 17, 1986. On December 29, 1986, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in October, 1982, the Respondent's prescribing activities came to the attention of the Florida Department of Professional Regulation. The initial investigation resulted in the recovery of numerous prescriptions for controlled substances written by Respondent from area pharmacies. At this time Respondent was advised that he was under investigation, and was given an opportunity to explain his liberal prescribing of controlled substances for specific patients. Respondent sent a written response to the Department. Subsequent investigation resulted in the recovery of approximately 75 additional prescriptions for controlled substances written by Respondent. The Department of Professional Regulation then filed a formal administrative complaint against the Respondent. The administrative complaint alleged that Respondent had inappropriately and excessively prescribed controlled substances to six individuals from February, 1982 through July, 1983.

In October, 1984, while the administrative matter was still pending, an investigator with the Department of Professional Regulation was notified by the Panama City, Florida, Police Department that Respondent had been involuntarily incarcerated for detoxification after determination that he was unsafe to the public and himself. The Police Department told the investigator that Respondent's girlfriend was willing to discuss Respondent's drug related activities. Respondent's girlfriend was listed in the administrative complaint as one of the individuals to whom Respondent had inappropriately prescribed controlled substances, including 36 prescriptions for controlled substances between April, 1982 and July 8, 1983. Respondent's girlfriend told the investigator that she lived with Respondent and had been his patient since September, 1982. She indicated that Respondent had introduced her to drugs, and that she became addicted to Dilaudid and cocaine. She indicated that Respondent used these substances, as well as alcohol.

On December 9, 1984, Respondent was taken ito custody by the Panama City Police Department after he discharged a firearm and had been holding his girlfriend in his bedroom for two to three hours. A search of the residence revealed cocaine residue, hypodermic needles, and marijuana. The Respondent was placed in a mental health facility. He voluntarily relinquished his license to practice medicine on December 15, 1984. The Respondent entered the impaired physician's program in Florida under court order.

By his own admission, Respondent began abusing alcohol in 1981 or 1982 while in the throes of a custody proceeding for his children. He began abusing drugs in 1984. Respondent has used cocaine and tried other drugs such as marijuana, Demerol and Dilaudid.

Respondent completed five months of rehabilitation in Florida from December, 1984 through May, 1985. He states that he has had no problems with alcohol or drugs since that time. Respondent is currently residing in the State of Maine with his girlfriend from Florida. He is in continuing treatment with Alcoholics Anonymous, Narcotics Anonymous, and a private physician specializing in

substance abuse. Respondent's medical license in Maine is on probation for five years under the terms of a Consent Decree. Respondent is only permitted to prescribe, administer or dispense Schedule II controlled substances in a hospital setting. He is required to submit to random urinalysis testing.

The Administrative Law Judge concluded that Respondent had a serious drug abuse problem as recently as December, 1984. He indicated that too little time had passed since Respondent's serious problems in Florida, and there was not sufficient evidence to indicate that Respondent has had a marked and lasting turnaround. In addition, the evidence indicates that Respondent did issue numerous prescriptions for controlled substances outside the course of professional practice in Florida, and that it is likely some sanction would have been imposed on his license in Florida prior to his voluntary surrender of that license.

The Administrative Law Judge recommended that Respondent's application for a DEA Certificate of Registration be denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. The Administrator agrees that granting the Respondent a DEA Certificate of Registration would be inconsistent with the public interest.

Having concluded that there is a lawful basis for the denial of Respondent's application for registration, and having further concluded that the application should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration submitted by Rudolfo Torres, M.D., be, and hereby is, denied. This order is effective immediately.

Dated: February 19, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3979 Filed 2-25-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-16)]

Government-Owned Inventions; Availability for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent.) Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Dennis Marchant, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 453-2430.

Patent Application 761,310: Tower Evaporator; filed July 30, 1985.

Patent Application 862,959: Low Phase Noise Oscillator; filed May 14, 1986.

Patent Application 867,987: Cellular Thermo Setting Fluoropolymers and Process for Making Them; filed May 29, 1986.

Patent Application 867,988: Compensation for Primary Reflector Wavefront Error; filed May 29, 1986.

Patent Application 886,149: Fiber Reinforced Ceramic Material; filed July 16, 1986.

Patent Application 875,798: Thermal Stress Minimized, Two Component Turbine Shroud Seal; filed June 18, 1986.

Patent Application 859,688: Carbine/Fluoride/Silver Self-Lubricating Composite; filed May 5, 1986.

Patent Application 890,445: Preloaded Space Structural Coupling Joints; filed July 30, 1986.

Patent Application 823,713: Ion Beam Nitriding of Steels; filed January 29, 1986.

Patent Application 890,575: Airfoil Flutter Model Suspension System; filed July 30, 1986.

Patent Application 886,133: Photodetector Array with Image Plane Processing; filed August 16, 1986.

Patent Application 886,123: Improved Flux Gate Magnetometer; filed July 16, 1986.

Patent Application 871,207: Polyarylene Ethers with Improved Properties; filed June 5, 1986.

Patent Application 879,758: ARC Lamp Power Supply; filed June 26, 1986.

Patent Application 874,320: Pretreatment and Reactivation of an Oxide-Containing Catalyst; filed June 11, 1986.

Patent Application 874,304: Isotope Exchange in Oxide-Containing Catalyst; filed June 11, 1986.

Patent Application 875,799: Monogroove Cold Plate; filed June 18, 1986.

Patent Application 886,121: Fatigue Testing a Plurality of Test Specimens and Method; filed July 16, 1986.

Patent Application 875,891: Remotely Controllable Mixing System; filed June 18, 1986.

Patent Application 890,577: Boron-Containing Organosilane Polymers and Ceramic Materials Thereof; filed July 30, 1986.

Patent Application 890,584: Castable Hot Corrosion Resistant Alloy; filed July 30, 1986.

Patent Application 879,757: Cross-Contact Chain; filed June 26, 1986.

Patent Application 898,986: A Method of Estimating the Molecular Weight of Polymeric Materials; filed August 22, 1986.

Patent Application 897,239: Coaxial Tube Tether/Transmissionline for Manned Nuclear Space Power; filed August 18, 1986.

Patent Application 913,447: Self-Clamping Arc Light Reflector for Welding Torch; filed September 30, 1986.

Patent Application 904,134: Mobil Remote Manipulator System for a Tetrahedral Truss; filed September 5, 1986.

Patent Application 913,433: Large TV Display System; filed September 30, 1986.

Patent Application 890,586: Ground Plan Interference Elimination by Passive Element; filed July 30, 1986.

Patent Application 901,114: Tailorable Infrared Sensing Device with Strain Layer Superlattice Structure; filed August 28, 1986.

Patent Application 913,446: Infusion Extractor; filed September 30, 1986.

Patent Application 874,319: Acoustic Emission Frequency Discrimination; filed June 12, 1986.

Patent Application 899,683: Synchronously Deployable Double Fold Beam and Planar Truss Structure; filed October 22, 1986.

Patent Application 901,113: Device for Quick Changeover Between Wind Tunnel Force and Pressure Testing; filed October 28, 1986.

Patent Application 913,432: Space Spider Crane; filed September 30, 1986.

Patent Application 904,132: High Lift, Low Pitching Moment Airfoils; filed September 5, 1986.

Patent Application 878,916: Real-time Garbage Collection for List Processing; filed June 26, 1986.

Patent Application 901,496: Preparation of B-Trichloroborazine; filed August 28, 1986.

Patent Application 904,513: Coaxial Cable Connector; filed September 8, 1986.

Patent Application 924,470: New Condensation Polyimides Containing 1,1,1-Triaryl-2,2,2-Triffuoro-ethane Structures; filed October 29, 1986.

Patent Application 924,399: Liquid Encapsulated Float Zone Process and Apparatus; filed October 29, 1986.

Patent Application 917,125: Gas Particle Radiator; filed October 9, 1986.

Patent Application 924,474: Substituted 1,1,1-Triaryl-2,2,2-Triflouroethanes and Processes for Their Synthesis; filed October 29, 1986.

Patent Application 921,574: High Density Tape Casting System; filed October 29, 1986.

Patent Application 921,573: Action Hold-Down for Heat Treating; filed October 21, 1986.

Patent Application 921,577: Passively Activated Prehensile Digit for a Robotic End Effector; filed October 21, 1986.
Patent Application 924,398: Weightlessness Simulation System and Process; filed October 10, 1986.

Dated: February 17, 1987.

John E. O'Brien,
General Counsel.

[FR Doc. 87-3959 Filed 2-25-87; 8:45 am]
BILLING CODE 7510-01-M

[Notice 87-15]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on General Aviation.

DATE AND TIME: March 31, 1987, 8:30 a.m. to 4:30 p.m.; April 1, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: Briefing Room, Garage Level, National Air and Space Museum, 7th and Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on General Aviation, chaired by Mr. John Olcott, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the team members and other participants).

Type of Meeting: Open.
Agenda:
March 31, 1987
8:30 a.m.—Opening Remarks by Chairperson and Executive Secretary.
10 a.m.—Foreign Technology and Competition.
1:30 p.m.—Propulsion Technology.
4:30 p.m.—Adjourn.

April 1, 1987
8:30 a.m.—Future Air Traffic Control System.
10 a.m.—Technology Implementation.
1 p.m.—Review Team Caucus.
4:30 p.m.—Adjourn.

Dated: February 19, 1987.

Richard L. Daniels,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-3960 Filed 2-25-87; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b, of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 5-7, 1987, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on February 18, 1987, Vol. 52, FR-4980.

Thursday, March 5, 1987

8:30 A.M.-8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.-10:45 A.M.: Quantitative Safety Goals (Open)—Review proposed NRC Staff plan for implementation of the NRC Quantitative Safety Goals.

11:00 A.M.-12:30 P.M.: Radioactive Waste Management and Disposal (Open)—Discuss proposed ACRS role in the regulation of radioactive waste management and disposal, as well as the risks to public health and safety of radioactive waste compared to other nuclear hazards.

1:30 P.M.-2:30 P.M.: Nuclear Power Plant License Renewal (Open)—Briefing regarding proposed NRC policy for renewal of nuclear power plant licenses.

2:30 P.M.-4:00 P.M.: Human Factors (Open)—Discuss proposed ACRS recommendations regarding the responsibility for safety at nuclear facilities. Representatives of the NRC Staff and the nuclear industry will participate as appropriate.

4:00 P.M.-6:00 P.M.: Safety Features in Foreign Nuclear Power Plants (Open/Closed)—Discuss added safety features in foreign nuclear power plants compared to those in U.S. reactor plants.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

Friday, March 6, 1987

8:30 A.M.-12:00 Noon: GE Advanced Boiling Water Reactor (Open/Closed)—Review the proposed Licensing Basis Agreement for this standardized nuclear plant as well as improvements proposed in the ABWR and related EPRI requirements for improved standardized light-water reactors. Representatives of the NRC Staff, the General Electric Company, and EPRI will participate in this discussion to the degree considered appropriate.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this facility.

1:00 P.M.-3:00 P.M.: Quantitative Safety Goals (Open)—Continue discussion of proposed NRC Staff plan for implementation of the NRC Quantitative Safety Goals.

3:15 P.M.-4:15 P.M.: Human Factors (Open)—Briefing by representatives of the NRC Staff regarding application of the NRC Rule on Fitness for Duty at nuclear facilities. The status of similar rules regarding NRC employees will also be discussed.

4:15 P.M.-4:30 P.M.: Future Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

4:30 P.M.-5:15 P.M.: Generic Item 61, SRV Discharge Line Break in the Airspace of Mark I and Mark II Containment Suppression Pool (Open)—Discuss proposed NRC Staff resolution of GI 61 and other mechanisms for bypass of the containment suppression pool.

5:15 P.M.-6:00 P.M.: ACRS Subcommittee Activities (Open)—Discuss the status of designated subcommittee activities related to safety and regulatory matters including the preparation of an ACRS annual report to the NRC regarding the proposed NRC Safety Research Program and Budget and activities associated with the regulation of high-level and low-level radioactive waste matters.

Saturday, March 7, 1987

8:30 A.M.-12:00 Noon and 1:00 P.M.-3:00 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding topics discussed during this meeting.

Portions of this session will be closed as required to discuss Proprietary Information and information provided in

confidence by a foreign source which is applicable to the matter being considered.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10 (d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information that involves Proprietary Information (5 U.S.C. 552b(c)(4)) and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(1)) applicable to the facility being discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: February 19, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–4015 Filed 2–25–87; 8:45 am]

BILLING CODE 7590–01–M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations APPLICATIONS AND

I. Background

Pursuant to Public Law (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 February 11, 1987 (52 FR 4400).

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.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram 6 Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Dockets Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 1–3, 1986, as supplemented January 28, 1987.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2. The proposed change deletes the requirement to perform response time testing on various temperature switches and thermocouples listed in TS Table 3.3.2–3.

Currently, Surveillance Requirement 4.3.2.3 requires that the isolation system response time of the applicable functions shown in Table 3.3.2–3 shall be demonstrated to be within its limit at least once per 18 months. As part of this requirement, Table 3.3.2–3 includes the testing of: (1) Primary containment isolation within 13 seconds of indication of high main steam line tunnel temperature (Item 1.d); (2) reactor water cleanup system (RWCS) isolation within 13 seconds of indication of high area temperature (Item 3.b); (3) RWCS isolation within 13 seconds of indication of high area ventilation temperature gradient (Item 3.c); and (4) high pressure coolant injection isolation within 13 seconds of indication of high HPCI steam line tunnel temperature (Item 4.a.4). Temperature sensors are provided primarily for detection of small line breaks. The Final Safety Analysis Report (FSAR) does not take credit for temperature sensor initiation of main steam line isolation in the event of a main steam line break. Therefore, these sensors are not subject to the design base accident response time.

The present surveillance program utilizes two distinct testing methods to determine the response time of the temperature sensors for the systems described above. However, the test results are not repeatable and, thus, do not give a reliable indication of the real response time. The Brunswick FSAR safety analysis does not address individual temperature sensor response times or the response times of the logic systems to which the temperature sensors are connected. The isolation times of primary containment, RWCS, and HPCI can be determined by other parameters such as reactor low level, high steam flow, or system low pressure.

In addition, the testing of the RWCS thermocouples requires removal of the devices. This may result in increased instrument wear causing decreased accuracy and reliability.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from

any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the FSAR safety analysis does not address individual temperature sensor response times or the response times of the logic systems to which the temperature sensors are connected. [The licensee has verified that credit is not taken for these temperature sensor response times in any accident analysis.] The purpose of these sensors is to initiate isolation of a given system in the event of a breach in the pressure boundary. The operability status of their safety-related function is adequately monitored by the remaining surveillance requirements of TS 3/4.3.2 (i.e., channel check, channel calibration, channel functional test, and logic system functional test).

2. For the same reasons as given in Item 1, the proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The affected isolation actuation instrumentation response times are only measured and recorded to enhance overall system reliability and to monitor instrument channel response time trends. Since the temperature sensors discussed in this request do not provide repeatable results when tested, the data collected does not serve any useful purpose. The primary containment, RWCS, and HPCI system isolation time is more accurately tested by using other parameters (pressure, flow or level) currently tested by surveillance requirements.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: Thomas A Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: December 18, 1986.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H. B. Robinson Steam Electric Plant, Unit No. 2. The proposed revision involves revising Technical Specification Heatup and Cooldown curves, Figures 3.1–1 and 3.1–2. The existing curves expire soon after the licensee's planned refueling outage in March of 1987 as 10 Effective Full Power Years (EFPY) are reached. The new curves retain the same numbers which currently apply to the existing curves but with an addition of designators (a) or (b) to differentiate between the new 12.5 and 15 EFPY curves. Appropriate changes to Section 3.1.2 of the TS will also be made to direct the use of the appropriate set of the curves.

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 an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power and Light Company has reviewed their proposed change in accordance with 10 CFR 50.92(c) and has determined that the proposed change does not:

(1) Involve a significant increase in the probability or consequences of any accident previously evaluated because the change only updates existing operating limits with new limits which compensate for continuing neutron fluence. The basis for the analysis remain unchanged;

(2) Create the possibility of a new or different kind of accident than previously evaluated because the change does not alter facility operation in such a manner or to an extent as to generate a new or different kind of accident. Slightly more restrictive operating limits are not expected to significantly change the operation of the facility;

(3) Involve a significant reduction in a margin of safety because the same techniques and margins have been applied that were previously used. Only the fluence-dependent parameters have been changed to update the analysis to compensate for the increased integrated power value. The NRC staff has reviewed the licensee's determination and agrees with their evaluation in this regard and, therefore, proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC. 20037.

NRC Project Director: Lester S. Rubenstein.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 12, 1987.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 4.1–1 for the H.B. Robinson Steam Electric Plant, Unit No. 2. The proposed change would revise the Technical Specifications to add requirements for independent testing of the undervoltage and shunt trip attachments of the reactor trip breakers on a monthly basis, testing of the bypass breakers prior to use, and independent testing of the control room manual switch contacts and wiring during each refueling outage.

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.

Carolina Power & Light Company has reviewed their proposed change in accordance with 10 CFR 50.92(c) and has determined that the proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because

the proposed change adds new testing requirements to help insure the functioning of the reactor trip system when needed. The change is intended to reduce the frequency of postulated Anticipated Transients Without Scram (ATWS) events.

(2) Create the possibility of a new or different kind of accident than previously evaluated because the proposed change adds new testing requirements intended to reduce the frequency of postulated ATWS events.

(3) Involve a significant reduction in a margin of safety because the proposed change adds additional testing requirements which effects an increase in the margin of safety. The NRC staff has reviewed the licensee's determination and agrees with their evaluation in this regard and, therefore, proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC. 20037.

NRC Project Director: Lester S. Rubenstein.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 31, 1985, as supplemented October 10, 1986.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Surveillance Requirement 4.8.2.1.1a.3) concerning electrolyte leakage. The proposed revision would change the requirement to demonstrate the operability of the 125 volt battery bank and charger by verifying, at least once per 7 days, that "there is no visible indication of electrolyte leakage" to the requirement that "there is no visible indication of damaging electrolyte leakage." This change would allow battery operation when there is minor electrolyte leakage.

By letter dated August 15, 1986, the NRC staff requested additional information regarding the proposed amendments. By letter dated October 10, 1986, the licensee modified the July 31, 1985, request to alleviate the staff's concerns regarding battery electrolyte leakage and significant discharge of a battery cell.

The proposed change is justified because Surveillance Requirement 4.8.2.1.1a.1) requires that the parameters in Table 4.8–3, Category A, be met every 7 days. Electrolyte leakage is one of these parameters. The limits on these parameters ensure that the electrolyte level is sufficient for battery operability. Thus, some minor electrolyte leakage, that would be unlikely to cause any significant discharge of a battery cell, can be allowed as long as the minimum electrolyte level is maintained.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the operability of the battery bank and charger continues to be ensured via the implementation of existing Surveillance Requirement 4.8.2.1.1a.1). Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change would not affect the applicable accident analyses and would not introduce new modes of operation. Finally, it would not (3) involve a significant reduction in a margin of safety because the proposed change has no adverse impact on safety and does not reduce the safety margin. Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 31, 1985, as supplemented November 8, 1985, March 7 and October 10, 1986.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) 6.5, 6.6, 6.8 and 6.10, concerning "Administrative Controls." The proposed amendments would (1) seek to add the Superintendent of Integrated Scheduling to TS 6.5.1.3, 6.5.1.5, 6.6.1b, 6.8.2, and 6.8.3c., (2) seek to add the Superintendent of Station Services to TS 6.5.1.8 and 6.8.1c., and (3) change the record retention period in TS 6.10.2 for records of quality assurance activities required by the QA Manual.

The effect of the first part would be to add the position of Superintendent of Integrated Scheduling to the list containing three other superintendents authorized to review and/or approve modifications of safety-related structures, systems or components (TS 6.5.1.3), proposed tests and experiments which affect nuclear safety and are not addressed in the FSAR or the Station Technical Specifications (TS 6.5.1.5), Reportable Events (6.6.1b.), and procedures specified under Specification 6.8.1 and changes thereto (TS 6.8.2 and 6.8.3), as designated by the Station Manager.

By letter dated August 15, 1986, the NRC staff requested additional information regarding the proposed amendments. By letter dated October 10, 1986, the licensee stated that each of the superintendents has received Qualified Reviewer Training which includes review and approval of procedures and procedure changes, and the requirements of 10 CFR 50.59. In addition, each of the superintendents meets the minimum qualifications specified by ANSI N18.1–1971.

The effect of the second part would be to allow the Superintendent of Station Services to review and approve modifications to the station security program and related implementation procedures. Currently, only the Station Manager has this authority. In the October 10, 1986, letter, the licensee stated that the qualifications of the Superintendent of Station Services meet the minimum qualifications requirements of ANSI N18.1–1971 for comparable station positions.

Regarding the third part of the proposed amendments, TS 6.10.2 presently requires that the records of the quality assurance activities be retained for the duration of the Operating License. The proposed change would substitute a new TS 6.10.3 requiring that these records be retained for the period specified by ANSI N45.2.9–1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records of Nuclear Power Plants."

A **Federal Register** Notice regarding parts (1) and (3) of the proposed amendments was published on January 29, 1986 (51 FR 3714).

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards

considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the qualifications of the Superintendents of Integrated Scheduling and Station Services meet acceptable standards for comparable station positions. The proposed change to TS 6.10 would involve only the substitution of a more specific and more appropriate requirement for QA record retention pursuant to a standard accepted by the NRC staff. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes would not affect the applicable accident analyses. Finally, it would not (3) involve a significant reduction in a margin of safety because the proposed addition of two superintendents would not represent a loss of review capability, and would not affect the applicable accident analyses. The change to TS 6.10 would not shorten the retention period for those types of QA records which the Commission has determined should be retained for the plant lifetime, and does appropriately recognize that some of the QA record types have limited significance and may be retained for lesser periods. Thus, the proposed change has no adverse impact on safety and does not reduce the safety margin. Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

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: February 12, 1986, as revised on October 10, 1986, and supplemented on October 20, 1986

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to govern the operation and maintenance of the recently installed and operational containment hydrogen recombiner system (CHRS). TSs 3.16 and 4.4.3, on the hydrogen purge system, would be changed to include the CHRS as the primary method to maintain the post-accident amount of hydrogen in the containment atmosphere below the control limit. The current Oconee TSs 3.16 and 4.4.3 define the conditions necessary to assure the availability for the reactor building hydrogen purge system (RBHPSl as the means for the containment hydrogen control. The hydrogen purge system will be available as a backup system.

Recombination of hydrogen and oxygen in the reactor building atmosphere is an alternate and preferred means of post-accident hydrogen control. The CHRS has a greater capacity than the RBHPS. Also, use of the recombiner will not increase offsite releases of radioactivity. The CHRS consists of two portable hydrogen recombiners, control panel for the recombiners and a portion of the penetration room ventilation system (PRVS). When needed, a recombiner will be moved to the affected unit, anchored to its foundation, and connected by flexible metal piping to PRVS piping which runs to and from containment penetrations. The control panel will be locally mounted near the recombiner.

The system functions by drawing air from the reactor building into a heater in the recombiner. As the air temperature increases, the hydrogen in the air combines with oxygen to form water vapor. The mixture is then returned to the reactor building. The design flowrate is 90 standard cfm, and the design recombination efficiency is 95 percent for hydrogen concentrations greater than 0.5 volume percent.

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 (51 FR 7750). Example (ii) of the types of amendments not likely to involve significant hazards considerations is an amendment that constitutes an additional limitation, restriction, or control not presently included in the TSs: for example, a more stringent surveillance requirement.

The proposed TSs concern the use of hydrogen recombination as the method for controlling the post-accident reactor building hydrogen concentration. Specifically, the current TSs 3.16 and 4.4.3 provide requirements for operation and surveillance of the RBHPS as the method for post-accident hydrogen purging. The proposed TSs will permit the use of CHRS as the primary method to control the post-accident reactor buildinq hydrogen concentrations. The CHRS has a greater capacity than the RPHPS.

Section 15.16 of the Oconee Nuclear Station Final Safety Analysis Report (FSAR) describes the post-accident hydrogen control. The FSAR provides detailed evaluation of hydrogen recombination acceptability as a method for controlling the reactor building hydrogen concentrations. The analyses conclude that recombination is the preferred technique for containment hydrogen control compared to purging since it does not result in offsite releases of radioactivity.

The proposed license amendments will improve the margin of safety in that the application of hydrogen recombination instead of purging as an alternate method for containment hydrogen control provides additional protection since it does not result in offsite releases of radioactivity.

Thus, the proposed license amendments appear to be encompassed by example (ii) of amendments not likely to involve a significant hazards consideration. On this basis, the Commission proposes to determine that these amendments do not involve significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: 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 13, 1986.

Description of amendment request: The proposed license amendments would revise Figure 2.3–1, "Protective System Maximum Allowable Setpoints," and Table 2.3–1, "Reactor Protective System Trip Setting Limits," of the Station's common Technical Specifications (TSs) to increase the reactor coolant system (RCS) high pressure reactor trip setpoint from 2300 psig to 2355 psig.

Basis for proposed no significant hazards consideration determination: Technical justification for increasing the RCS high pressure reactor trip setpoint is contained in Babcock & Wilcox (B&W) Owners Group Topical Report BAW–1890, "Justification for Raising Setpoint for Reactor Trip on High

Pressure," dated September 1985. In its April 22, 1986, Safety Evaluation of this topical report, the Commission concluded that it is acceptable to increase the high pressure reactor trip setpoint for B&W plants from 2300 psig to 2355 psig while the power operated relief valve (PORV) setpoint remains at 2450 psig; that the setpoint change meets the requirements of NUREG–0737, Items II.K.3.2 and II.K.3.7, regarding PORV openings and PORV caused small-break loss of coolant accidents (SBLOCA) and the requirements on this matter embodied in IE Bulletin 79–05B; and the topical report may be referenced in licensing submittals by B&W Owners Group members.

The Commission has made a proposed determination that the proposed amendments involve no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the Station in accordance with the proposed amendments 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 total PORV openings per reactor year is negligibly changed by raising the setpoint for reactor trip on high pressure from 2300 psig to 2355 psig. However, as discussed in the Commission's Safety Evaluation of Topical Report BAW–1890, the probability of a SBLOCA caused by a stuck-open PORV is within the WASH–1400 range of 10^{-2} to 10^{-4} per reactor year. In addition, increasing the reactor trip setpoint in accordance with the proposed amendments will not alter the consequences of a stuck-open PORV. On these bases, the Commission finds that the proposed amendments would not increase the probability or the consequences of an accident.

Since the design high pressure reactor trip setpoint is 2355 psig, the original Final Safety Analysis Report analyses remain applicable for the increased setpoint. Raising the RCS high pressure trip setpoint would not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed setpoint change meets the requirements of NUREG–0737, Items II.K.3.2 and II.K.3.7 regarding PORV openings and PORV caused SBLOCA, as well as the requirements on this matter embodied in IE Bulletin 79–05B. In addition, the licensee states that the proposed change will result in improved operational safety through a reduction in challenges to safety systems. On these bases, the Commission finds that the proposed change would not involve a significant reduction in a margin of safety.

Based on the above, the Commission proposes to find that the proposed license amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: John F. Stolz.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 15, 1987.

Description of amendment request: The proposed amendment would add a temporary note to Technical Specification 3.7.7.1 to allow the Control Room Emergency Ventilation System (CREVS) to be temporarily removed from service for up to 60 days. This request is being made to allow CREVS modifications, which will increase the capability of the system, and to remove an air-tight partition of steel plates which currently separates the Beaver Valley Unit 1 and Unit 2 portions of the control room.

Basis for proposed no significant hazards consideration determination: The proposed amendment is a temporary revision which would provide an alternate means of emergency control room pressurization during that time period when the Beaver Valley Unit 1 CREVS is out of service for equipment modifications and to allow removal of the partition that currently physically separates the Unit 1 and Unit 2 portions of the control room. The Beaver Valley Unit 2 CREVS is sized to provide the required ventilation system capacity for both control room areas. During the temporary period when the Beaver Valley 1 CREVS is out of service, control room habitability will be maintained by the Unit 2 CREVS, and the required support systems will also be available (including the applicable portions of the emergency power systems). The probability of occurrence or consequences of accidents (FSAR Chapter 15 accidents and offsite accidents involving chemical releases) previously evaluated will not be significantly increased. The implementation of the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because existing systems are only being modified to increase their capability, and during the modification, Unit 2 systems will provide the needed service. Furthermore, the amendment will not involve a significant reduction in the margin of safety because equivalent means of control room habitability and pressurization will be provided. Therefore, the staff proposes to determine that the amendment involves a no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Lester S. Rubenstein.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: December 19, 1986.

Description of amendment request: The proposed change adds a license condition to require implementation of Florida Power & Light Company's (FPL) Plan for the Integrated Scheduling of Plant Modifications for Turkey Point Units 3 and 4 (the Plan). The Plan describes the responsibilities of FPL and the Nuclear Regulatory Commission (NRC); provides a summary description of the FPL Integrated Schedule Program; describes the Integrated Schedules; describes the mechanisms for changing the Integrated Schedules; describes the periodic reporting requirements; and describes the mechanism for changing the Plan.

The Integrated Schedule program will enable FPL to effectively manage implementation of modifications which have been required or proposed by the NRC, as well as other measures which have been identified by FPL, and which will ensure the continued safe, prudent, reliable, and economic operation of the Turkey Point Plant.

This program was developed to coordinate and schedule all necessary work at the Turkey Point Plant, whether mandated by NRC or identified by FPL and others. The program objectives are to: (1) Conform to regulatory requirements; (2) provide sufficient lead times for modifications; (3) minimize changes for operators; (4) assure training requirements are fulfilled; (5) effectively

manage financial and human resources; and (6) specify the framework for changes to developed schedules.

The program reflects that fiscal and manpower resources are finite and that a limit on the onsite manpower is necessary. The program integrates all presently planned work at Turkey Point over a nominal five year period to ensure that individual tasks are effectively scheduled and coordinated. It provides a means for new requirements to be accommodated taking into account schedule and resource constraints.

The proposed changes to the Turkey Point Technical Specifications are: for Facility Operating License DPR–31, the license will be amended by adding a new license condition, Condition K, to read as follows:

K. Integrated Schedule

1. The plan for the Integrated Scheduling of Plant Modifications for Turkey Point Units 3 and 4 (the Plan), submitted on December 19, 1986 is approved.

a. The Plan shall be followed by the licensee from and after the effective date of this amendment.

b. Changes to dates for completion of items identified in Schedule B do not require a license amendment. Dates specified in Schedule A shall be changed only in accordance with applicable NRC procedures.

2. This license amendment shall be effective December 31, 1989, subject to renewal upon application by the licensee.

For Facility Operating License DPR–41, the license will be amended by adding a new license condition, Condition J, to read as follows:

J. Integrated Schedule

1. The plan for the Integrated Scheduling of Plant Modifications for Turkey Point Units 3 and 4 (the Plan), submitted on December 19, 1986 is approved.

a. The Plan shall be followed by the licensee from and after the effective date of this amendment.

b. Changes to dates for completion of items identified in Schedule B do not require a license amendment. Dates specified in Schedule A shall be changed only in accordance with applicable NRC procedures.

2. This license amendment shall be effective December 31, 1989, subject to renewal upon application by the licensee."

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 or an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments implement an administrative program to provide for scheduling changes and notification of scheduling changes, and does not affect in any way the design or operation of the plant. The program would enhance plant safety by more effectively controlling the number and scheduling of plant modifications, thereby ensuring that issues required for safe operation of the plant receive priority and are completed in a timely manner.

In addition, the amendment is consistent with the NRC guidance in Generic Letter 83–20 dated May 9, 1983 and Generic Letter 85–07 dated May 2, 1985.

Since the proposed amendments will not affect the existing design nor result in any changes to the operational limitation of this plant, the staff proposes to determine that the amendments do not involve a significant increase in the probability or consequences of an accident from any accident previously evaluated; do not create the possibility of a new or different kind of accident previously evaluated; and do not involve a significant reduction in a margin of safety. The staff, therefore, proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: September 9, 1986.

Description of amendment request: This amendment would modify the Technical Specifications (TS) to clarify the surveillance requirements for refueling interlocks by (a) stating that the reactor mode switch refueling interlocks shall be functionally tested "prior to core alterations" rather than the current "prior to any fuel handling with the head off the reactor vessel" and (b) adding surveillance requirement discussions that specifically address the fuel grapple hoist load setting interlock and the auxiliary hoist load setting interlock.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria in 10 CFR 50.92. Providing example of amendments that are considered not likely to involve a significant hazards consideration (51 FR 7751). One such example is (i) a purely administrative change to technical specifications.

The proposed modification consists of changes in wording and format that clarify the original wording but do not change the original intent of the surveillance requirements. Therefore since there have been no changes in the requirements the proposed change is an editorial change and is similar to example (i).

On this basis the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: August 25, 1986, supplemented January 23, 1987.

Description of amendment request: The amendment would modify the Technical Specification (TS) to change the high room temperature setpoint that automatically closes the Reactor Water Cleanup Unit (RWCU) isolation valves in the event of a leak or pipe break inside the RWCU rooms. It would increase this setpoint from 120° F to 150° F in order to eliminate some of the unnecessary valve isolations that occur due to high RWCU room temperature that are not related to pipe breaks or leaks in the RWCU piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a

significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change involves an increase in the RWCU room temperature setpoint at which the RWCU isolation valves would automatically close if a pipe break or leak occurred in the RWCU room. The RWCU pipe break accident was evaluated in Section 15A.5.5 of the Hatch Unit 2 FSAR. The proposed change does not affect the cause of a pipe break and therefore, does not affect the probability of the pipe break accident. The increase in the temperature setpoint will have essentially no affect on the consequences of a full pipe break in the RWCU room because the increase in the temperature would be so rapid that by the time it reach 150°F or the time it takes to reach 120°F is insignificant compared to the time it takes to close the isolation valves after the setpoint is reached.

The smallest leak rate requiring automatic actuation of the isolation valves is 25 gallons per minute. The difference in consequences of an accident involving this 25 gallon per minute leak with a 150°F as compared to a 120°F setpoint amounts to an increase in total leakage into the RWCU prior to isolation of the RWCU of a few hundred gallons of water. This is insignificant with respect to the 7500 gallons (approximately) water release estimated in the full pipe break accident analysis.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the physical features of the plant are not altered and no new modes of operation are created. The postulated effects of this change are bounded by the existing Accident Analysis of the RWCU pipe break as discussed in the Hatch Unit 2 FSAR.

The proposed change does not involve a significant reduction in the margin of safety because (1) the system continues to isolate the postulated leaks and breaks with little water released prior to isolation compared to the design break analysis as discussed in Section 15.A.5.5 of the Hatch Unit 2 FSAR, (2) the environmental qualification of the affected components remains valid, and (3) allowing the RWCU to operate with a higher RWCU room temperature will prevent some unnecessary forced outages of the RWCU that are currently caused by the existing lower temperature setpoint and the resultant automatic isolation of the RWCU.

On the basis of the above, the Commission has determined that the requested amendments meet the three standards and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania.

Date of amendment request: January 28, 1987.

Description of amendment request: The TMI–1 Fire Detection System in the Auxiliary, Fuel Handling, Intermediate and Control Buildings, and the Fire Suppression System in the Auxiliary Building are being expanded to satisfy the commitments made concerning 10 CFR Part 50, Appendix R, and approved in NRC Safety Evaluations dated June 4, 1984, and December 30, 1986. The amendment would revise the TMI–1 Technical Specifications (TSs) to include expansions of existing fire detection systems to cover new areas. Additionally, it would allow converting a manually actuated deluge water spray system to an automatically actuated sprinkler system in the Auxiliary Building containment penetration area and would allow installing a water curtain system in one location. The amendment would also correct a typographical error in the existing TSs.

Basis for proposed no significant hazards consideration determination: A proposed amendment to an operating license for a facility involves no significant hazards considerations if the three standards of 10 CFR 50.92(c) are met. Pursuant to the provisions of 10 CFR 50.91, the licensee has provided an analysis of no significant hazards considerations using the Commission's standards. The Commission's staff agrees with the licensee's analysis. Each standard of 10 CFR 50.92(c) is discussed in turn.

Standard 1. Operation of the facility in accordance with the proposed amendment should not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The design basis event related to this change is a fire in the affected fire zones. The proposed amendment has no effect on the probability of occurrence of this design basis event. The potential consequences of a fire in the affected fire zones are reduced because the proposed change provides additional assurance that the fire detection instrumentation and suppression provided in each fire zone are operable and therefore capable of promptly detecting, confining and extinguishing the fire.

Standard 2. Operation of the facility in accordance with the proposed amendment should not create the possibility of a new or different kind of accident from any accident previously evaluated. The design basis event related to this change is a fire in the affected fire zones. The proposed amendment has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated. The proposed amendment provides additional assurance that the fire detection instrumentation and suppression systems installed to satisfy 10 CFR Part 50, Appendix R, requirements are operable and are unrelated to the possibility of creating a new or different kind of accident.

Standard 3. Operation of the facility in accordance with the proposed amendment should not involve a significant reduction in a margin of safety. The proposed amendment provides for the control of the additional fire detection instrumentation and suppression installed to satisfy 10 CFR Part 50, Appendix R, requirements. The proposed amendment also increases the minimum number of detectors required to be operable in the Control Room Cabinets and the Control Room Area in Control Building Elevation 355'. Therefore, the overall margin of safety for the plant is increased.

The typographical error being corrected concerns the incorrect spelling of a single word and is purely administrative in nature. This change is considered to fall within the scope of example (i) of amendments that are not considered likely to involve significant hazards considerations contained in the Commission's guidelines published within 51 FR 7751.

Accordingly, based on the above discussion, the Commission proposes to determine that the application for amendment does not involve significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: January 16, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications for the emergency diesel generators to improve and maintain reliability (Per Generic Letter 84–15 issued July 2, 1984), change a number of related Technical Specifications to improve clarity and correct errors, and revise the emergency battery loads testing. to allow simulated connected loads during tests.

Basis for proposed no significant hazards consideration determination: The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Generic Letter 84–15 on the subject "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," established new requirements that would reduce the risk of core damage from station blackout events by, among other things, changes to the technical specifications which support a desired diesel generator reliability goal. The licensee proposes to adopt many of the technical specification changes which were determined by the NRR as risk reduction actions. The proposed changes, therefore, should reduce the probabilities and consequences of accidents previously analyzed and should increase the margin of safety. The proposed changes will not place the plant in a new or unanalyzed condition, therefore, the changes will not create a new or different kind of accident from any previously analyzed.

The licensee also proposes to change a number of related Technical Specifications to improve clarity and correct errors. Several changes were made to reflect plant design and to make the two Units' Technical Specifications alike. There are also a number of editorial changes and error corrections. All of these changes are administrative in nature and do not change the probabilities or consequences of any previously analyzed accidents. The changes reflect plant design similarities and correct errors, therefore, there is no change to plant operation which would result in a new or different kind of accident. The corrections and clarifications will not result in a reduction in any margin of safety.

In amendments 86 and 72 for Unit Nos. 1 and 2 respectively, the licensee was granted approval to test the battery capacities with simulated loads using a load bank in place of the actual loads using the static inverters. The surveillance requirement being changed is to determine the condition of the battery; a separate surveillance test is required for determining the performance discharge through actual battery loads. The use of a load bank which simulates actual loads should not affect the test nor would it significantly increase the probabilities or consequences of any previously analyzed accident. While the battery is connected to the load bank during testing, the battery cannot affect other systems or components which are required to be operable. Therefore, the change would not create a new or different kind of accident from any previously analyzed. The batteries will continue to be capacity tested on the same frequency; only the method of loading the batteries is changed. Since the change will not impact the batteries in the modes when the batteries are required to be operable, the change will not affect the ability of the batteries to perform their safety function. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

On the basis of the above consideration, the staff proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 14, 1986.

Description of amendment request: The Iowa Electric Light and Power Company (the licensee) proposes to change the Technical Specifications for the Duane Arnold Energy Center to (1) eliminate the requirement for Operations Committee review of routine procedure changes that do not affect safety related equipment design bases or the safety objectives of administrative controls by substituting a screening process, and (2) invoke minor administrative revisions to reflect changes in nomenclature.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

In reviewing this proposed request for Technical Specification change we have concluded that this amendment:

(1) does not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the review procedures for these changes which affect safety-related equipment design bases or safety objectives of administrative controls. The word changes noted above are to achieve consistency in nomenclature and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) does not create the possibility of a new or different kind of accident because the use of a senior licensed operator and member of the plant supervisory staff or a plant supervisory staff member who possesses a senior operator's license to review routine procedure changes will provide a comprehensive review of plant procedures and their effect on system interrelationships. For those procedure changes which affect safety-related equipment design bases or the safety objectives of administrative controls, review and approval by the Operations Committee will still be required. The word changes which are needed to achieve consistency in nomenclature are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident.

(3) does not involve a significant reduction in a margin of safety because changes to

existing procedures which are identified to potentially affect the safety design bases of equipment or safety objectives will not only have an additional level of review (a senior licensed operator and a supervisory plant staff member who possesses a senior operator's license), but also review by the Operations Committee. This will result in an equivalent or more stringent review process as compared to the existing process.

Based on an evaluation of the above licensee analysis, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: November 26, 1986.

Description of amendment request: The proposed license amendment would revise Duane Arnold Energy Center (DAEC) Technical Specification Section 3.7/4.7, which requires Standby Gas Treatment System (SGTS) surveillance testing at a flowrate of 4,000 cfm. The proposed changes would allow those SGTS tests that are required to be performed at the design flowrate to be performed in the flowrate range of design flow minus 10% (3,600 cfm) to design flow (4,000 cfm).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

In reviewing this proposed request for Technical Specification change we have concluded that this amendment:

(1) does not involve a significant increase in the probability or consequences of an accident previously evaluated because the Standby Gas Treatment System will still perform its design functions and will be demonstrated to do so using this flowrate range. These tests will be performed using the same acceptance criteria for inplace cold [dioctylphthlate] DOP and halogenated hydrocarbon removal and maintaining a minimum 1/4 inch w.g. negative pressure in secondary containment currently in the DAEC Technical Specifications.

(2) does not create the possibility of a new or different kind of accident because it involves no modifications to the plant and affects only the testing of the Standby Gas Treatment System. The changes to the testing will not affect the performance or the design basis of the Standby Gas Treatment System as described in the updated FSAR.

(3) does not involve a significant reduction in a margin of safety because performing the revised Technical Specification Surveillance Requirements at an SGTS train flow near but below 4,000 cfm (e.g., between 3,600 and 4,000 cfm) is consistent with the design basis of the system. The SGTS flow control system will be tested to meet the same iodine retention requirement and maintain flow below 4,000 cfm and meet the 1/4 inch w.g. negative pressure requirement of Technical Specification Surveillance 4.7.C.1.c.

Therefore, this proposed license amendment is judged to involve no significant hazards consideration.

Based on an evaluation of the above licensee analysis, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N W, Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: January 13, 1987.

Description of amendment request: Louisiana Power and Light Company (LP&L) has proposed the addition of new technical specification (No. 3.3.3.7.3) for the Broad Range Toxic Gas Detection System (BRTGDS) to satisfy Condition 2.C.4, "Broad Range Toxic Gas Detectors," of Facility Operating License No. NPF–38 and Supplement No. 6 to the Safety Evaluation Report (NUREG–0787).

Waterford 3 was allowed to operate during the first cycle without a BRTGDs system due to near-term compensatory measures i.e., periodic surveys of toxic gas inventories, a hot line communication with the St. Charles Parish Emergency Operations Center, a control room operator and plant personnel training program, and procedures with respect to response to toxic gases. Although these measures were considered adequate for short-term operation, an additional level of protection will be provided by the BRTGDS for operation over the expected plant lifetime.

The proposed BRTGDS would include two redundant photoionization detectors. These detectors would monitor the atmosphere in the reactor auxiliary building outside air intake duct. Whenever the concentration of the detectable gases exceeds a preset limit, these detectors will each induce an electric current in the associated circuit through photoionization, thus generating a signal. This signal automatically switches the control room air conditioning system to the isolation mode of operation.

The Waterford Steam Electric Station, Unit 3 control room operators are presently protected from accidental releases of chlorine and ammonia by separate chlorine and ammonia detectors which monitor the atmosphere in the outside air intake duct. The detectors sound an alarm and isolate the control room if the concentration of either of these gases exceeds its respective preset limit.

In addition, LP&L is a participant in the St. Charles Parish emergency hot line, which can be expected to alert the control room within five minutes of being notified of any serious release of hazardous chemicals in the area, thus allowing the operators to take immediate protective action. The BRTGDS will thus supplement the present defense-in-depth toxic chemical protective measures and provide additional toxic chemical protection.

This new technical specification will require two independent broad range gas detection systems to be operable with their alarm/trip setpoints adjusted to actuate at the lowest achievable IDLH (Immediately Dangerous to Life and Health) gas concentration level of detectable toxic gases. They are also required to provide reliable operation. This proposed technical specification is to be applicable in all modes of operation. Should the above requirements not be met, one of the following actions will be required. When only one broad range gas detection system is operable, the inoperable system must be restored to operable status within seven days, or within the next six hours the plant must initiate and maintain operation of the control

room ventilation system in the recirculation mode of operation. When both systems are inoperable, the control room ventilation system must be initiated and maintained in the recirculation mode of operation within one hour. The provisions of Specification 3.0.4 (Entry into an Operational Mode) are not applicable to this proposed technical specification.

The proposed surveillance requirements for this technical specification demand that each broad range gas detection system be demonstrated operable by a performance of a channel check at least once every twelve hours, a channel functional test at least once every 31 days, and a channel calibration at least once every seven days.

LP&L has proposed that the Bases (3/4.3.3.7) for this section be amended to include the BRTGDS with the other chemical detection systems. It would state that the operability of the BRTGDS shall ensure that sufficient capability is available to promptly detect and initiate protective action in the event of an accidental chemical release. The amended Bases would also provide further definition of the system and indicate that the setpoint is based on testing and operating experience as a result of the Waterford 3 area chemical atmosphere profile. Due to possible environmental conditions, this setpoint is subject to change and therefore would be established and controlled by procedure.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration, because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed addition has no effect on the assumptions contained in the safety analyses. The technical specifications which preserve the safety analysis assumptions are likewise unaffected by the proposed change. The Waterford 3 program for the protection of control room operators is comprised of various in-depth defensive measures. The control room operators are protected from accidental releases of chlorine and ammonia by dedicated chlorine and ammonia detectors, which monitor the atmosphere in the outside air intake duct and will sound an alarm and isolate the control room if the concentration of either of these gases exceeds its respective preset limit. In addition, LP&L is a participant in the St. Charles Parish emergency hot line, which can be expected to alert the control room within five minutes of being notified of any serious release of hazardous chemicals in the area, thus allowing the operators to take immediate protective action. The proposed BRTGDS will supplement the present defense-in-depth toxic chemical protective measures and will therefore not increase the probability or consequences of any accident previously analyzed.

(2) The proposed change will not physically affect existing chlorine and ammonia systems. Therefore, the proposed change will not create the possibility of a new or different kind of accident.

(3) The Waterford 3 safety limits and margins are defined and maintained by the Technical Specifications. This proposed technical specification is an additional limitation on plant operation and does not affect the safety limits or margins contained in the other Waterford 3 technical specifications. The proposed change will therefore not involve any reduction in a safety margin.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 CFR Part 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications.

In this case, the proposed change in similar to Example (ii) in that the BRTGDS has not previously had a technical specification associated with it.

As the changes requested by the licensee's January 13, 1987 submittal fit Example (ii) as well as satisfy the criteria of 50.92, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St. NW., Washington, DC 20037.

NRC Project Director: George W. Knighton.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 22, 1986 as revised December 9, 1986 and January 29, 1987.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) for alternating current electrical power systems (TS 3/4.8.1) to reduce excessive testing of the three onsite emergency diesel generators (diesel generators 11, 12 and 13) consistent with the recommendations provided in the Commission's Generic Letter 84–15 "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," July 2, 1984. The specific changes to the Technical Specifications would include the following changes to Limiting Conditions for Operation in TS 3.8.1.1:

(1) Action Statement a. (actions to be taken upon declaring either one of the two required offsite circuits or diesel generator 11 or 12 inoperable) would be divided into two action statements; Action Statement a, for one offsite circuit inoperable and Action Statement b, for either diesel generator 11 or 12 inoperable. Proposed Action Statements a and b would require the performance of Surveillance Requirement 4.8.1.1.2.a.4 (verifying operability of the remaining diesel generators) within 24 hours of declaring the offsite circuit or diesel generator inoperable. The present requirement is to perform the surveillance within 2 hours and at least once per 8 hours thereafter. Also, the time allowed for restoration to operable status (72 hours) is clarified by specifying that inoperable equipment will be restored to operable status within 72 hours "from time of initial loss."

(2) Action Statement b. (actions to be taken upon declaring one offsite circuit and either diesel generator 11 or 12 inoperable) would be designated Action Statement c and would be changed to require the performance of Surveillance Requirement 4.8.1.1.2.a.4 within 8 hours. The present requirement is to perform this surveillance testing within 2 hours and at least once per 8 hours thereafter. Also, the statement regarding time allowed for restoration of all required offsite circuits and diesel generators to operable status (72 hours) would be deleted because it would be redundant

to similar statements in proposed Action Statements a and b.

(3) Action Statement c would be designated Action Statement d and only the references to other action statements would be changed to be consistent with the proposed TS.

(4) Action Statement d (actions to be taken upon declaring two offsite power circuits inoperable) would be designated Action Statement e and would be changed to require performance of Surveillance Requirement 4.8.1.1.2.a.4 within 8 hours. The present requirement is to perform this surveillance testing within 2 hours and at least once per 8 hours thereafter. The time allowed for restoration of both offsite power circuits to operable status would be deleted because it would be redundant to a similar statement in proposed Action Statement a.

(5) Action Statement e (actions to be taken upon declaring diesel generators 11 and 12 inoperable) would be designated Action Statement f and would be changed by deleting the present requirement to perform Surveillance Requirement 4.8.1.1.2.a.4 for diesel generator 13 within two hours from the time of initial loss and at least once per 8 hours thereafter. Performance of Surveillance Requirement 4.8.1.1.2.a.4 for diesel generator 13 within 2 hours of the restoration to operability of either diesel generator 11 or 12 would be a condition for continued operation.

(6) Action Statement f (actions to be taken upon declaring diesel generator 13 inoperable) would be designated action statement g and would be changed to require the performance of Surveillance Requirement 4.8.1.1.2.a.4 for diesel generators 11 and 12 within 2 hours. The present requirement is to perform this surveillance testing within 2 hours and at least once per 8 hours thereafter.

Additional changes would be made to the Surveillance Requirements in TS 4.8.1.1 as follows:

(7) Surveillance Requirement 4.8.1.1.2.a.4 (testing required to demonstrate diesel generator starting capability) would be revised by changing the term for initial testing conditions from "ambient" to "standby" and by adding a footnote to specify allowable initial conditions for testing.

The proposed footnote would allow all diesel generator starts to be preceded by an engine prelube period. The footnote would also allow surveillance testing to be preceded by warmup procedures except that a fast cold start from standby conditions would be required once per 184 days. The present requirement is to perform all testing from ambient (standby) conditions.

(8) Surveillance Requirement 4.8.1.1.2.a.5 (testing required to demonstrate diesel generator loading capability) would be revised by adding a footnote to specify allowable loading conditions for testing. The footnote would allow gradual loading during surveillance testing except that fast loading (within 60 seconds) would be required once per 184 days. The present requirement is to perform all testing with fast loading.

(9) Table 4.8.1.1.2–1 (diesel generator test frequency as a function of valid test failures) would be revised to: (a) make the maximum test frequency once per 7 days instead of the present maximum frequency of once per 3 days; (b) base the determination of number of test failures on a per diesel generator basis instead of the present requirement to base the number of failures on a per nuclear unit basis; (c) clarify the starting date for counting valid tests by adding the OL issuance date; and, (d) clarify the use of the table by deleting the statement "Entry in this test schedule shall be made at the 31 day test frequency."

The TS Bases 3/4.8.1 (alternating current sources) would be changed to reflect the proposed changes to TS 3/4.8.1 regarding a reduced maximum test frequency and determination of number of test failures on a per diesel generator basis rather than a per nuclear unit basis.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

The objective of diesel generator (DG) periodic surveillance testing is to meet the reliability goals of Regulatory Guide 1.108 "Periodic Testing of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants." Such surveillance testing provides assurance of the availability of the diesel generators in mitigating various transients and postulated accidents following a loss of offsite power. The required reliability is demonstrated with more frequent testing as the number of test failures increases. Standard Technical Specifications require that the DGs be tested in accordance with Regulatory Guide 1.108 where the test interval depends on the demonstrated DG performance and the test interval is established on a per nuclear unit basis.

As described in Generic Letter 84–15, the staff has for sometime been evaluating the frequency of DG testing and the associated potential for severe degradation of engine parts. The staff concluded that this test frequency can be reduced to minimize this potential. Generic Letter 84–15 identified the following means by which periodic surveillance testing of diesel generators can be changed to increase availability of onsite electric power without significantly affecting diesel generator reliability:

(a) testing of remaining operable diesel generators following failure of an offsite power circuit or diesel generator can be reduced from a starting test of each diesel generator every 8 hours to one test of each diesel generator;

(b) testing of all diesel generators based on the number of failures of all diesel generators for one nuclear unit can be changed to testing of the restored diesel generator based on the number of failures of that diesel generator;

(c) the test frequency for an individual diesel generator based on the number of its failures can be reduced from the present maximum of once every three days to a maximum of once every seven days; and,

(d) the number of cold fast starts during surveillance testing can be reduced by using engine prelubrication and warmup procedures recommended by the diesel engine manufacturer to reduce engine stress and wear for most tests.

Changes (1), (2), (4), (5), and (6) to the Technical Specifications would reduce the number of tests of remaining operable diesel generators following loss of an alternating current power source, thus reducing wear of the diesel generators and consequently increasing their reliability, and availability because of less frequent outages for repairs. Change (3) is an editorial change to reference redesignated action

statements in the proposed amendment. Changes (7) and (8) would minimize the number of cold fast starting and loading tests and allow prelubrication and warmup procedures for most surveillance testing, further reducing wear of the diesel generators and further increasing their reliability and availability. Change (9) would decrease the number of tests of good diesel generators and decrease the maximum frequency of testing failed diesel generators after their restoration to operable status. However, the reliability goal has not been changed by the changes to proposed TS Table 4.8.1.1.2–1. Other changes in the limiting conditions for operation, surveillance requirements and bases are administrative or editorial and do not affect the TS requirements.

Based on its preliminary review, the staff concludes that the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes will increase diesel generator reliability and availability by eliminating excessive testing which can lead to increased wear and more frequent diesel qenerator failures. The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not involve modifications to plant equipment or procedures. The proposed changes do not involve a significant reduction in a margin of safety because the reliability goal of the testing schedule for failed diesel generators after they are repaired would remain the same.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications regarding diesel generator testing do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washinoton, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 28, 1986 as amended November 11, 1986 and February 13, 1987.

Description of amendment request: The proposed amendment would change the facility Technical Specifications (TSs) as follows: (1) Change the wording in TS 3/4.6.2 and Bases 3/4.6.2.3 to indicate only one drywell air lock instead of "each" drywell air lock; (2) combine parts 1, 2 and 3 of Action Statement a. of TS 3.6.2.3 into one statement; (3) change the drywell overall air lock leakage test frequency in Surveillance Requirement 4.6.2.3.b.1 from the present frequency of once per 6 months, to each cold shutdown if not performed within the previous 6 months; (4) change Surveillance Requirement 4.6.2.3.c regarding the verification that only one door in the air lock can be opened at a time from once per 6 months to once per 18 months; and, (5) change Surveillance Requirement 4.6.2.3.d.1 so that the drywell air lock inflatable seal pressure instrumentation channel functional tests will be run once per 18 months rather than once per 31 days.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

Change (1) corrects an error in the TSs; reference to "each" drywell air lock is incorrect because there is only one personnel air lock in the drywell. Change (2) clarifies Action Statement a. because as presently written parts 1, 2 and 3 could be interpreted as separate actions whereas they are intended to be part of the same action. Because changes (1) and (2) correct and clarify the TSs and do not change the TS requirements, these two changes would not involve a significant increase in the probability or consequences of an accident previously evaluated nor would they involve a significant reduction in a margin of safety. Because changes (1) and (2) do not involve a change in equipment or procedures they would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changes (3), (4) and (5) involve changes to the surveillance tests for determining operability of the drywell air lock. The present tests require entering the drywell air lock during high power operation because the test intervals are less than intervals for refueling when the plant is in cold shutdown (presently 12 months and in the future, 18 months). During high power operation, the drywell and the drywell air lock are high radiation areas: therefore, plant procedures restrict entry into the drywell or the drywell air lock when power level is greater than 5% of rated power. With the present surveillance requirements, the tests required by TS 4.6.2.3.c (verifying that only one door can be opened at a time) and by TS 4.6.2.3.d.1 (demonstrating operability of the inflatable seal pressure instrumentation channels for each door) are performed only for the outer door when the reactor is operating greater than 5% power. Because testing the inner door would require entering the high radiation field in the drywell air lock, the inner door is declared inoperable and the outer door is locked closed and verified to be locked closed at least once per 31 days as permitted by Action Statement a. of TS 3.6.2.3. The present overall drywell airlock leakage test required by TS 4.6.2.3.b is performed during power operation by declaring the air lock inoperable and entering the air lock briefly to complete the test within the 24 hours as permitted by Action Statement b. of TS 3.6.2.3. Before the air lock is entered to complete the airlock leakage test, the operability of the inner door seal is assured by verifying the inner door seal pressure is greater than 60 psig as required by Action Statement c. of TS 3.6.2.3. Change (3) would require the airlock leakage test to be performed during each cold shutdown (including forced outages) unless it has been performed during the previous 6 months. This new requirement would eliminate the necessity for licensee personnel to enter a high radiation field to perform the tests and would eliminate the opening of the outer door during high power operation. Assuming no forced outages during an 18-month fuel cycle, the potential maximum test interval would be increased thus increasing the potential for failure of a leakage barrier in the air lock between tests. However, the major leakage potential exists for

the inflatable door seals which would remain inflated for the proposed interval instead of being deflated and reinflated for the present 6-month test interval. The greater potential for failure of the door seals during the longer test interval is offset by the lesser potential for failure due to less openings of the outer door for test purposes. Furthermore, the periodic verification (once per 7 days) of the airlock door inflatable seal system pressure (TS 4.6.2.3.d.2) will be retained in the Technical Specifications, thus assuring that the airlock doors are sealed and closed during the interval between tests. Changes (4) and (5) would eliminate the present requirements to test each airlock door during high power operation to verify proper operation of the interlock which prevents opening of both doors at the same time (TS 4.6.2.3.c) and to demonstrate operability of the seal pressure instrumentation channels (TS 4.6.2.3.d.1). In the implementation of the present requirements, however, because of high radiation in the air lock, these tests are not run during power operation (as permitted by Action Statement a.). Changes (4) and (5), which would permit tests of the door interlocks and seal pressure instrumentation channels to be made during cold shutdown (once per 18 months) would not therefore result in significant changes to the implementation procedures.

Because changes (3), (4) and (5) would result in less airlock door openings during power operation when the potential accidental release of fission products is greatest and another means is retained in the TS for verifying the door seals are operable between surveillance tests (TS 4.6.2.3.d.2), changes (3), (4) and (5) would not involve a significant increase in the consequences of an accident previously evaluated. Because changes (3), (4) and (5) involve only changes to surveillance tests of accident mitigation features they would not involve a significant increase in the probability of an accident previously evaluated nor would these changes create the possibility of a new or different kind of accident from any accident previously evaluated. Because changes (3), (4) and (5) do not involve a change in TS limiting conditions for operation or safety analyses, they would not involve a significant reduction in a margin of safety.

Accordingly, for the reasons cited above, the Commission proposes to determine that these five changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

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NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 17, 1986.

Description of amendment request: The October 17, 1986 application for license amendment requested four changes to the Technical Specifications (TSs). One of the changes, the addition of TSs for smoke detectors in the control rod drive repair room, is not addressed in this notice. The other three changes to TSs which are addressed herein are: (1) Change of action Statement b. of TS 3.4.2.1 by deleting the requirement to close a stuck-open safety relief valve within two minutes and by changing the limit of the suppression pool water temperature from 105 °F to 110 °F; (2) addition of a requirement in TS Table 3.8.4.2–1 for a bypass of the thermal overload protection device for the motor operated valve in the reactor core isolation cooling (RCIC) turbine bypass line; and, (31 change of the nomenclature of a valve in TS Table 3.6.6.2–1 for the residual heat removal (RHR) discharge line to the liquid radwaste system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows:

Change (1) would delete the two-minute time limit for closing one or more stuck-open safety relief valves and increase the suppression pool temperature limit from 105 °F to 110 °F. The purpose of the time limit for closing stuck-open safety relief valves is to assure the valve is closed as soon as possible and thus preserve the maximum capability of the suppression pool to absorb fission product decay heat and reactor coolant and structure sensible heat during a reactor blowdown without exceeding containment structural limits. Necessary and sufficient conditions for preserving adequate capability of the suppression pool is obtained by specifying minimum pool water level and maximum pool water temperature in TS 3.6.3.1. The specification of a time limit to close a stuck-open safety relief valve is therefore not necessary to preserve an acceptable heat absorption capability in the suppression pool. The two-minute time limit was based on the estimated minimum time for an operator to identify the condition and close the valve with a hand switch in the control room. An April 7, 1986 stuck-open safety relief valve event showed that two-minutes was not adequate to determine the condition, operate the valve hand switch and verify that the valve had closed; therefore, the reactor was manually tripped. Analysis after the trip showed the valve had closed four to five seconds before the trip. Simulated stuck-open relief valves on a simulator have shown that from four to six minutes were required to close the valve when the operators were aware of the condition to be simulated. Calculations indicate the suppression pool temperature would be less than the limiting temperature for these longer times. The safety analysis of a stuck-open relief valve takes no credit for reactor shutdown within two minutes. The radiological release to the suppression pool following a stuck-open safety relief valve is less than the release from a main steam isolation valve closure. Because the time limit for closing a stuck-open safety relief valve is not necessary in addition to the temperature limit, because the time limit can cause unnecessary reactor trips, and because the safety analyses do not depend on the time limit, deleting the time limit does not involve a significant increase in the consequences of an accident previously evaluated. The change in Action Statement b. of TS 3.4.2.1 to require plant shutdown if pool water temperature exceeds 110 °F instead of the presently specified 105 °F

would make this action statement consistent with Action Statement b.2 of TS 3.6.3.1 which specifies pool water temperature limits. Because the limiting pool temperature would not be exceeded, the change from 105 °F to 110 °F in the action statement does not involve a significant increase in the consequences of an accident previously evaluated. Because change (1) affects accident mitigation only, it does not involve a siqnificant increase in the probability of an accident previously evaluated. Change (1) does not create the possibility of a new or different kind of accident from any accident previously evaluated because the time limit has not been considered in safety analyses and the proposed temperature limit is consistent with that used in other safety analyses. Change (1) does not involve a significant reduction in a margin of safety because the proposed temperature limit is the same as that used in the specification of suppression pool heat absorption capability.

The Commission has also provided guidance concerning the application of the three standards in 10 CFR 50.92 by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7751) . The NRC staff has made a preliminary review of changes (2) and (3) in the licensee's submittal. A discussion of these examples as they relate to changes (2) and (3) follows.

One of the examples of actions involving no significant hazards consideration, (ii), is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Change (2) is similar to this example because it would add a requirement to continuously bypass the thermal overload device for a motor-operated valve in the RCIC system. The bypass will meet the requirements of Regulatory Guide 1.106, "Thermal Overload Protection for Electric Motor-Operated Valves." Addition of the bypass will increase the availability of the valve, which is used in the startup of the RCIC turbine prior to opening the main steam supply valve.

Another example of an action involving no significant hazards consideration, (i), is a purely administrative change to Technical Specifications: for example, a change in nomenclature. Change (3) is similar to this example because the nomenclature of a valve would be changed. The change would more clearly identify the valve as one in the line connecting the RHR discharge header to the liquid radwaste system. Several RHR Loop A and Loop B flushing lines tie into the discharge header. The nomenclature change would also identify the two ESF power divisions (A and B) that power two solenoid valves that control air supply to the air operated valve.

Accordingly, for the reasons cited above, the Commission proposes to determine that these three changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 11, 1986 as revised January 20, 1987.

Description of amendment request: The licensee's application dated November 11, 1986 requested two changes to the Technical Specifications (TSs): (1) Changes to the reactor pressure vessel (RPV) pressure-temperature limit curves, and (2) changes to the drywell air lock Technical Specifications. This notice addresses only the first item. The proposed amendment would change the Technical Specifications and associated Bases for the RPV pressure and temperature limits (TS 3/4.4.6) to be consistent with the limits provided by the nuclear steam system supplier, the General Electric Company.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its November 11, 1986 request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7751). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration, (ii), involves a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed change of the RPV pressure-temperature limit curves is similar to this example because the proposed curves are more restrictive than the present curves. Curve "A" for hydrostatic or leak testing would not be changed. More restrictive (higher) temperature limits would be imposed for pressures below 312 psig for Curve "B" which is used for non-nuclear heatup, cooldown following shutdown and low power physics tests and for Curve "C" which is used for operation with a critical core other than low power physics tests. The licensee's review of plant operating records showed that the plant has not operated in the proposed additional restricted area of the pressure-temperature limit curves.

Accordingly, for the reasons cited above, the Commission proposes to determine that the proposed change does not involve significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler

Northeast Nuclear Energy Company (NNECo), Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: January 21, 1987.

Description of amendment request: The proposed amendment would delete reference to the switchyard batteries from technical specifications 3.9.A.5, 4.9.B.2 and Basis 4.9.B.

Basis for proposed no significant hazards consideration determination: Deletion of the technical specifications for switchyard batteries will permit NNECO to shift maintenance responsibility for these batteries from the Millstone Nuclear Power Station, Unit No. 1 (Millstone 1), Maintenance Department to the New London Substation Maintenance Department. The batteries are part of the components requiring surveillance, calibration and preventive maintenance that make up the switchyard. However, the switchyard breakers, disconnect switches, cables, protective relays, and other components are not contained in the technical specifications. The proposed changes will provide consistent treatment of the Millstone 1 preferred offsite power supply.

NNECO has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence or the consequences of a previously analyzed accident has not been increased and the possibility for a new type of accident has not been created. Since switchyard batteries do not serve a safety-related function and are not included in the Standard Technical Specifications for General Electric Boiling Water Reactors, NUREG–0123, (STS) the changes proposed herein will establish consistency between the Millstone 1 technical specifications and the STS.

Removal of this non-safety related provision from the technical specifications would not result in a decrease in safety, because the capability for emergency power is unchanged, and would facilitate focusing attention of maintenance personnel on matters more directly related to nuclear safety.

NNECO has reviewed the proposed changes, in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because switchyard batteries do not serve a safety-related function.

2. Create the possibility for a new or different kind of accident from any previously analyzed. The proposed change has no effect on potential failure modes because there are no equipment changes; the only change is the transfer of responsibility for maintenance of the batteries.

3. Involve a significant reduction in a margin of safety, in that the reliability of station power will not be degraded. By having the switchyard batteries maintained by the New London Substation Maintenance Department, the reliability of the offsite power supplies will be consistent with the entire NNECO system.

Based on the information provided by the licensee, the staff proposes to determine that the licensee amendment request involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 22, 1986.

Description of amendment request: The proposed amendment would change the expiration date for the Millstone Unit 2 Operating License, DPR–65, from December 11, 2010 to July 31, 2015.

Basis for proposed no significant hazards consideration determination: The currently licensed term for Millstone Unit 2 is 40 years commencing with issuance of the construction permit (December 11, 1970). Accounting for the time that was required for plant construction, this represents an effective operating license term of approximately 35 years. The licensee's application requests a 40-year operating license term for Millstone Unit 2.

The licensee's request for extension of the operating license is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices which are implemented in accordance with the ASME code and the facility Technical Specifications provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The design of the reactor vessel and its internals considered the effects of 40 years of operation at full power with a plant capacity factor of 80% (32 effective full power years). Analyses have demonstrated that expected cumulative neutron fluences will not be a limiting consideration. In addition to these calculations, surveillance capsules placed inside the reactor vessel provide a means of monitoring the cumulative effects of power operation.

Aging analyses have been performed for all safety-related electrical equipment in accordance with 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," identifying qualified lifetimes for this equipment. These lifetimes will be incorporated into plant equipment maintenance and replacement practices to ensure that all safety-related electrical equipment remains qualified and available to perform its safety function regardless of the overall age of the plant.

Based upon the above, it is concluded that extension of the operating license for Millstone Unit 2 to allow a 40-year service life is consistent with the safety analysis in that all issues associated with plant aging have already been addressed. Since the proposed amendment involves no change in the Technical Specifications or safety analyses, we conclude that the proposed amendment would not: (i) Involve any significant increase in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

Based upon the above, the Commission proposes to determine that the proposed amendment, which would provide for a 40-year operating life for Millstone Unit 2, involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: Ashok C. Thadani.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 8, 1986 [sic] (1987).

Description of amendment request: The proposed amendment would delete

the hydrogen fluoride detectors from Table 2–11, Toxic Gas Monitors Operating Limits, and from Table 3–3, Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls. The licensee has concurrently requested that the NRC terminate license SMC–1420 which authorizes possession of natural uranium hexafluoride (UF_6) at the Fort Calhoun station. The licensee's submittal states that the UF_6 was shipped offsite in April 1986. With no UF_6 on site, the licensee states that there is no possibility of a toxic gas accident involving hydrogen fluoride. The amendment would also correct a typographical error in Table 3–3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed deletion of the hydrogen fluoride monitors from Tables 2–11 and 3–3 will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. As stated by the licensee, the UF_6 was shipped offsite and therefore there is no possibility of a toxic gas accident involving hydrogen fluoride. Accordingly, the deletion of the hydrogen fluoride monitors will not increase the possibility or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Because the proposed change will delete instruments from the Technical Specifications that are designed to monitor hydrogen fluoride and there is no possibility of a toxic gas accident involving hydrogen fluoride, as discussed above, the possibility of a new or different kind of accident from any previously evaluated will not be created.

(3) Involve a significant reduction in the margin of safety. The proposed change will delete instruments from the Technical Specifications that will no longer be needed to monitor a hydrogen fluoride toxic gas release because such a release is not possible, as discussed above; hence, there will not be a reduction in the margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of these examples, (i), involving no significant hazards consideration is a purely administrative change to technical specifications. The proposed change to correct the typographical error is related to this example.

Based on the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 31, 1986.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3/4.4.9, Figures 3.4–2 and 3.4–3, to reflect heatup and cooldown rate pressure/temperature limits for a service period of up to 10 Effective Full Power Years (EFPY) consistent with the May 27, 1983 amended requirements of 10 CFR Part 50, Appendix G. Table 4.4–5 would be revised to reflect compliance with ASTM E 185–82 with respect to capsule withdrawals, consistent with the amended requirements of 10 CFR Part 50, Appendix H. The capsule withdrawal schedule would be based on neutron fluence or EFPY, consistent with ASTM E 185–82. The associated bases would also be revised to maintain consistency within the Technical Specifications.

Figures 3.4–2 and 3.4–3 of the current TS are based on a service period of up to 15 EFPYs, and do not reflect the amended requirements of 10 CFR Part 50, Appendix G. The capsule withdrawal schedule in Table 4.4–5 is currently based on calendar years rather than EFPYs as required by the revised 10 CFR Part 50, Appendix H. Changes to 10 CFR Part 50 Appendix H require compliance with ASTM E 185–82 for reactor vessel material irradiation surveillance capsule withdrawal, for capsules withdrawn after July 26, 1983. The change from calendar years to EFPY is only a minor change in facility operation.

Changes to Section IV.A.2 of 10 CFR Part 50 Appendix G require that, when the reactor is not critical and pressure exceeds 20 percent of the preservice system hydrostatic test pressure, the temperature of the closure flange regions must exceed the reference temperature of the material in these regions by at least 120 °F. To implement this revised regulation, the licensee proposes minor changes to the required pressure-temperature curves for the reactor coolant system. For Trojan, the amended regulation would require that the reactor coolant system be at a temperature higher than 140 °F before exceeding a pressure of 620 psig. To account for possible instrument error, the indicated temperature must be at least 150 °F before exceeding a pressure of 560 psig. This represents only a minor change from present requirements.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards considerations is Example (vii) A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The staff has reviewed the licensee's no significant hazards analysis and concludes that the proposed changes are within the scope of the Commission's cited example, since the changes are required in order to assure compliance with the regulations, as amended.

Thus, the staff proposes to determine that the requested changes do not involve a significant hazard consideration.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon 97205.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: Steven A. Varga.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: January 14, 1987.

Description of amendment request: The licensee provided the following description:

This proposed revision to the Indian Point 3 Technical Specifications seeks to reduce the elapsed time interval from shutdown requirement for the discharge of more than one region of fuel (72 assemblies). Presently, the Technical Specifications require 400 hours to have elapsed after shutdown before more than one region of fuel can be discharged from the reactor.

This change will reduce the elapsed time interval prior to discharge to 162 hours.

The 400 hour limitation was originally established based on pool decay heat load calculations from a full core discharge, not based on any accident analysis. An analysis is provided of the decay heat load after a 162 hour period which concludes that the maximum bulk pool water temperature would be less than or equal to 198 °F and that the spent fuel pool heat removal system is adequate to transfer the decay heat generated in this case. This is consistent with the NRC Standard Review Plan Section 9.1.3 which states that the temperature of the spent fuel pool water should be kept below the boiling point upon full core discharge.

The analysis assumes a component cooling water (CCW) temperature of 100 °F. This CCW temperature was determined to correspond to a river water temperature of 87.8 °F. A sensitivity study was performed on the analysis to determine the effect of increasing the assumed river water temperature. The sensitivity study results indicate that increasing the assumed river water temperature to 92 °F would increase the maximum spent fuel pool bulk temperature to 201.9 °F, which is below the boiling point.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of this change:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not increase the probability of a previously evaluated accident. The consequences of a fuel handling accident are described in FSAR Chapter 14.2.1. The assumed fuel decay time after shutdown is 100 hours. The consequences of a fuel handling accident assuming a 100 hour decay time will bound the consequence of such an accident with a greater assumed decay time. As the proposed delay time of 162 hours for the discharge of more than one region of fuel is greater than 100 hours, the consequences of the previously evaluated fuel handling accident are not increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves a reduction in the delay time prior to discharge of more than one region of fuel. Reducing the length of the delay time will not create a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Upon a complete loss of the spent fuel cooling system, the adiabatic pool heatup rate of the pool has been conservatively calculated to be 15.37 ° F/hr. For the case assuming a river water temperature of 87.8 ° F, the instantaneous discharge of a full core after a decay time of 162 hours will result in a steady state bulk pool temperature of 197.7 ° F. For this case 0.93 hours are available to start the redundant spent fuel pooling cooling pump to restore heat removal and preclude bulk pool boiling. For the case assuming a river water temperature of 92 ° F, the instantaneous discharge of a full core after a decay time of 162 hours will result in a steady state bulk pool temperature of 201.9 ° F. For this case 0.66 hours are available to start the redundant spent fuel pool cooling pump and preclude bulk pool boiling. These time periods are considered adequate to start the redundant pump.

Based on the above, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Steven A. Varga.

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: January 15, 1987.

Description of amendment request: The licensee has proposed changes to LCO 4.3.1 of the Fort St. Vrain (FSV) Technical Specifications to require both evaporator-economizer-superheater (EES) sections and both reheater sections be available during operation at power as the minimum number of operable heat exchangers. The FSV Technical Specifications currently require both the reheater section and the EES section of one steam generator and either the reheater section or the EES section of the other steam generator be operable for the removal of decay heat. For power levels above 39 percent of full power, the plant will only use the two EES sections to remove decay heat for the Class 1E and Appendix R design basis shutdowns. The licensee is retaining the operability requirement for the reheater sections because they can be used for other accident sequences.

A second proposed change to LCO 4.3.1 is that the EES sections shall be capable of receiving water from both the Emergency Condensate Header and the Emergency Feedwater Header instead of the former minimum allowable of only one of these emergency headers.

Basis for proposed no significant hazards consideration determination: Recent analyses of Safe Shutdown Cooling with a single EES have shown that maximum fuel temperatures remain well below a level where significant fuel damage could occur, the primary coolant pressure boundary remains intact and the PCRV safety valves remain seated. The fuel temperatures are lower than those than would have occurred had decay heat been removed with the reheater section. Thus, the consequences of the Safe Shutdown Cooling accident previously evaluated will not be increased by the LCO 4.3.1 Basis change that omits reliance on the reheaters for Safe Shutdown Cooling. In addition, LCO 4.3.1 would require that the EES sections can be supplied by water from either the Emergency Condensate Header or the Emergency Feedwater Header. For these reasons, it is considered that this proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

The revision to LCO 4.3.1 will not create a new or different kind of accident. The accident descriptions for Safe Shutdown Cooling with a fire pump

and other Safe Shutdown List equipment in the FSAR (Sections 10.3.9, 14.4.2.1 and 14.4.2.2) will remain essentially as written. FSV will continue to meet the NRC's single failure requirements. FSV continues to meet the General Design Criteria commitments in Appendix C of the FSAR without relying on the reheaters for Safe Shutdown Cooling.

Reliance on the EES sections of the steam generators is considered desirable because of their larger heat transfer capability and the fact that their capabilities have been demonstrated in normal plant operation. Thus, the proposed fully redundant EES sections potentially offer a greater margin of safety. The revision of LCO 4.3.1, requiring both EES sections to be capable of receiving water from both the Emergency Feedwater Header and the Emergency Condensate Header, does not decrease the margin of safety over the former minimum requirement of the capability of receiving water from only one of these headers.

Based on the above evaluation, it is the staff's initial determination that operation of Fort St. Vrain in accordance with the proposed LCO changes will 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 any margin of safety. Hence, the staff proposes to determine that this proposed change would involve no significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201–0840.

NRC Project Director: Herbert N. Berkow.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 18, 1986, supplemented by letter dated January 7, 1987.

Description of amendment request: The proposed amendment would delete the surveillance requirements for the Reactor Building Upper Dome Air Circulators (RB–UDAC) from Technical Specification 4.5.2.1.B.

Basis for proposed no significant hazards consideration determination: The surveillance requirement for the Reactor Building Upper Dome Air Circulators (RB–UDAC) has been in effect since the issuance of the initial operating license for Rancho Seco. Since then, reviews and data have shown that the safety function of these circulators, which is to prevent formation of flammable pockets of hydrogen within the Reactor Building (RB) dome during accident conditions, can be adequately accomplished by other existing systems and mechanisms. These existing systems include the RB Emergency Coolers and Containment Spray Systems, as well as natural mechanisms such as convective mixing and molecular diffusion. The RB Emergency Coolers and Containment Spray Systems are safety-related systems with appropriate surveillance requirements in the Technical Specifications to ensure their operability in the event of an accident.

The licensee has reviewed the issue of safety-related RB–UDAC against the Commission's Standard Review Plan and the omission of RB–UDACs, or equivalent, at similar reactor plants, all designed by the same architect-engineer. The licensee's comparison of Rancho Seco's design with these other plants, which do not have a separate containment recirculation system (i.e., RB–UDAC), reveals very close similarities in Reactor Building design features. This indicates that plants similar to Rancho Seco but of later design satisfy Standard Review Plan 6.2.5, Section II.3, "Combustible Gas Control in Containment, Acceptance Criteria".

The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)]. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As noted previously, the proposed change does not affect ability of the plant to operate safely or perform necessary safety functions in the event of an accident. The Commission's staff agrees with the licensee's conclusion that plant operation with the surveillance requirement of the RB–UDAC deleted from the Technical Specifications would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The initial design intent of the RB–UDAC was to ensure that an accumulation of hydrogen would not occur in the RB dome under accident conditions. With respect to this safety-related function of the RB–UDAC, the Rancho Seco Updated Safety Analysis Report (USAR paragraph 6.4.2) states:

> The hydrogen will rapidly diffuse by rising into the Reactor Building atmosphere to give an even distribution throughout the Reactor Building. In addition, convective mixing due to the heating of air above the hot water in the sump and the forced circulation created by the Reactor Building emergency coolers will enhance the dispersion of hydrogen. Accordingly, operation of the emergency upper dome circulators is not considered essential to the elimination of regions of high hydrogen concentration.

This conclusion is supported by a research project conducted by the Los Alamos National Laboratory in 1978. Their report, NUREG/OR–0304, "Mixing of Radiolytic Hydrogen Generated Within a Containment Compartment following a LOCA", provides detailed mathematical and experimental evidence that the molecular diffusion process and the turbulent mixing caused by small temperature differences between the floor and the ceiling of the containment will be sufficient to ensure proper mixing of hydrogen in containment.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The worst accident foreseen, the possibility that the RB–UDAC is unavailable in a future post-accident situation, has already been evaluated as indicated in Item (1). Therefore, the absence of the RB–UDAC or its associated surveillance requirement would not create a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety. As discussed above, there are various means of achieving the mixing of postaccident generated hydrogen in the RB to prevent an explosive or flammable concentration. Therefore, the possible minor reduction of a margin of safety resulting from the proposed change is considered not significant.

Thus, based on the above criteria, the Commission's staff proposes to determine that the change involves no significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: December 9, 1986.

Description of amendment request: South Carolina Electric & Gas Company (SCE&G) hereby requests a revision to the Virgil C. Summer Nuclear Station Technical Specifications, Section 5.3.1, "Fuel Assemblies." This change would allow SCE&G the flexibility to reconstitute fuel assemblies in order to reduce coolant activity and utilize the remaining energy in fuel assemblies which contain small numbers of defective fuel rods.

Basis for proposed no significant hazards consideration determination: Section 5.3.1 of the Technical Specifications describes certain design features of the fuel assemblies in the reactor core. The description currently states that each fuel assembly in the core is comprised of 264 fuel rods clad with Zircaloy-4. The proposed change would allow substitution of some of the fuel rods with filler rods consisting of Zircaloy-4 or stainless steel. The change would also allow fuel rods to be removed from the assembly structure and those positions left vacated. In each reload core the reconstituted assemblies would be specifically evaluated using standard methods currently utilized in accepted reload methodology topicals. Existing safety criteria and design limits will apply in these evaluations. Consideration of the effects on peaking factors and core average linear heat rate will be included in the core physics evaluations.

The Commission has provided certain examples (51 FR 7751) of actions likely to involve no significant hazards considerations. This change is similar to Example iii which states: "For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC—89 for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable."

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 R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: December 11, 1986.

Description of amendment request: South Carolina Electric & Gas Company requests a revision to Technical Specification Section 3.1.2.5, "Borated Water Source—Shutdown," Section 3.1.2.6, "Borated Water Sources—Operating," and other related Sections 3.5.1, 3.5.5, B3/4.1.2, B3/4.5.4, and B3/4.6.2.2. The changes revise the Refueling Water Storage Tank (RWST) boron concentration levels from a minimum of 2000 ppm to a minimum of 2300 ppm in Sections 3.1.2.5, 3.1.2.6 and B3/4.1.2, and from between 2000 ppm and 2100 ppm to between 2300 ppm and 2500 ppm in Section 3.5.5; revise the accumulator boron concentration levels from between 1900 ppm and 2100 ppm to between 2200 ppm and 2500 ppm in Section 3.5.1; and revise the pH value from between 8.5 and 11.0 to 7.8 and 11.0 for the solution recirculated within containment after a loss of coolant accident [LOCA] in Sections B3/4.5.4 and B3/4.6.2.2. The purpose of these changes is to increase the current margin to a post-LOCA shutdown requirement in order to have increased assurance of conformance for Cycle 4 and future cycles at Virgil C. Summer Nuclear Station.

Basis for proposed no significant hazards consideration determination: The purpose of these changes is to increase the current margin to a post-LOCA shutdown requirement (i.e., the reactor will remain subcritical in the cold condition following a large break LOCA assuming complete mixing of the RWST, reactor coolant system (RCSl and emergency core coolant system (ECCS) water and other sources of water that may eventually reside in the sump post-LOCA with all control rods assumed to be out) in order to have increased assurance of conformance for Cycle 4 and future cycles at Virgil C. Summer Nuclear Station.

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 accidents previously evaluated; or (3) involve a significant reduction in margin of safety. The licensee has determined that the requested amendment does not involve significant hazards considerations for the following reasons:

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report is not increased.

a. The only non-LOCA safety analyses affected are those in which the Safety Injection System (SIS) is actuated. For these accidents no adverse impact will occur, and the conclusions as stated in the FSAR will remain valid. For most accidents, the higher boron concentrations are beneficial since a more rapid negative reactivity insertion will occur.

b. In the small break LOCA analysis, there is no assumption regarding the concentration of boron in the ECCS water and no credit is taken for the negative reactivity produced by soluble boron. Thus, the FSAR conclusions remain valid with the higher allowable boron concentrations.

c. Like small breaks, the large break analysis takes no credit for boron in the ECCS water up to the time of peak clad temperature. The FSAR conclusions remain valid.

d. For maintenance of post-LOCA long term cooling, the higher boron concentrations decrease the maximum allowable time for operator action (i.e., from 24 hours to 11 hours to start hot recirculation and from 24 hours to 11 hours to start hot recirculation and from 24 hours to 18 hours to subsequently alternate hot leg and cold leg recirculation) to prevent boron precipitation. The resulting operator action times are still adequate to assure the required actions can be accomplished to maintain post-LOCA long term cooling.

e. The increased boron concentrations and resulting lower post-LOCA containment spray and recirculating core cooling solution pH are acceptable. The design basis for pH sensitive issues are maintained.

(2) The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not created. The proposed changes increase existing boron concentration limits within current operational restraints and without compromising the performance or qualification of safety related equipment. Thus, these changes are considered to be adjustments within the Virgil C. Summer design bases and thus do not create the possibility of a new or different kind of accident.

(3) The margin of safety as defined in the basis for any Technical Specification is not reduced. The proposed Technical Specification changes maintain the Final Safety Analysis Report design bases and adequate margins of safety. The higher boron concentrations increase the negative reactivity insertion capability of the ECCS providing an increase in the plant's margin of safety. As discussed in item 1.d above, the higher boron concentrations do impact safety by decreasing the allowable operator action times to prevent boron precipitation in the long term following a LOCA. However, the required operator action scan still be easily accomplished within the minimum acceptable time restraints to prevent boron precipitation. Therefore, the proposed increases in the Technical Specification boron concentrations do not result in a significant reduction in margins of safety.

The staff has reviewed the licensee's determination and finds it acceptable. 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 R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: January 20, 1987.

Description of amendment request: South Carolina Electric & Gas Company requests a revision to Technical Specification (TS) 4.6.2.3 "Reactor Building Cooling System" and the associated bases to reflect a flow requirement of 2,000 gpm per operating reactor building cooling unit (RBCU) instead of 4,000 gpm per train as currently listed in Technical Specifications. The proposed change would allow continued operation at lower indicated service water booster pump flow rates due to automatic closure of the outlet valves on the non-operating RBCU's while ensuring that the required flow rate to the single operating RBCU in each train is met.

Basis for proposed no significant hazards consideration determination: The existing RBCU service water outlet valves are non-active and therefore cannot be assumed to be capable of post accident operation. Since service water (SW) flow presently passes through the operating and non-operating RBCU's, the TS flow is 200% of the flow required for cooling. The modification converts the RBCU service water outlet valves to active motor operated valves with automatic controls to open the valves on the RBCU selected post accident, and close the valves on the non-selected RBCU.

TS 4.6.2.3 requires that the service water booster pump flow be at least 4,000 gpm to assure that the selected RBCU in each train receives its required 2,000 gpm. Since only 2,000 gpm is required per selected RBCU and the system is designed to have only one RBCU and its associated fan in each train in service for the design basis accident, the required flow through the service water booster pump can be reduced to 2,000 gpm.

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 accidents previously evaluated; or (3) involve a significant reduction in margin of safety. The licensee has determined that the requested amendment does not involve significant hazards considerations for the following reasons:

1. (a) An increase in the probability of the previously evaluated will not occur. The valves are being made active to facilitate the removal of heat from the containment following a Condition IV event by assuring that the entire SW flow provided for containment cooling is delivered to the active (fans running) reactor building coolers.

(b) There will be no increase in the consequences of an accident previously evaluated in the FSAR/FPER. Since this modification will increase the SW flow margin it will enhance the capability to remove reactor building heat following a Condition IV event and assures that any potential release of radioactivity will be less than the FSAR licensing basis.

(c) The upgrade of these valves to active status will not adversely affect the functions of equipment important to safety as previously evaluated in the FSAR/FPER. Separation of redundant electrical systems is maintained per FSAR section 8.3.1.4.1, and Electrical Construction Guidelines Dwg. S–200–926, sheet 6, revision 3, paragraph 2.3.6; and sheet 4, revision 5, paragraph 2.1.8. This separation is maintained by physical distance, and by the installation of a single Kaowool wrap, acting as a suitable barrier. Installed conduit is designed to withstand a seismic event, and to avoid main steam line break 'jet-cones'. The modified valve operators are seismically designed, and valve position status lights on the engineered safety features equipment board are designed as described in the FSAR.

(d) The use of active valves in these positions does not increase the consequences of a malfunction of equipment important to safety as valves as the single active failure results in the same consequences from the accident. All accidents evaluated in the FSAR/FPER bound any accidents which these valves may create or contribute to.

2. The proposed change will not create the possibility of a new or different kind of accident from accidents previously evaluated because the original design was reviewed to 10 CFR Part 50, Appendix A, criterion 38, 39 and 40, and the proposed change is in accordance with that criteria. No malfunctions of equipment important to safety are anticipated which will be different from those malfunctions already evaluated in the FSAR/FPER. The modification will not induce water hammer transient loadings in the piping system. Flow limiting orifices in the discharge pipe are revised to maintain the SW system pressure in the reactor building and to prevent excessive flow through the reactor building cooling coils. The reduced flow thru the SW booster pump after the modification is greater than the minimum flow at which the pump was tested. The valve operator stroke time maintains the margin of safety as defined in TS Table 3.3–5 for service water response times.

3. The margin of safety as defined in the bases to TS 3/4.6.2.3 is not reduced by this modification. This modification will permit a reduction in the

surveillance requirements for SW flow. The TS surveillance flow of 4,000 gpm is the total of: (1) 2,000 gpm to the active functioning fan cooler, and (2) 2,000 gpm to the non-functioning fan cooler. This modification will allow the isolation of flow to the non-functioning reactor building fan cooler. This will permit a reduction in the surveillance flow requirements to 2,000 gpm. This modification will increase the margin of flow to the reactor building fan cooler operating post accident above the 2,000 gpm required and will provide cooling capacity greater than that assumed for accident analysis.

The staff has reviewed the licensee's determination and finds it acceptable. 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 R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: December 23, 1986.

Description of amendment request: The proposed amendments would increase the maximum allowable response time for the alignment of the safety injection system valves between the charging pumps, the volume control tank, and the refueling water storage tank (RWST).

Basis for proposed no significant hazards consideration determination: The Commission provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. Therefore, the staff has reviewed the proposed change and the no significant hazards analysis performed by the licensee.

In its determination the licensee reached the following conclusions.

(1) The proposed amendment did not involve a significant increase in the probability and consequences of an accident previously evaluated since a Westinghouse analysis of the proposed valve stroke time increase would not adversely impact the current analyses results contained in the final safety analysis report.

(2) There is no possibility of a new or different kind of accident since the change only involves valve regearing.

(3) There is not a significant reduction in margin. This is because the change does not adversely impact any of the safety margins in the present analysis.

Based on its review of the licensee's determination, the staff finds that the amendment request meets the standards for concluding that no significant hazard exists. Accordingly, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Attorney for licensee: Mr. Lewis E. Wallace, Acting General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B33, Knoxville, Tennessee 37902.

NRC Project Director: B.J. Youngblood.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: January 29, 1987.

Description of amendment request: The proposed amendment requests that the Action Statement associated with the Ultimate Heat Sink be divided into 2 separate Action Statements to provide clarification and to recognize that there are 2 separate trains of cooling available (100 percent redundancy) for the Essential Service Water System. Currently as stated, the Action Statement requires declaring the Ultimate Heat Sink inoperable if one train of cooling tower has an inoperable cell. If the Ultimate Heat Sink is inoperable, then both trains of the Essential Service Water are inoperable and require entry into the more restrictive action required by Technical Specification 3.0.3.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

This amendment request consists of a change to Technical Specification 3/4.7.5. The following discussion addresses this change and its corresponding significant hazards evaluation.

This change involves the wording of the Action Statement for Technical Specification 3/4.7.5. It will be revised to establish two Action Statements in lieu of the existing one to clearly delineate that there are two independent trains of cooling available to justify the operability requirements of the Ultimate Heat Sink (UHS). As currently stated, the UHS is considered inoperable with one cell of one cooling tower train out-of-service. If the UHS is inoperable, then the entire Essential Service Water System is inoperable, and the requirements of Technical Specification 3.0.3 must be met. This change provides consistency between the Technical Specifications and the FSAR as to the purpose for providing two independent trains of cooling for the UHS.

This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change provides clarification to establish operability of the UHS thus averting the entry into an Action Statement erroneously.

This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged.

This change does not involve a significant reduction in a margin of safety. This is based on the fact that no design change is involved, but the intent of the Technical Specification is clarified to meet the as-built condition as specified in the FSAR.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has therefore made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 25, 1986.

Description of Amendment Request: The proposed changes would modify the NA–1&2 Technical Specifications (TS) 3/4.12 (Radiological Environmental Monitoring) to reflect established practices, to agree with NRC approved

documents, and to conform to regulatory guidance.

The proposed changes to the NA–1&2 TS will correct an administrative error in Table 4.12–1, paragraph 2.c. This table lists a sample point for offsite monitoring to be 15 to 30 kilometers from the site. This specification came in existence when the radiological portion of the Environmental TS were incorporated into the NA–1&2 TS (Amendment 48 for Unit 1 and Amendment 31 for Unit 2).

The original Environmental TS listed eight locations for continuous airborne sampling. There was 1 at the site, 3 on the site perimeter, 3 in nearby communities and 1 at the Orange District Office. These locations are also specified in the Offsite Dose Calculation Manual (ODCM) in accordance with TS requirements. The ODCM lists site 24, the "Control" monitor at the Orange District Office, as being "22 miles" (35.4 km) from the site. This monitoring site was placed in service in December 1976 as a control location for NA–1&2 and has provided the station with a well established 10 year base of sampling data. The location is secure from vandalism and assures a stable power source.

In order to correct this discrepancy, TS Table 4.12–1 paragraph 2.c will be changed to read "1 sample from a control location 15–40 kilometers distant and in the least prevalent wind direction." This change will bring the NA–1&2 TS into agreement with the NRC approved Offsite Dose Calculation Manual.

Table 4.12–2 of the NA–1&2 TS lists a reporting level of 30,000 pCi/liter for H_3. This is to be changed to 20,000 pCi/liter in accordance with NUREG–0472, Radiological Effluent Technical Specifications for PWRs, Revision 3. In addition there is a footnote being added which specifies the sample to be tested.

Table 4.12–3 of the NA–1&2 TS 3/4.12.1 lists a Lower Limit of Detectability (LLD) for High Resolution Ge(Li) Gamma Spectroscopy Environmental sample of 10 pCi/liter for I_{131} and LLD of 3000 pCi/liter for H_3. These are to be changed to 1 pCi/liter for I_{131} and 2000 for H_3 in accordance with NUREG–0472, Radiological Effluent Technical Specifications for PWRs, Revision 3. Finally, a footnote is being deleted from Table 4.12–3 which specifies that, "The LLD for Gamma isotopic analysis shall be used." A footnote being added to Table 4.12–2 and 4.12–3 will state that, "The LLD value is for drinking water samples."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed action involves a significant hazards consideration by providing certain examples (See 51 FR 7751). Example (i) states: "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change is enveloped by example (i) above, since the proposed change would correct an error presently existing in Table 4.12–1, paragraph 2.C and achieve consistency with the NRC approved ODCM and NUREG–0472 for Tables 4.12.2 and 4.12.3. Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Dates of amendment requests: January 31, April 11, July 22, 1986 and January 9, and February 11, 1987.

Description of amendment request: This proposed amendment, if approved, will modify the WNP–2 Technical Specifications surveillance requirement to allow Appendix J Type B and C testing on an extended schedule of 27 months maximum between tests instead of the 24 month maximum now required by the Technical Specifications. Concurrently, the Supply System is seeking exemptions to the requirements of 10 CFR Part 50, Appendix J regulations which require Type C testing during reactor shutdown for refueling and Type B and C testing at intervals no greater than 2 years.

WNP–2 provides power to the Bonneville Power Administration (BPA) grid which is heavily dependent on hydroelectric power generation, in turn impacted by seasonal variation in snow pack and spring runoff in the Pacific Northwest. The spring runoff and subsequent increase in hydroelectric capacity is the most opportune time for WNP–2 refueling. Hence, the BPA directs the Supply System to refuel on a yearly basis, ideally coinciding with the peak period of hydroelectric capacity. This peak period can vary from year to year by as much as three months.

As most of the Type B and C testing is carried out during refueling outages, strict compliance with the Technical Specifications as currently applied requires testing each valve every year during refueling. The Supply System proposes that the B and C tests would be performed on approximately half the valves during each (annual) refueling outage, such that each valve is tested approximately every two years (the actual interval being no greater than 27 months).

The Supply System has proposed criteria for the acceptable leakage of individual valves and will retest, at the next refueling outage, those valves that fail the leakage criteria. Specifically, the Supply System's criteria require placing each valve in one of three categories depending upon its service and previous leakage history:

1. Some valves, such as Main Steam Isolation Valves, will be tested during each refueling outage regardless of previous leakage history.

2. Valves with leakage rates that exceed the target leakage rate by a factor of five or more and those valves that were reworked due to excessive leakage during the preceding outage will be tested during each refueling outage.

3. Valves with leakage rates that do not exceed the target leakage rate and did not exceed this leakage during the previous outage in which they were tested will be tested every other outage. Target leakage rate is determined from past performance and is based on ensuring that the overall leakage rate is less than the Technical Specification limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards considerations exist (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously

evaluated because the proposed change continues a containment isolation valve testing program and operation governed by the overall bounds required by Appendix J of 10 CFR Part 50 and incorporated into the Technical Specifications; or (2) create the possibility of a new or different kind of accident than previously evaluated because changing to a 27 month testing frequency rather than the 24 month frequency in the regulations does not affect the accident scenarios previously evaluated or (3) involve a significant reduction in a margin of safety because, as indicated in (1) above, operation is maintained consistent with the original intent of Appendix J, thus the original safety margin is maintained because those valves that contribute most to the total leakage will be detected, repaired and retested on a shorter (annual) cycle.

Based on our review of the proposed modification, the staff proposes to determine that the requested change to the WNP-2 Technical Specifications involves no significant hazards considerations.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: December 12, 1986.

Description of amendment request: In its December 12, 1986 letter, the licensee requested changes to WNP-2 Technical Specification 3/4.7.4, "Snubbers". The Technical Specification currently requires that, if a snubber is removed from its associated system while that system is required to be operable, the system is to be declared inoperable, requiring entry into the applicable Action Statement. The licensee notes that during Operation Conditions 4 and 5, snubbers are removed periodically for (1) functional testing, and (2) eliminating interferences in the performance of maintenance activities on adjacent equipment. The requested change would permit the removal of snubber(s) for maintenance or testing (while in Operational Condition 4 or 5) without having to declare the associated system inoperable, provided its (their) removal is substantiated by engineering analysis.

Additionally, the current Technical Specification requires that visual inspection periods of a snubber type occur every 18 months, ± 25 percent, if no inoperable snubbers of each type on any system are discovered per inspection period. This requires that a visual inspection of a snubber type be performed between 13.5 months and 22.5 months following the previous inspection. At WNP-2, this visual inspection is done during refueling outages, which occur on 12-month cycles. The current visual inspection requirement does not recognize 12-month refueling cycles. Accordingly, the licensee has requested that the visual inspection criteria be revised to 18 months, −50 percent, + 25 percent. This would require a visual inspection of a snubber type between 9 months and 22.5 months following the previous inspection. Without such a change, the licensee could be required to shutdown between refueling outages for the purpose of snubber surveillance, even when the last inspection revealed no failures. The proposed change reduces the minimum interval between inspections; however, the maximum interval between inspections remains 22.5 months. The Basis of the Technical Specification would be revised to be consistent with the proposed Technical Specification change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed Technical Specification change involves snubber removal in Operational Conditions 4 and 5, "Cold Shutdown" and "Refueling", respectively. The proposed modification does not increase the probability of an accident previously evaluated because those accidents were not initiated by snubber failure in Operational Conditions 4 and 5. Similarly, the proposed modification does not increase the consequences of an accident previously evaluated because engineering analyses performed by the licensee demonstrate the structural integrity of safety-related systems in which snubbers may be removed during Operational Conditions 4 and 5. It should be noted that during these operational conditions, the reactor is shut down; therefore, stresses and loads on piping systems are much lower than those stresses and loads occurring during power operation. The licensee's analyses also demonstrate that while in Operational Conditions 4 and 5, structural integrity of safety-related systems is maintained during and following a seismic event. The proposed modification to the interval of visual inspections, should no inoperable snubbers be discovered in the previous inspection, is purely an administrative change to accommodate a 12-month operating cycle, and does not increase the probability or consequences of an accident previously evaluated, because the maximum time between visual inspections remains 22.5 months.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. Engineering evaluations will be conducted to demonstrate the capability of the snubbers remaining in place to handle the normal and accident piping loads anticipated in Operational Modes 4 and 5. Accordingly, no new failure mode is created. The change in visual inspection period in no way creates different accidents from those previously evaluated because this change is an administrative change to accommodate a 12-month operating cycle.

The proposed changes do not involve a significant reduction in a margin of safety. Engineering analysis and generic snubber replacement criteria assure that sufficient margin exists to accommodate normal and accident loads anticipated while in Operational Conditions 4 and 5. Regarding the change to visual inspection period, the margin of safety is actually increased because the proposed change permits the visual inspection to take place as early as 9 months after the previous inspection, instead of the 13.5 months currently required in the Technical Specification. The maximum visual inspection period remains as 22.5 months following the previous inspection.

Based on its review of the proposed modification, the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and

Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam.

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.

Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio,

Date of amendment request: January 23, 1987.

Brief description of amendment request: The proposed amendment would allow sale and leaseback transactions by Ohio Edison Company (OE) relating to its 30.0% ownership interest in Perry Unit 1 and common facilities.

Date of publication of individual notice in **Federal Register:** February 11, 1987 (52 FR 4432).

Expiration date of individual notice: March 13, 1987.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 23, 1987.

Brief description of amendment: The Emergency Feedwater (EFW) System is being upgraded to safety-related criteria during the present Cycle 6 Refueling Outage in order to comply with TMI–1 restart commitments and NUREG–0737, Action Item II.E.1. In accordance with the licensee's application dated January 23, 1987 (Technical Specification (TS) Change Request No. 166), this amendment would provide appropriate operability and surveillance requirements for the modified EFW System and associated Heat Sink Protection System (HSPS). Administrative and editorial changes to affected TS pages were also requested, including revisions to the EFW and HSPS bases.

Date of publication of individual notice in **Federal Register:** February 4, 1987 (52 FR 3515).

Expiration date of individual notice: March 6, 1987.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 21, 1987.

Brief description of amendment: The amendment would revise Technical Specification (TS) Sections 3.8.2.3, 4.8.2.3.1, 4.8.2.3.2, and 4.8.2.4.1 and the associated Basis Section 3/4.8. These TS Sections relate to the D.C. electrical power distribution system during plant operation and when shutdown. The proposed revisions would (1) change certain nomenclature used in the TSs to the specific equipment designations used at Davis-Besse, and (2) revise the Surveillance Requirements for D.C. Distribution using the guidance of the model technical specifications for station batteries issued by the NRC on July 16, 1981. The NRC guidance was based upon Regulatory Guide 1.129, February 1978, and IEEE Standard 450–1980. The current Davis-Besse TS Surveillance Requirements were based on earlier revisions of these documents.

Date of publication of individual notice in **Federal Register:** February 2, 1987 (52 FR 3182); corrected February 11, 1987 (52 FR 4436).

Expiration date of individual notice: March 4, 1987.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 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 NW., Washington, DC, 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, DC 20555, Attention: Director, Division of Licensing.

Arizona Public Service Company, et al. Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, Arizona

Date of application for amendments: November 6, 1986.

Brief description of amendments: The amendments revised the Technical Specifications to change the organizational structure and to change the version of ANSI Standard N509 to be used for initial testinq of the charcoal filter units in the Essential Filtration Systems.

Date of issuance: February 9, 1987.

Effective date: February 9, 1987.

Amendment Nos.: 13 and 7.

Facility Operating License Nos.: NPF-41 and NPF-51: Amendments revised the Technical Specifications.

Date of initial notice in the **Federal Register:** December 17, 1986 (51 FR 45192). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1987.

No significant hazards consideration comments were received: No.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Commonwealth Edison Company, Docket No. 50-374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of amendment request: October 16, 1986.

Brief description of amendment: This amendment revises the La Salle, Unit 2 Technical Specifications to permit replacing an existing peripheral locking piston control rod drive module with a fine motion control rod drive module during one fuel cycle.

Date of issuance: February 9, 1987.

Effective date: Upon startup following the first refueling outage.

Amendment No.: 30.

Facility Operating License No. NPF-18: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 5, 1986 (51 FR 40277) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1987.

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.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 17, 1983, as supplemented and superseded August 23, 1984 and January 20, 1986, respectively.

Brief description of amendments: Changes were made in the Administrative Control section of the Technical Specifications, primarily to reflect changes in staff organization, and changes in 10 CFR Part 50 regarding minimum staffing and immediate notification requirements, and the Licensee Event Reporting system.

Date of issuance: February 2, 1987.

Effective date: February 2, 1987.

Amendment Nos.: 100 and 97.

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41848) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 2, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: October 20, 1981.

Brief description of amendment: This amendment revises Technical Specification 4.3 by deleting the requirement that surveillance tests of the diesel generators include automatic loading of the charging pumps. No credit for automatic loading of the charging pumps is assumed in any accident safety analysis.

Date of issuance: February 9, 1987.

Effective date: February 9, 1987.

Amendment No. 89.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: July 9, 1984.

Brief description of amendment: The amendment incorporated Technical Specifications pertaining to the implementation of a post-accident sampling system. The change is consistent with the requirements of NUREG-0737 TMI Action Plan II:B.3 and the guidance given in Generic Letter 83-37.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment No. 100.

Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33363).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 19, 1985.

Brief description of amendment: The amendment deletes out of date footnotes and incorrect references to a motor control center within the Technical Specifications.

Date of issuance: February 10, 1987.

Effective date: February 10, 1987.

Amendment No. 101.

Provisional operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47072 at 47077). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 25, 1982.

Brief description of amendment: This amendment revised Section 4.7.1(d) of the Technical Specifications and included an addition to the Bases of Section 4.7 to reflect the manufacturer's true nameplate rating of the emergency diesel generators.

Date of issuance: February 11, 1987.

Effective date: February 11, 1987.

Amendment No. 102.

Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38398).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: October 27, 1986.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to add requirements for independent testing of the reactor trip breaker, undervoltage and shunt trip attachments, and bypass breakers. Review of the design of these components has been documented in the staff's letters of November 8, 1984, October 9, 1985, and April 3, 1986.

Date of issuance: February 4, 1987.

Effective date: February 4, 1987.

Amendment No. 107

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45199) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: August 25, 1986, as supplemented November 14, 1986.

Brief description of amendments: The amendments modify the technical specifications Limiting Conditions of Operation (LCO) for a one-time additional 45 day LCO in conjunction with the current 3½ day LCO to permit implementation of modifications required to satisfy NUREG–0737, Item III.D.3.4, Control Room Habitability.

Date of issuance: February 2, 1987.

Effective date: February 2, 1987.

Amendment Nos. 121 and 115.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47078). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 2, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: November 25, as supplemented December 8, 1986.

Brief description of amendment: This amendment revises the Technical Srecifications to increase the fuel enrichment limit to 3.5 weight percent Uranium-255 for Cycle 10 and beyond.

Date of issuance: February 9, 1987.

Effective Date: February 9, 1987.

Amendment No.: 92.

Facility Operating License No. DPR–36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47072 at 47081.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1987.

No significant hazards consideration comments received: No. Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 6, 1986.

Brief description of amendment: The amendment changes the Technical Specifications to state that the Main Steam Drain Header Isolation Valves are normally open.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment No.: 107.

Facility Operating License No. DPR–62. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 452111).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: August 22, 1986.

Brief description of amendment: The amendment adds surveillance requirements to Technical Specification Section 4.4.5 to verify the ability of the control room air treatment system to maintain a positive pressure in the control room to maintain control room habitability during accident conditions.

Date of issuance: February 10, 1987.

Effective date: February 10, 1987.

Amendment No.: 91.

Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36099).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

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: October 29, 1986.

Brief description of amendment: The amendment changes the Technical Specifications (TS) for Millstone Unit 2 related to primary system iodine spiking: (1) The requirement in TS 3.4.8, "Specific Activity", that operation, outside predetermined primary coolant activity limits, not exceed 10 percent of the unit's total yearly operating time is deleted; and (2) the current "special report" requirement in TS 6.9.2i associated with primary coolant activity is replaced by an annual report requirement in TS 6.9.1.4.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment No.: 115.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47072 at 47083).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: July 18, 1986 (LAR 86–08).

Brief description of amendments: Technical Specification change will implement axial offset control (RAOC) for Diablo Canyon Unit 2 after burnup of relaxed 8000 MWD/MTU in first cycle.

Date of issuance: January 30, 1987.

Effective date: January 30, 1987.

Amendment Nos.: 12 and 10.

Facility Operating Licenses Nos. DPR–80 and DPR–82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37518).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 30, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit No. 3, Eureka, California

Date of application for amendment: May 14, 1986 as revised November 17, 1986.

Brief description of amendment: The amendment establishes physical security requirements for the shutdown Humboldt Bay, Unit 3. The security plan reflects the possess-but-not-operate status of Facility Operating License No. DPR–7.

Date of issuance: February 11, 1987.

Effective Date: When the revised physical security plan is fully implemented but in no case more than 90 days from the date of issuance.

Amendment No.: 22.

Facility Operating License No. DPR–7. Amendment revised the license.

Date of initial notice in **Federal Register:** June 4, 1986 (51 FR 20371).

The November 17, 1986 letter provided clarifying information and did not change the initial determination published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Eureka-Humboldt County Library, 471 I Street (County Court House), Eureka, California 95501.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 8, 1986.

Brief description of amendment: The amendment changes the Technical Specifications to eliminate operability and testing requirements for the recirculation pump discharge bypass valves. The bypass valves and lines are to be removed during the 1987 refueling outage.

Date of issuance: February 9, 1987.

Effective date: February 9, 1987.

Amendment No.: 104.

Facility Operating License No. DPR–59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41867).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 11, 1986.

Brief description of amendment: The amendment changes the Administrative Controls section of the Technical Specifications to reflect the management reorganization of the Power Authority of the State of New York's headquarters staff.

Date of issuance: February 10, 1987.

Effective date: February 10, 1987.

Amendment No.: 105.

Facility Operating License No. DPR–59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36102).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: September 12, 1986 as supplemented on September 22, and November 10, 1986.

Brief description of amendment: This amendment revises the Technical Specifications to be consistent with the Standard Radiological Effluent Technical Specifications for BWRs by permitting continued plant operation should certain gaseous and liquid radioactive effluent monitors be inoperable, provided regular grab samples are collected and analyzed to be below specified limits.

Date of issuance: February 6, 1987.

Effective date: February 6, 1987.

Amendment No.: 2.

Facility Operating License No. NPF–57: Amendment revises the Technical Specifications.

Date of initial notice in the **Federal Register:** November 19, 1986, (51 FR 41867). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 24, 1986.

Brief description of amendment: The licensee plans to replace the analog rod position indication (ARPI) system with a Westinghouse microprocessor rod position indication (MRPI) system. The ARPI system is being replaced because the system requires a significant effort to maintain alignments, the aging system is prone to component failures, and spare parts are difficult to obtain. In addition, the replacement of the ARPI system will resolve human engineering discrepancies identified during the detailed control room design review; a licensing action of NUREG–0737 (Item I.D.1.1).

As a result of the replacement of the ARPI system with the MRPI system, the licensee has proposed changes to the technical specification (TS) that (1) replaces the references to the ARPI

system with references to the MRPI system, (2) clarifies the requirements related to the indicated positions versus demand positions, (3) allows the use of the process plant computer system as a backup to the MRPI cathode ray tube (CRT) if the CRT should become inoperable, (4) remove the calibration requirement which is no longer necessary when the new system is operational, and (5) modify the rod movement test.

Date of issuance: February 10, 1987.

Effective date: February 10, 1987.

Amendment No.: 22.

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41868). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: January 24, 1986, as supplemented September 19, 1986.

Brief description of amendment: This amendment increased the setpoint for reactor trip on high pressure from 2300 psig to 2355 psig and increased the arming threshold for anticipatory reactor trip on turbine trip from 20% to 45% of full power.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment No.: 83.

Facility Operating License No. DPR-54. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 5, 1986 (51 FR 40281).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Dates of applications for amendments: September 30, 1986.

Brief description of amendments: The amendments change the Technical Specifications to add requirements for Radiological Effluent Technical Specifications (RETS) which comply with Section V of Appendix I to 10 CFR Part 50.

Date of issuance: February 5, 1987.

Effective date: February 5, 1987.

Amendments Nos.: 132, 128 and 103.

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 3, 1986 (51 FR 43685).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 1, 1985, as supplemented August 8, 1986.

Brief description of amendments: The amendments change the Technical Specifications to delete a surveillance requirement, add a footnote to allow a reduction in fast start/fast load surveillance testing and change the reporting requirements of Emergency Diesel Generators, and correct an editorial mistake.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment Nos.: 52 and 44.

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1985 (50 FR 23554) and December 3, 1986 (51 FR 43685).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 4, 1983, as supplemented September 30, 1986.

Brief description of amendments: The amendments change the license conditions related to implementation of Regulatory Guide 1.97, Revision 2.

Date of issuance: February 12, 1987.

Effective date: February 12, 1987.

Amendment Nos.: 53 and 45.

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised Operating License conditions.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37521).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 28, 1985.

Brief description of amendment: This amendment reduces the frequency of cold fast starts required for surveillance testing of emergency diesel generators. A portion of the amendment request has been denied by the Commission. A Notice of Denial is being published separately in the **Federal Register.**

Date of issuance: February 10, 1987.

Effective date: February 10, 1987.

Amendment No. 97.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49793).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: June 16, 1986.

Brief description of amendments: These amendments revise the audit frequency of the Surry Power Station Security Plan from at least once per 24 months to at least once per 12 months.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment Nos. 112 and 112.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1986 (51 FR 25772).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: September 30, 1986.

Brief description of amendment: The amendment removed requirements from the Technical Specifications (TS) that were duplicated in the Operational Quality Assurance Program. In addition, a recent change in a management title was made on three pages of the TS.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment No.: 72.

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45216).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

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: August 29, 1986.

Brief description of amendments: The amendments revise the Limiting Conditions for Operation (LCO) of the component cooling water system to reflect the addition of a fourth heat exchanger to the system.

Date of issuance: February 2, 1987.

Effective date: 20 days from the date of issuance.

Amendment Nos.: 105 and 108.

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36108).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 2, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the 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 for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act, and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(bl and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these

items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By March 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedinqs" 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 prehearinq 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 prehearinq 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.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Florida Power and Light Company, Docket No. 50-250, Turkey Point Plant Unit 3, Dade County, Florida

Date of application for amendment: February 4, 1987.

Brief description of amendment: The amendment extends the surveillance testing requirements of Technical Specifications 4.7.1.1 and 4.7.1.2.a relating to the Emergency Containment Filter System to allow the tests to be performed during the Unit 3 refueling outage for Cycle 11.

Date of issuance: February 12, 1987.

Effective date: February 12, 1987.

Amendment No.: 122.

Facility Operating License No. DPR-31: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 12, 1987.

Attorney for Licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street NW., Washington, DC 20036.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

NRC Project Director: Lester S. Rubenstein.

Dated at Bethesda, Maryland this 19th day of February, 1987.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A.

[FR Doc. 87-3860 Filed 2-25-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-530]

Arizona Public Service Co. et al. Palo Verde Nuclear Generating Station, Unit 3; Order Extending Construction Completion Date

Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power and Southern California Public Power Authority are the holders of Construction Permit CPPR-143 issued by the Nuclear

Regulatory Commission on May 25, 1976, for construction of the Palo Verde Nuclear Generating Station, Unit 3. Construction of the facility is substantially complete at the applicants' site in Maricopa County, Arizona, approximately 34 miles west of Phoenix, Arizona.

On September 8, 1986, Arizona Public Service Company (APS) filed a request for an extension of the completion date. The extension has been requested because construction has been delayed by the following factors:

1. Palo Verde, Units 1, 2 and 3 have been constructed on a sequential schedule. Delays in construction, testing and operations of Units 1 and 2 to assure Safety have resulted in modifications and delays impacting the sequential schedule for completion of Unit 3.

2. Although, at the current time, basic construction of Palo Verde, Unit 3 is substantially complete, and preoperational testing is at an advanced stage, additional time will be required for completion in a safe manner. Unit 3 is expected to be ready for fuel load toward the end of the first quarter of 1987.

Additionally, APS states that extension of the latest date for completion of Palo Verde, Unit 3 to December 31, 1987, will preclude the need for requesting further amendments of CPPF–143 if there should be any slippage in the expected Unit 3 fuel load date due to unforseen circumstances.

This action involves no significant hazards consideration; good cause has been shown for the delays; and the extension is for a reasonable period, the bases for which are set forth in the staff's evaluation dated February 19, 1987.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment (52 FR 4694).

The NRC staff safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

It is hereby ordered that the latest competion date for Construction Permit No CPPR–143 is extended from November 1, 1986 to December 31, 1987.

Date of Issuance: February 19, 1987.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87–4008 Filed 2–25–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–14597; License No. 25–18172–01 EA 86–140]

Professional Consultants, Inc.; Order Imposing Civil Monetary Penalties

I

Professional Consultants, Inc. (licensee), 3115 Russell Street, Missoula, Montana, is the holder of License No. 25–18172–01 issued by the Nuclear Regulatory Commission (NRC). License No. 25–18172–01 authorizes use of byproduct materials and is due to expire December 31, 1988.

II

An inspection of the licensee's activities under its license was conducted on May 8–9, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. These results were discussed with the licensee's representative during an enforcement conference on July 15, 1986.

A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated September 30, 1986. This Notice stated the nature of the violations, NRC requirements that were violated, and amount of civil penalties proposed. An answer dated October 27, 1986, to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

After consideration of the answer received, and the statements of fact, explanations, and arguments for 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 in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

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 total amount of One Thousand Dollars ($1,000) 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, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails 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 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 18th day of February 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaulation and Conclusions

On September 30, 1986 a Notice of Violation and Proposed Imposition of Civil Penalties (NOV) was issued for violations identified during a rountine NRC inspection. Professional Consultants, Inc. responded on October 27, 1986. The licensee admitted all of the violations, including Violation F, although characterizing the violation as "partially true." In addition, the licensee requested mitigation of the civil penalties because it argued that such penalties place an unreasonable burden on the firm. The NRC's evaluation and conclusions regarding the licensee's response are as follows:

Restatement of Violation F

License Condition 13 requires, in part, that each sealed source be tested for leakage and/or contamination at intervals not to exceed six months.

Contrary to the above, a Troxler moisture/density gauge Model 3411–B, S/N 5487, containing an 8 millicurie cesium-137 sealed source and a 40 millicurie americium-241 sealed source, was not leak tested for the periods of September 2, 1980 to November 24, 1982, and November 24, 1982 to the date of the inspection.

This is a repeat violation from the previous inspection of August 1980.

Summary of Licensee's Response

The licensee admitted all of the violations, including Violation F; however, it also characterized Violation F as "partially true" in that a copy of a leak test dated February 4, 1985 was in the licensee's file but was apparently overlooked by the NRC during its inspection.

NRC's Evaluation of Licensee's Response

The violation is based on the licensee's failure to perform leak tests for multiple six-month intervals. Consequently, the existence of the February 4, 1985 leak test results does not invalidate the violation. Therefore, the licensee has not provided an adequate basis for the withdrawal of this violation.

Summary of Licensee's Request for Mitigation

The licensee's October 27, 1986 response stated that the licensee could not "deny . . . any of the violations. . . ." However, the licensee asserted that the proposed civil penalties place an unreasonable financial burden on it, in that, the return of profit for using the guage is less the $1,000 civil penalties. In support of this argument, the licensee provided information which seeks to demonstrate that the financial costs to the licensee, before any payment of the civil penalties, has already exceeded the total of the proposed civil penalties. Further, the licensee argues that because its use of the licensed material constitutes only a service provided to its construction clients, imposing the civil penalties at this time will only further exacerbate the unprofitability of the use of the subject licensed material.

NRC's Evaluation of Licensee's Request for Mitigation

The Commission's stated position in the Enforcement Policy is that the NRC intends to apply its full enforcement authority where such action is warranted, such as for repeated poor performance in the area of concern. In view of this policy and because in this case five of the seven cited violations were repeated from the licensee's previous inspection, it is clear that imposition of the proposed civil penalties is warranted. Further, the licensee's arguments concerning costs associated with the May 8–9, 1986 inspection and the ensuring proposed enforcement action, and the unprofitability of its use of the licensed material, provide no basis to mitigate the civil penalties.

NRC Conclusion

The licensee's assertion with regard to the facts associated with Violation F, even if true, does not invalidate the violation. Further, the licensee provides no basis for mitigation of the proposed civil penalties. The NRC concludes that the violations occurred as stated in the Notice of Violation and Proposed Imposition of Civil Penalties. Accordingly, the NRC concludes that civil penalties in the amount of $1,000 should be imposed.

[FR Doc. 87–4010 Filed 2–25–87; 8:45 am]
BILLING CODE 7590–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meeting of the Prospective Payment Assessment Commission on March 2 and 3, 1987, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The meeting will convene at 9:00 a.m. on March 2, 1987 and at 10:00 a.m. on March 3, 1987 and will be held in Washington Room A&B.

The meeting is open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87–4049 Filed 2–25–87; 8:45 am]
BILLING CODE 6820–BW–M

SMALL BUSINESS ADMINISTRATION

Region II—Advisory Council; Public Meeting

The Small Business Administration, Region II Newark District Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting at 9:00 AM on Tuesday, March 31, 1987, at the Ramada Inn, 36 Valley Road, Clark, New Jersey 07066, to discuss such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey, 07102, (201) 645–3580.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 19, 1987.

[FR Doc. 87–3994 Filed 2–25–87; 8:45 am]
BILLING CODE 8025–01–M

Region VIII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Sioux Falls, South Dakota, will hold a public meeting on Friday, March 20, 1987, from 9:00 a.m. to 3:00 p.m., at the Community Room, First National Bank in Sioux Falls, 100 South Phillips, Sioux Falls, South Dakota 57102, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101, Security Building, 101 South Main, Sioux Falls, South Dakota 57102, 605/336–2980, Ext. 231.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 11, 1987.

[FR Doc. 87–3995 Filed 2–25–87; 8:45 am]
BILLING CODE 8025–01–M

Region IV Joint Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Nashville, Tennessee, and Jackson, Mississippi, will hold a joint public meeting at 8:30 a.m. to 3:30 p.m. on Wednesday, March 25, 1987, in the office of the First American Bank, 44 North Second Street, Memphis, Tennessee 38101–0183, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Robert D. Hartman, District Director, U.S. Small Business Administration, Suite 1012 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37219, telephone (615) 736–5850.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 11, 1987.

[FR Doc. 87–3993 Filed 2–25–87; 8:45 am]
BILLING CODE 8025–01–M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, Kentucky, will hold a public meeting at 2:00 p.m., Tuesday, March 3, 1987, at the Louisville District Office, 600 Federal Place, Room 188, Louisville, Kentucky, to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, P.O. Box 3527, Louisville, KY 40201—(502) 582–5971.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 19, 1987.

[FR Doc. 87–3991 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

Region V District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting on March 13, 1987, at 9:30 A.M. at the U.S. Small Business Administration District Office, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call George W. Griebenow, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, 612/349–3530

Jean M. Nowak,

Director, Office of Advisory Councils.

February 19, 1987.

[FR Doc. 87–3992 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting from noon until 4:00 p.m., Friday, February 27, 1987, at the Marriott Hotel, at the Astrodome, in Salon I and II, located at 2100 South Braeswood at Greenbrier, Houston, Texas 77030, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Donald D. Grose, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, (713) 660–4409.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 11, 1987.

[FR Doc. 87–3996 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–07–M

[License No. 02/02–0489]

United Jersey Venture Capital Inc.; Issuance of a Small Business Investment Company License

On August 27, 1985, a notice was published in the **Federal Register** (50 FR 34 788) stating that an application has been filed by United Jersey Venture Capital, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business September 27, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA Issued License No. 02/02–0489 on January 20, 1987, to United Jersey Venture Capital, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–3997 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cities of Norfolk and Portsmouth, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Cities of Norfolk and Portsmouth, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, Post Office Box 10045, Richmond, Virginia 23240–0045, telephone (804) 771–2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to construct a four-lane limited access facility and parallel tunnel to the Midtown Tunnel under the Elizabeth River from the east end of the West Norfolk Bridge in the City of Portsmouth to the Brambleton Avenue Interchange in the City of Norfolk. The length of the proposed improvement is approximately 2.2 miles. The proposal will relieve congestion on existing facilities and improve intercity travel.

Alternatives under consideration include (1) taking no action (no build), (2) mass transit, (3) Transportation System Management (improving existing roadway network), and (4) build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: February 18, 1987.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 87–3915 Filed 2–25–87; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept Cir.—Public Debt Series—No. 6-87]

Treasury Notes of May 15, 1992, Series J-1992

Washington, February 19, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,250,000,000 of United States securities, designated Treasury Notes of May 15, 1992, Series J-1992 (CUSIP No. 912827 UQ 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 3, 1987, and will accrue interest from that date, payable on a semiannual basis on November 15, 1987, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 25, 1987. Non-competitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 24, 1987, and received no later than Tuesday, March 3, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves that right to accept or

reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, March 3, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, February 27, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, March 3, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forefeited to the United States.

5.3 Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.2. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-4045 Filed 2-24-87, 10:07 am]

BILLING CODE 4810-40-M

Dept. Circ.—Public Debt Series—No. 5-87]

Treasury Notes of February 28, 1989, Series V-1989

Washington, February 19, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of February 28, 1989, Series V-1989 (CUSIP No. 912827 UP 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 2, 1987, and will accrue interest from that date, payable on a semiannual basis on August 31, 1987, February 29, 1988, August 31, 1988 and February 28, 1989. They will mature February 28, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 24, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 23, 1987, and received no later than Monday, March 2, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall

not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5 Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery.

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, March 2, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing one or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 26, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, March 2, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-4046 Filed 2-24-87; 10:07 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act)

notice is hereby given that the Annual report of the Veterans Administration's Special Medical Advisory Group for calendar year 1986 has been issued.

The report summarizes activities of the Group on matters relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery. It is available for public inspection at two locations:

Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540

and

Veterans Administration, Office of the Chief Medical Director, Room 800, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: February 12, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-3970 Filed 2-25-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 38
Thursday, February 26, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 3376.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., February 24, 1987.

CHANGE IN THE MEETING: This meeting has been rescheduled for 11:30 a.m., February 27, 1987.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-4076 Filed 2-24-87; 11:08 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 6, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-4077 Filed 2-24-87; 11:21 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-4078 Filed 2-24-87; 11:21 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 20, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-4079 Filed 2-21-87; 11:21 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 27, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-4080 Filed 2-24-87; 11:21 am]
BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 4987, February 18, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1:30 p.m. (eastern time) Monday, February 23, 1987.

CHANGE IN THE MEETING: Due to inclement weather, the above subject Meeting of the Equal Employment Opportunity Commission was canceled.

Open

Items on the Open Portion of the Commission Meeting will be handled by Notation Vote. The results of the Notation Voting will be announced at the Commission Meeting of March 2, 1987, at 2:00 p.m., eastern time.

Closed

Items on the Closed Portion of the Meeting will be considered at the Closed Portion of the Commission Meeting of March 2, 1987, at 2:00 p.m., eastern time.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: February 24, 1987.

Johnnie L. Johnson, Jr.,
Attorney Advisor, Executive Secretariat.
[FR Doc. 87-4127 Filed 2-24-87; 2:30 pm]
BILLING CODE 6750-06-M

FEDERAL ELECTION COMMISSION

PURSUANT TO 11 CFR 2.7(D)(1) THE COMMISSION HAS CALLED A MEETING FOR THE FOLLOWING DATE: Wednesday, February 25, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED: Proposed revision of Title 26 Regulations.

* * * * *

FEDERAL REGISTER NO. 87-3647

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 26, 1987, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Draft Advisory Opinion 1986-43—Laurence A. Tuttle.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 87-4074 Filed 2-24-87; 11:08 am]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 4:00 p.m., Wednesday, February 25, 1987.

The business of the Committee requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

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. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the

Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific item to be considered: Proposal regarding the Retirement Plan.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–4145 Filed 2–24–87; 3:13 pm]

BILLING CODE 6210–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:00 a.m., Thursday, February 26, 1987.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS:

The first part of this meeting will be open to the public.

The remaining part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public

Proposed revisions to Board Rules in respect to the posting of election notices and to summary judgment procedures.

Portion closed to the public

Board case agenda.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, 20 February 1987.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 87–4068 Filed 2–24–87; 10:54 am]

BILLING CODE 7545–01–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, March 4, 1987.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of February, 1987.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of notice: February 24, 1987.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 87–4072 Filed 2–24–87; 10:54 am]

BILLING CODE 7550–01–M

Corrections

Federal Register
Vol. 52, No. 38
Thursday, February 26, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Access, Use and Recreation; Back Bay National Wildlife Refuge, VA

Correction

In proposed rule document 87-3412 beginning on page 5159 in the issue of Thursday, February 19, 1987, make the following corrections:

1. On page 5159, in the third column, in the sixth line, the FR citation should read "28314".

§ 26.34 [Corrected]

2. On page 5162, in § 26.34(h)(2), in the first column, in the first line "Commercial service" should read "Commercial service vehicles".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51661; FRL-3154-3]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

Correction

In notice document 87-2869 beginning on page 4381 in the issue of Wednesday, February 11, 1987, make the following corrections:

1. On page 4383, in the first column, in premanufacture notice P 87-502, in the sixth line, remove ">"; and

2. On the same page, in the second column, in premanufacture notice P 87-506, in the first line, "*Manufacturer*" should read "*Importer*", and in the 12th line, "Sking" should read "Skin".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-07-4212-11; A 20916]

Realty Action; Recreation and Public Purposes Classification and Conveyance of Public Land in Graham County, AZ

Correction

In notice document 87-2476 beginning on page 3873 in the issue of Friday, February 6, 1987, make the following corrections:

On page 3873, in the third column, in the legal description table, in the third line, insert "¼" after the second "SE", and in the fourth line, "26" should read "25".

BILLING CODE 1505-01-D

federal register

Thursday
February 26, 1987

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 393 and 396
Motor Carrier Safety Regulations;
Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[OMCS Docket No. MC-127; Notice No. 87-01]

Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; General

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed revisions to the Federal Motor Carrier Safety Regulations (FMCSR's) relative to requirements affecting axles and attaching parts, brake systems, frame and frame assemblies, lights, steering systems, suspension systems, wheels and rims, fuel tanks, fuel systems including natural gas fuel systems, and other vehicle parts and accessories, or possible ways to improve, streamline and simplify existing regulations in Part 393. This rulemaking is being issued under the provisions of section 206 of the Motor Carrier Safety Act of 1984. This action is being taken to enhance the safe operation of commercial motor vehicles in interstate commerce.

Elsewhere in today's **Federal Register**, in the same part, is published another NPRM entitled Inspection, Repair, and Maintenance (OMCS Docket No. MC-113; Notice No. 87-102). We request that the public consider these proposed rules together and make recommendations or suggestions on how both rulemaking actions can work together in a more efficient manner.

DATE: Comments must be received on or before April 27, 1987.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Office of Motor Carrier Standards, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2999, or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832) (the Act). The Act was signed into law by the President on October 30, 1984.

On January 10, 1985, the FHWA published an advance notice of proposed rulemaking (ANPRM) (50 FR 1245) seeking public comment concerning possible modifications to Parts 393 and 396 of the FMCSR (OMCS Docket No. MC-113; Notice No. 84-9, Parts and Accessories Necessary for Safe Operation and Inspection, Repair, and Maintenance). Numerous comments were received concerning these potential changes. Due to the complexity of these two areas of rulemaking, the FHWA is separating the rulemaking action for Part 393 from Docket No. MC-113. The Part 396 review will be addressed further in Docket No. MC-113, found elsewhere in today's **Federal Register**.

The purpose of these proposed changes is to ensure that all parts and equipment are maintained in a safe operating condition. The FHWA is charged with the important role of promulgating regulations for commercial motor vehicles operating on our Nation's highways. These regulations have a vital role in ensuring, to the maximum extent practical, the safe operation of such vehicles. At the same time the FHWA is properly concerned that its regulations do not impose unnecessary burdens on the motor carrier industry and yet protect the safety of the general public. In order to fulfill adequately both of these aims, the FHWA must periodically review these regulations as new technologies become available. In addition, it is desirable to open channels of communication with those directly affected by the regulations. Comments are specifically requested on possible ways that the requirements of this part can be streamlined or simplified.

These proposed revisions, in addition to those sections not revised, will be applicable to commercial motor vehicles operated in interstate commerce that have a gross vehicle weight rating of 10,001 pounds or more; are designed to transport more than 15 passengers, including the driver; and such vehicles as are used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act and are transported in a quantity requiring placarding under regulations issued by the Secretary.

Background

This rulemaking action addresses section 210 of the Act, which directs the Secretary of Transportation to afford interested parties an opportunity to comment on Part 393 of the FMCSR, concerning parts and accessories necessary for safe operation. Part 393 is the basis for the vehicle inspection currently performed on vehicles operated by motor carriers subject to the jurisdiction of the FHWA.

It is important to note that section 210 of the Act requires that each commercial motor vehicle pass an inspection, upon request, of all safety equipment required under Part 393 of the FMCSR. We invited public comment in the ANPRM regarding the need for further revision of Part 393.

Proposed Changes

Public comment was requested specifically on the issue of expanding the present scope of Part 393 to include the vehicles: (1) Frame and frame assemblies, (2) suspension systems, (3) axles and attaching parts, (4) wheels and rims, and (5) sterring systems now referred to in Part 396. It should be noted that manufacturing requirements, where used, are considered as those requirements needed for evaluation of the minimal physical attributes of component materials, labelling, and instructional materials considered necessary for adequate safety of the motoring public, for proper identification of responsible parties, and the safety of operation of the commercial vehicle.

The majority of those commenting on this issue supported expanding the scope of Part 393 to include the above five items so as to assure standardization. Two of those commenting on the issue were of the opinion that it was not necessary to include the five items in Part 393. However, the Act requires that each commercial motor vehicle shall be required to pass an inspection, upon request, of all safety equipment required under Part 393. These items are commonly found to service items at agency roadside vehicle inspections. In addition, a study of approximately 3,000 truck accidents by the California Highway Patrol, preceding its development of the Critical Item Inspection process, clearly indicated each of these items to be common causes of truck accidents. Therefore, we are proposing to include the five items in Part 393.

Also, it is being proposed herein to require parking brakes on all trailers. Further, we propose to require that the name of the manufacturer be marked on the motor vehicle's fuel tank along with the certification requirement. A new § 393.68 is being proposed covering

natural gas fuel systems. Revisions of certain lighting requirements of Part 393, to be compatible with the Federal Motor Vehicle Safety Standards (FMVSS), are being proposed.

A new § 393.5, Definitions, would be added, defining the words and terms used in this Part only.

A grandfather clause would be provided in the final rule for vehicles in use. Consideration is being given to permit a 2 year period for design changes on new vehicles unless comments to the docket indicate otherwise.

It is proposed to redesignate § 393.2, Additional equipment and accessories, as § 393.3 and to amend it to include Parts 398 and 399 of this subchapter.

Lighting Requirements

It is being proposed that the FMCSR lighting requirements be amended to be in conformity with the FMVSS. A proposed table in § 393.11 has been devised to make it easier to identify the requirements. It is also being proposed to make it clear that the current regulations now require, and will continue to require, that the rear of large trailers have either identification lamps or clearance lamps located at the top of the trailer. This is compatible with National Highway Traffic Safety Administration (NHTSA) and the various State's standards. Some trailers are now being manufactured with neither lamps at the extreme height.

The FHWA agrees with the position of the NHTSA that there is a need for lights marking the width of the vehicle. This is especially true for the new vehicles constructed to the 102-inch width range. Other proposed changes include requirements for a light to illuminate the rear license plate on all vehicles as now required by the FMVSS 108; two stop lamps and two tail lamps on all truck tractors and on dollies when the towing unit's rear lamps are obscured by the dolly; and updating Society of Automotive Engineers (SAE) references.

In addition, it is proposed to update the wiring specifications contained in § 393.27 to require compliance with the current SAE standard for high tension (voltage) ignition cable, battery cable and low tension (voltage) primary cable. Also, it is desirable to divide the trailer lights between two circuits so that should one circuit fail, the other will continue to illuminate the vehicle.

Wiring to be protected, as provided in § 393.28, would be revised to require specifically that wiring be protected from moisture, abrasion, road splash, grease, oil, fuel and chafing. The wiring on trailers would have to be accessible when the trailer is fully loaded and locked.

It is being proposed that parking brakes be required on all trailers (full trailers and semitrailers) which shall be in conformity with the requirements of the FMVSS (49 CFR 571.121, S5.6). Parking brakes are necessary to prevent the trailer from moving from the dock when being loaded and to prevent the trailer from rolling backwards when the tractor is being hooked up. In addition, the parking brake on trailers increases the overall holding capability of the combination unit. Parking brakes are not being required on dollies.

The requirement in § 393.44 that each bus be equipped at a location adjacent to but neither forward nor to the left of the driver's seat, with a means to apply the brakes on the rear wheels in the event any connection to the brake system forward of the driver's seat or any brake line to any of the front wheels is broken, is being considered for revision to accommodate new technology that may be developed. As proposed herein the means to apply the brakes on the rear wheels may be located either on the vehicle's dash or, under certain conditions, at the brake treadle, so long as the means can be reached by the driver from the driver's seat with the seatbelt in use.

A proposed revision to § 393.41, parking brake system, would change the grade holding requirement to be in conformity with the requirement in 49 CFR 571.121, S5.6.2, that requires the vehicle to remain stationary facing uphill and downhill on a 20 percent grade, both loaded and empty. The current rule requires the vehicle to remain stationary on any grade on which the vehicle is operated. This rule is considered unenforceable. The proposed change gives industry and enforcement personnel a specific criterion of measurement. Comments on this proposed revision are requested.

Updated brake tubing and brake hose requirements in § 393.45 are being proposed. SAE recommended practices represent the correlation of the best information available from research investigation and production experience on the minimum construction and performance characteristics essential for new brake tubing and hose assemblies used as original or replacement equipment. They also represent the minimum quality recognized by manufacturers and hose suppliers as essential for satisfactory and safe operation by the hose itself and other parts of the braking system. Therefore, special requirements for metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing and brake hose are being revised to reflect current SAE recommended practices.

Nonmetallic brake tubing will be required to meet the requirements of the SAE Recommended Practice, J844 nonmetallic air brake system Type B (Oct. 80). This requires an outer layer of material of a different color. The reason for this is that a simple visual inspection could then identify serious wear. The idea here being that wear through the first layer will be indicated by a color change and replacement made before an accident causing situation develops. This is similar to the present requirement for coiled nonmetallic tubing.

We propose to amend § 393.50, Reservoirs required, and § 393.51, Warning devices and gauges, to make the applicability of those sections consistent with the Act.

Fuel Tanks

The rules pertaining to fuel systems were revised by rulemaking published in the **Federal Register** on August 14, 1971 (36 FR 15444) at which time the fuel tank manufacturer's identity marking requirement was inadvertently omitted from the revised certification requirement. It is now being proposed to again require the manufacturer's name be marked on all fuel tanks. Without the identification of themanufacturer, it is impossible to enforce the certification requirement on fuel tanks not so certified. It is our understanding that most fuel tank manufacturers now include their name in addition to the certification. Therefore it is being proposed to amend § 393.67(f), Certification, to include the manufacturer's name.

Fuel Gauges

It is proposed that a fuel gauge be required to assist the driver in knowing at all times the fuel supply of the motor vehicle being operated. With the introduction of anti-theft plates being installed by many carriers, it is impossible for the driver to determine the available fuel supply by looking in the fuel tank. Therefore, we propose to amend § 393.65 to require a fuel gauge.

Fuel System—Natural Gas

The use of natural gas as a fuel for motor vehicles began in Italy about 40 years ago. During the past 10 years, increases in the price of liquid fuels and political considerations reflecting dependence upon imported energy have made the use of natural gas more attractive. The approximately 15,000 natural gas vehicles in the U.S.A. are predominantly in the so-called "fleet"

operations. These systems have been designed, fabricated and operated on the basis of criteria agreed upon by equipment manufacturers, vehicle owners, and fueling station owners and operators. Since natural gas is lighter than air and will dissipate readily into the atmosphere when released, it is felt that fueling operations must be conducted outdoors.

Compressed Natural Gas (CNG) is a naturally occurring mixture of hydrocarbon gases and vapors, consisting principally of methane (CH_4) in gaseous form which has been compressed to 2,400—3,600 PSIG for use as a vehicular fuel.

There is considerable concern, from a safety standpoint, that once the use of natural gas fuel systems increases, the probability of fuel tank failures will rise sharply. Uncontrolled blending of pure (clean) natural gas with natural gas from sources with corrosive impurities present in the gas will cause destructive deterioration (stress-corrosion cracking) to the fuel system. When pressurized natural gas fuel systems fail there is a great potential for very serious accidents involving fire. Therefore, a Federal standard is necessary prior to any mass introduction of such systems to the interstate commercial vehicle fleets to assure that potential hazards associated with the gaseous fuel system are minimized.

One of the greatest incentives for using gaseous fuels in urban areas is the control of air pollution. The environmental and ecological problems attributed to air pollution have caused considerable concern from the standpoint of identifying and eliminating pollution at its source. One of the biggest pollution sources is that associated with the internal combustion engine. The exhaust fumes from these engines produce, in addition to particulate contamination, significant quantities of hydrocarbons, carbon monoxide, and oxides of nitrogen. These substances have been responsible for a large share of the health and environmental problems associated with atmospheric smog and air pollution in general. One means of controlling the exhaust contaminants is to replace the gasoline fuel, which is a mixture of literally hundreds of compounds with a simpler fuel, such as natural gas, which is principally methane. Government vehicles, equipped to run on either natural gas or gasoline, have been shown to produce exhaust emissions which are characterized by an 82% reduction in hydrocarbons, 87% reduction in carbon monoxide and 53% reduction in oxides of nitrogen, when using natural gas as compared with gasoline.[1] Natural gas is usually supplied as compressed natural gas (CNG), but systems are available using liquefied natural gas (LNG) stored at approximately minus 260° F in a cryogenic tank.

At this time, there does not appear to be sufficient interest in LNG to initiate a Federal standard for commercial motor vehicle use. However, we invite comments on the use of LNG as a fuel for commercial motor vehicles. It is our intention to limit this rulemaking to CNG.

CNG and LNG are both lighter than air in the gaseous state and have different hazard characteristics from the familiar liquefied petroleum gas (LPG), which is principally propane.

This new proposed standard on gaseous fuel systems is intended to fulfill a need that is materializing as vehicle fleets are modified to use gaseous fuel.

Fuels, such as natural gas, possess additional desirable characteristics in addition to the lowered exhaust emissions. Lubricating engine oil does not require changing as often, due to reduced contamination and sludge formation. Engine life is prolonged and maintenance is reduced.

In general, the tanks, lines, regulators and other components must be placed and secured in such a manner that normal vibration and vehicle utilization cannot damage the fuel system. The tanks and associated valves must be placed in a structurally protective area. These components must also be readily accessible for inspection or disassembly. The system tubing must be protected in a similar manner, utilizing, where possible, the vehicle frame or other substantial components along with protective grommets in areas where the tubing passes through structural members. The system tubing also must be equipped with "stand-off" braces where rubbing or chafing may be encountered. Serious consideration should be given to crash conditions when installation is made. Catastrophic failure of the system during a crash should be guarded against. High pressure tubing for example, can be installed with sufficient slack provided in the form of a stress relieving loop or other means that is capable of absorbing substantial deformation or stretching of the line without rupture.

Little actual experience in using American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code containers in this service is available to the FHWA, especially with regard to testing and recertification. It is felt that hydrostatic testing is an acceptable method of requalification for containers at these pressures. However, the FHWA is inclined to require either internal inspection by the wet fluorescent magnetic particle method in accordance with Section V of the ASME code or by the ultrasonic method as prescribed in American Society for Testing and Materials (ASTM) Standard A–388–67 for those containers subject to stress corrosion cracking.

At the present time, and for purposes of this rulemaking, the difference between the terms "cylinder" and "pressure vessel" is one of size and structure. Comments are invited on the use of these terms.

To ensure a high level of safety practices in fleet operations, minimum safety requirements are being proposed by the addition of a new § 393.68 covering natural gas fuel systems.

One of the recognized risks associated with the use of compressed natural gas is stress corrosion cracking introduced or enhanced through contaminants in the gas. One way of eliminating this problem is by setting limits on the contaminants in the gas. Another means may be by controlling the dew point of the gas. The effect of contaminants may be lessened by controlling the dew point of the gas. Public comment is sought on this matter in order to determine the best means of controlling gas purity and thereby preventing or decreasing stress corrosion cracking of the container.

Due to this risk of contamination in the gas, it is felt that a very strict inspection standard should be established for natural gas containers. Two container inspection standards which are relevant and useful to the operation of commercial motor vehicles are: (1) Compressed Gas Association (CGA) C–6 for steel containers, and (2) CGA C–6.1 for aluminum containers. Public comment is also sought on these procedures.

The purpose of this proposed rule is to specify requirements for the integrity and security of compressed gaseous fuel system equipment and its installation, and to minimize the fire hazard resulting from gaseous fuel leakage.

In view of a lack of a national standard for the composition of natural gas, it is important that such cylinders and pressure vessels be retested and reinspected at a frequency suited to the severity of the service conditions, in order to assure continued integrity. A major safety concern with the use of high pressure cylinders and vessels in CNG service is stress corrosion cracking and/or hydrogen embrittlement also called "hydrogen-assisted cracking" and

"sulfide stress cracking". This phenomenon, caused primarily by contaminants in the CNG, including hydrogen sulfide (H_2S) and water vapor (H_2O), can cause cylinder failure. Since the composition of CNG varies, and since there is no industry standard restricting contaminants in CNG Used as fuel, there is an increased possibility that harmful amounts of H_2S and H_2O will be present in these high pressure containers. Also, the high filling pressure used (up to 4500 psig) significantly increases the potential for stress corrosion caused by contaminants.

In at least four respects, cylinders used in fuel systems are likely to be subject to more severe conditions than those used in commercial shipments:

(1) The CNG is likely to have more contaminants, and is contained at higher pressures.

(2) The cylinders are often mounted horizontally and any condensation or other contaminants settle on the sidewall which is the most highly stressed part of the cylinder.

(3) The cylinders are subject to far more pressure cycles due to frequent filling and may not receive a visual inspection as a part of the filling procedure.

(4) Damage potential from abrasion and corrosion at the mounting brackets may be present in fuel system containers but is not normally a factor with commercial cylinders. In addition, certain mounting locations may expose containers to severe external corrosion from such elements as moisture and road salt.

In view of the above, appropriate retest and reinspection intervals should be established by manufacturers and equipment installers, but in no case should this retest and reinspection interval exceed 3 years. Such retests and reinspections should be performed on a container after it has been removed from the fuel system in conformance with all retest and reinspection requirements prescribed in 49 CFR 173.34(e) for DOT–3AA cylinders.

An additional concern is the adequacy of the pressure relieving systems. Traditional pressure relief device requirements for DOT specification and exemption cylinders are contained in 49 CFR 173.34(d). These requirements provide a relief device system capable of preventing rupture of the normally charged cylinder under fire conditions. However, a relief device system based on these requirements may not be adequate to prevent rupture of a partially charged cylinder under fire conditions because of the longer period of time required for pressure to increase to the level needed to activate the relief device. This longer exposure to fire could weaken the container and cause failure. Any container used in a partially filled condition should be equipped with a pressure relief device(s) tested and proven to function so as to prevent rupture of the container under fully enveloping fire conditions at all pressure levels. A cylinder (container) must be removed from the fuel system to be retested and reinspected in conformity with the requirements prescribed in 49 CFR 173.34(e) for DOT–3AA cylinders. In addition, any cylinder made from material that may be subject to stress corrosion cracking should be examined for this type of defect and removed from service if any evidence of cracking is present. This testing will be conducted by the wet flourescent magnetic particle method in accordance with Section V of The American Society of Mechanical Engineers Boiler and Pressure Vessel Code, 1985 edition, or by the ultrasonic method as prescribed in the American Society for Testing and Material Standard A–388–67, 1982 edition.[2]

The FHWA would like to receive information from utility companies, cylinder manufacturers, equipment manufacturers, compressor manufacturers and equipment installers on the following:

1. Range of gas quality supplied through the gas utilities distribution system.

2. The quality of gas that a cylinder or system manufacturer would recommend in their storage vessels.

3. Information gathered through cylinder testing regarding corrosion, stress fractures or other related information about the structural integrity of CNG vessels such as research ongoing at Southwest Research Institute.

4. Type of CNG vessel testing that should be allowed or required. An information to support time interval of conducting test on these vessels.

Hydro-static testing is presently the most common means of retesting a cylinder. The FHWA is also seeking public comment on more effective/efficient means of testing, such as ultrasonic on acustic testing and also comments on length of time between test periods.

This information could lead to a less restrictive requirement than the one proposed in this rulemaking.

Frame and Frame Assemblies

High strength heat treated steel frame rails, having high resistance to bending moments, are used in truck/tractor frames. The load carrying ability of this type frame is dependent primarily on the ability of the material used to withstand very high stresses. High strength steel frames, because they are so highly stressed, are particularly susceptible to failures due to stress concentration. This is most critical in areas where a stress concentration will be combined with fatigue loading. Most problems encountered in truck/tractor frame failures today are the result of improperly installed frame mounted accessories. Therefore, we propose to amend the regulations to include frame and frame assembly requirements which would: (1) Prohibit cracked, loose, sagging or broken frames or frame members; (2) require that all accessories be bolted securely; and (3) prohibit welds and the drilling of holes in certain areas of the frame by persons other than the manufacture.

Wheels

Specific requirements for the maintenance of wheels are being proposed. Wheel and tire failures are historically one of the major mechnical defect related causes of reportable accidents filed with the FHWA. The proposed rule would prohibit cracks in wheels and rims, prohibit stud or bolt holes from being elongated (out of round), and prohibit missing or loose nuts or bolts.

Suspension Systems

The suspension system is employed to allow axle movement independent of the frame in order to provide a smooth ride for the driver and the cargo. As a multifunctional system it also attaches the axle to the vehicle. The suspension must keep the axle or axles in proper alignment for safe operation and absorb the tremendous twisting imposed by driving torque, as well as the equally punishing opposite force of braking. Accident statistics generated by motor carriers of property filing accident reports with the FHWA, show that suspension systems is the fourth leading cause of accidents; therefore, regulations concerning the condition of springs, axles, adjustable axle assemblies, torsion bars, and related devices, are being proposed herein.

Steering Wheel Systems

In 1983, 5.9 percent of the reported mechanical defect related accidents involved steering systems. According to accident reports filed with the FHWA, steering wheel system problems and failures account for the third most serious mechanical defect resulting in accidents of motor carriers. Regulations concerning free play in steering wheels, defects in the steering column system,

universal joints, and power steering systems are therefore being proposed for the first time.

Exhaust Systems

It is being proposed to amend the exhaust system location requirement to require an exhaust system, and to prohibit the use of patches or leaking at any point below or forward of the driver/sleeper compartment, or in the case of a bus, forward of any window or door designed to be opened. These proposed changes will increase safety by ensuring that exhaust fumes will not affect the alertness of the driver while driving or affect the driver's health or the health of passengers when being transported.

Sleeper Berths

A petition has been received requesting an amendment to § 393.76 to permit the use of water mattresses in sleeper berths of trucks. The petition appears to have merit. Therefore, it is being proposed that mattresses containing a liquid may be used in sleeper berths provided the mattress is so manufactured that the occupant will not get wet in the event of a leak; that it is of such thickness that it will not "bottom-out" when occupied while the vehicle is in motion; that electricity is not used to heat the mattress; that the liquid will not freeze, and eliminate the requirement for cleaning.

Future rulemaking will consider other changes in the regulations upon which research is presently being conducted. It would be unwise to make these changes until the research is complete and found to be acceptable. Besides research being conducted by the Federal Government, several industry associations and private companies are conducting research that will hopefully resolve several controversial issues.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It is considered to be a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the sizeable number of individuals and companies that may be impacted economically by certain rule changes promulgated herein. However, despite the number of individuals and companies that may be affected, it is anticipated that the economic impact of this rule to all individuals will be minimal. It is also anticipated that the benefits and opportunities for benefits to be derived from the rule will offset any costs. A draft regulatory evaluation/ initial regulatory flexibility analysis has been prepared and is available for review in the public docket.

Based on the information available to the FHWA at this time, this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 393

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Parts and accessories.

References

1. EPA Motor Vehicle Emission Laboratory, Ann Arbor, Michigan, April 1981.

2. Published by The American Society of Mechnical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017, and by the American Society For Testing and Materials, 1916 Race Street, Philadelphia, Pa. 19103, respectively.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: February 13, 1987.

Ray Barnhart,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Subtitile B, Chapter III, by amending Part 393 as set forth below.

Part 393—[Amended]

1. The authority citation for Part 393 is revised to read as follows:

Authority: Section 210 of Pub. L. No. 98–554, 98 Stat. 2839 (1984) (49 U.S.C. App. 2505); 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

2. Subpart A consisting of §§ 393.1 through 393.5 is revised to read as follows:

Subpart A—General

Sec.

393.1 Scope of the rules in this part.
393.3 Additional equipment and accessories.
393.5 Definitions.

Subpart A—General

§ 393.1 Scope of the rules in this part.

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

§ 393.3 Additional equipment and accessories.

Nothing contained in subchapters A and B of this chapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by subchapters A and B of this chapter, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

§ 393.5 Definitions.

As used in this part, the following words and terms are construed to mean:

Brake. An energy conversion mechanism used to stop, or hold a vehicle stationary.

Brake tubing/hose. (a) Metallic brake tubing, nonmetallic brake tubing and brake hose are conduits or lines used in a brake system to transmit or contain the medium (fluid or vacuum) used to apply the motor vehicle's brakes.

(b) Metallic and nonmetallic brake tubing intended for use in areas of the brake system where relative movement in the line is not anticipated.

(c) Brake hose and coiled nonmetallic brake tubing is intended for use in the brake system where substantial relative movement in the line is anticipated or the hose/coiled nonmetallic brake tubing is exposed to potential tension or impact such as between the frame and axle in a conventional type suspension system (axle attached to frame by suspension system).

Chassis. The load-supporting frame in a truck or trailer, exclusive of any appurtenances which might be added to accommodate cargo.

Clearance Lamp. A lamp used on the front and the rear of a motor vehicle to indicate its overall width and height.

Composite container. A container fabricated of two or more materials that interact together to facilitate the container design criteria.

Container. A pressure vessel or cylinder used to store CNG.

Container Appurtenances. Devices connected to container openings for safety, control or operating purposes.

Container Valve. A handwheel-operated valve connected directly to a container outlet.

Converter dolly. A motor vehicle with a fifth wheel lower half or equivalent mechanism, the attachment of which converts a semitrailer to a full trailer.

Curb weight. The weight of a motor vehicle with standard equipment; maximum capacity of fuel, oil, and coolant; and if so equipped, air conditioning and additional weight of optional engine. Curb weight does not include the driver.

Cylinder. A container constructed, inspected, and maintained according to DOT regulations (Research & Special Programs Administration (DOT–E8009) for the purpose of storing compressed

natural gas and having not over 1000 pounds of water capacity (nominal).

Dew Point. The temperature at which vapor begins to condense.

Emergency Brake System. a mechanism designed to stop a vehicle after a failure of the service brake system.

Fittings. Any removable device affixed to an opening in the fuel tank with the exception of the filler cap.

Flammable Range. Designates the difference between the minimum and maximum volume percentages of the material in air that forms a flammable compressed gas.

Fuel Supply Container. A container mounted upon a motor vehicle to store Compressed Natural Gas (CNG) as the fule supply to the internal combustion engine of the vehicle.

Grommets. A device that serves as a support and protection to that which passes through it.

Hazard Warning Signal. Lamps that flash simultaneously to the front and rear, on both the right and left sides of a commercial motor vehicle, to indicate to an approaching driver the presence of a vehicular hazard.

Head Lamps. Lamps used to provide general illumination ahead of a motor vehicle.

Identification Lamps. Lamps used to identify certain types of commercial motor vehicles.

Lamp. A device used to produce artificial light.

Lash. The condition in which the steering wheel may be turned through some part of a revolution without associated movement of the front wheels.

License Plate Lamp. A lamp used to illuminate the license plate on the rear of a motor vehicle.

Lower Half Fifth Wheel. A device mounted on a truck tractor or a converter dolly upon which the upper half fifth wheel mounted on a semitrailer rests.

Manual Shutoff Valve. A quick-closing valve located downstream of all CNG fuel supply containers on the vehicle.

Parking Brake System. A brake system used to hold a vehicle stationary.

Play. Any free movement of the front wheels and suspension components.

Pressure Relief Device. A device designed to prevent rupture of a normally charged fuel supply container placed in a total fire involvement Test as prescribed in CGA pamphlet C–14.[1]

[1] Procedures for Fire Testing of D.O.T. Cylinder Pressure Relief Device Systems, published by the Compressed Gas Association, Inc., Crystal Gateway 1, Suite 501, 1235 Jefferson Davis highway, Arlington, Virginia 22202.

Pressure Relief Device Channels. The passage or passages beyond the operating parts of the pressure relief device through which fluid must pass to reach the atmosphere.

Rear Extremity. The rearmost point on a vehicle when the vehicle's cargo doors, tailgate or other permanent structure are positioned as they normally are when the vehicle is being driven. Non-structural protrusions such as taillights, hinges and latches are deleted from the determination of the rear most point.

Reflector. A device used on a vehicle to reflect the light from all sources, but primarily from the head lamps of an approaching motor vehicle.

Service Brake System. A primary brake system used for slowing and stopping a vehicle.

Side Extremities. The outermost point on the sides of the vehicle. Nonstructural protrusions such as taillights, hinges, and latches are excluded from the determination of the outermost point.

Side Marker Lamps. Lamps used on each side of a trailer to indicate its overall length.

Side Marker Lamp (Intermediate). A lamp shown to the side of a trailer to indicate the approximate middle of a trailer 30 feet or more in length.

Stop lamps. Lamps shown to the rear of a motor vehicle to indicate the intention of the operator to stop or reduce speed by braking.

Tail Lamps. Lamps used to designate the rear of a motor vehicle.

Turn Signals. Lamps used to indicate a change in direction by emitting a flashing light on the side of a motor vehicle towards which a turn will be made.

Upper Half Fifth Wheel. A device consisting of upper coupler plate reinforcement framing and a fifth wheel kingpin mounted on a semitrailer.

Upper Coupler Plate. A plate structure through which the kingpin neck and collar extend. The bottom surface of the plate contacts the fifth wheel lower half when the trailer is coupled to the truck-tractor.

3. Subpart B is amended by revising § 393.11 to read as follows and removing § 393.12, 393.13, 393.14 and 393.15.

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

* * * * *

§ 393.11 Lighting devices and reflectors.

The following table sets forth the required color, position and required lighting devices by type of commercial motor vehicle. Diagrams illustrating the location of lighting devices and reflectors, by type and size of commercial motor vehicles, are shown immediately following the table.

Footnote—1

Identification lamps may be mounted on the vertical centerline of the cab where different from the centerline of the vehicle, except where the cab is not more than 42 inches wide at the front roofline, then a single lamp at the center of the cab shall be deemed to comply with the requirements for identification lamps. No part of the identification lamp or their mountings may extend below the top of the vehicle windshield.

Footnote—2

Unless the turn signals on the front are so constructed (double-faced) and located as to be visible to passing drivers, two turn signals are required on the rear of the cab, one at each side.

Footnote—3

The identification lamps need not be lighted if obscured by a vehicle in the same combination.

Footnote—4

Vehicles manufactured on and after March 1, 1979 shall be equipped with side-marker lamps at a height of not less than 15 inches (381 mm) nor more than 60 inches (1524 mm) above the road surface, as measured from the center of the lamp on the vehicle at curb height. The rear side-marker lamps shall be visible in the vehicle's rearview mirror when the trailer is tracking straight.

Footnote—5

For purposes of these regulations, each converter dolly shall be equipped with two stop lamps, two tail lamps, and two reflectors on the rear at each side when towed singly by another vehicle. Each converter dolly shall be equipped with turn signals at the rear if the converter dolly obscures the turn signals at the rear of the towing vehicle when towed singly by another vehicle.

Footnote—6

Pole trailers will have two reflectors, one on each side, placed to indicate extreme width of the trailer.

Footnote—7

Pole trailers may have 3 identification lamps mounted on the vertical centerline of the rear of the cab of the truck tractor drawing the pole trailer, and higher than the load being transported, in lieu of the three identification lamps mounted on the rear vertical centerline of the trailer.

Footnote—8

Pole trailers shall have on the rear-most support for the load, one combination marker lamp showing amber to the front and red to the rear and side, mounted on each side to indicate maximum width of the pole trailer; also one red reflector on each side of the rear-most support for the load.

Footnote—9

Any motor vehicle having a load which extends beyond the sides, or more than 4 feet beyond the rear of the motor vehicle, shall have the extremities of the load marked with a red flag, not less than 12 inches square at each point where a map is required.

Footnote—10

Any motor vehicle transporting a load which extends beyond the width of the motor vehicle, or having projections beyond the rear of such vehicle, shall be equipped with the following lamps in addition to other required lamps.

(a) Loads projecting beyond sides of motor vehicles

(1) The foremost edge of the projecting load at its outermost extremity shall be marked with an amber lamp visible from the front and both sides.

(2) The rear-most edge of the projecting load at its outermost extremity shall be marked with red lamp visible from the rear and side.

(3) If any portion of the projecting load extends beyond both the foremost and rear-most edge, it shall be marked with an amber lamp visible from the front, both sides, and rear.

(4) If the projecting load does not measure over 3 feet from front to rear, it shall be marked with an amber lamp visible from the front, both sides, and rear, except that if the projection is located at or near the rear, it shall be marked by a red lamp visible from the front, side, and rear.

(b) Projections beyond rear of motor vehicles. Motor vehicles transporting loads which extend over 4 feet beyond the rear of the motor vehicle, or which have tailboards or tailgates extend over 4 feet beyond the body, shall have these projections marked as follows.

(1) On each side of the projecting load, one red lamp, visible from the side, located so as to indicate maximum overhang.

(2) On the rear of the projecting load, two red lamps, visible from the rear, one at each side; and two red reflectors visible from the rear, one at each side, located so as to indicate maximum width.

Footnote—11

To be illuminated when tractor headlamps are illuminated.

Footnote—12

Every motor vehicle shall be equipped with a signaling system that, in addition to signaling turning movements as required by Section 392.15, shall have a switch or combination of switches that will cause the two front turn signals and the two rear signals to flash simultaneously as a vehicular traffic signal warning, required by Section 392.22(a). The system shall be capable of flashing simultaneously with the ignition of the vehicle turned on or off.

Footnote—13

To be actuated upon application of service brakes.

Footnote—14

Backup lamp not required but allowable to operate when unit is in reverse.

Legend

1. Headlamps (2)-white (4 optional)
2. Side-marker lamps, Front (2)-amber
3. Side reflectors, Front (2)-amber
4. Turn-signal lamps, Front (2)-amber
4a. Turn-signal lamps, Front (2)-amber (optional location)
5. Identification lamps, Front (3)-amber
5a. Identification lamps, Front (3)-amber (optional location)
6. Clearance lamps, Front (2)-amber
7. Side-marker lamps, Rear (2)-red
8. Side reflectors, Rear (2)-red
9. Identification lamps, Rear (3)-red
10. Clearance lamps, Rear (2)-red
11. Reflectors, Rear (2)-red
12. Stop lamps, Rear (2)-red
13. License plate lamp, Rear (1)-white
14. Rear backup lamp (1)-white (location optional provided optional requirements are met)
15. Side-marker lamps, Intermediate (2)-amber (if vehicle is 30' or more overall length)
16. Side reflectors, Intermediate (2)-amber (if vehicle is 30' or more overall length)
17. Turn signal lamps, amber or red
18. Tail lamps, Rear (2)-red

BILLING CODE 4910-22-M

Table
Required Commercial Vehicle Lighting Equipment

A Item	B Quantity	C Color	D Location	E Position	F Height Above Road Surface in Inches	G Required Lighting Devices/ Vehicles*
Headlamps	2 At least	White	Front	On the front at the same height, an equal number at each side of the vertical centerline as far apart as practicable.	Not less than 24 nor more than 54.	1, 2, 3
Turn Signal (Front), See Footnote # 12	2	Amber	Front	One at each side, at the same height and as far apart as practical.	Not less than 15 nor more than 83.	1, 2, 3
Identification Lamp (Front)	3	Amber	Front	Mounted on the vertical centerline of the vehicle or the vertical centerline of the cab where different from the centerline of the vehicle.	All three on same level as close as practicable to the top of the vehicle.	2, 3
Tail Lamp See Footnote # 11	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level, between 15 and 72.	1, 2, 3, 4, 5, 6, 7
Stop Lamp See Footnote # 13	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level, between 15 and 72.	1, 2, 3, 4, 5, 6, 7

Table
Required Commercial Vehicle Lighting Equipment (Continued)

A	B	C	D	E	F	G
Item	Quantity	Color	Location	Position	Height Above Road Surface in Inches	Required Lighting Devices/ Vehicles*
Clearance Lamps See Footnote # 9	2	Amber	One on each side of front	On each side to indicate overall width.	Both on same level as high as practicable.	2, 3, 4, 7
	2	Red	One on each side of rear	On each side to indicate overall width.	Both on same level as high as practicable.	2, 4, 7
Side Marker Lamp, Intermediate; See Footnote # 4	2	Amber	One on each side	Near midpoint between front and rear side marker lamps, if over 30' in length.	Not less than 15.	1, 2, 3, 4, 7
Reflector Intermediate (Side)	2	Amber	One on each side	Near midpoint between front and rear side reflectors, if over 30' in length.	Between 15 and 60.	1, 2, 3, 4, 7
Reflector (Rear) See Footnote # 4	2	Red	Rear	As far apart as practicable.	Both on same level, between 15 and 60.	1, 2, 3, 4, 5, 6, 7
Reflector (Rear Side)	2	Red	One on each side (rear)	As far to the rear as practicable.	Between 15 and 60.	2, 4, 7
Reflector (Front Side)	2	Amber	One on each side (front)	As far to the front as practicable.	Between 15 and 60.	2, 4, 7

Table
Required Commercial Vehicle Lighting Equipment (Continued)

A Item	B Quantity	C Color	D Location	E Position	F Height Above Road Surface in Inches	G Required Lighting Devices/ Vehicles*
License Plate Lamp (Rear) Footnote # 11	1	White	At rear license plate	To illuminate the license plate from the top or sides.	No requirement	1, 2, 3, 4, 6, 7
Side Marker Lamp (Front) Footnote # 4	2	Amber	One on each side	As far to the front as practicable.	Not less than 15.	2, 4
Side Marker Lamp (Rear) Footnote # 4	2	Red	One on each side	As far to the rear as practicable.	Not less than 15.	2, 4, 7
Turn Signal (Rear) See Footnote # 12	2	Amber or Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level, between 15 and 83.	1, 2, 3, 4, 6, 7
Identification Lamp (Rear)	3	Red	Rear	One as close as practicable to vertical centerline. One on each side with lamp centers spaced not less than 6" or more than 12" apart.	All three on same level as close as practicable to the top of the vehicle.	2, 4, 7

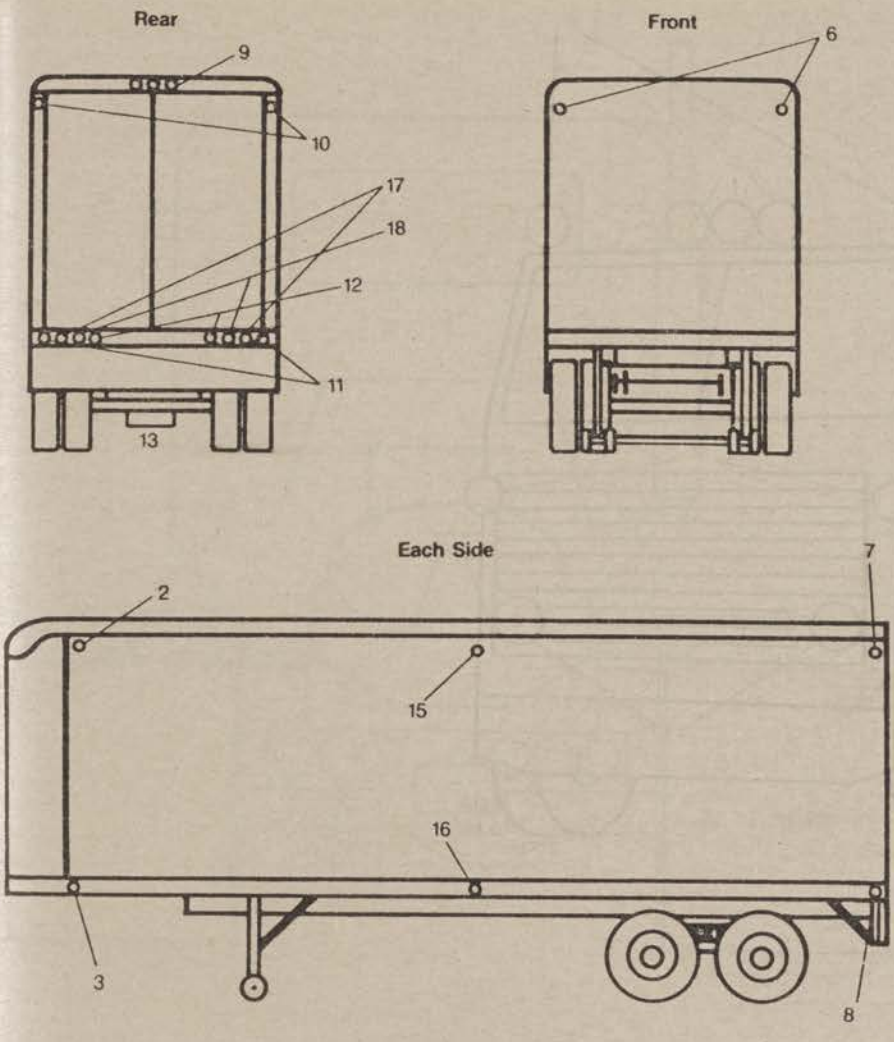
Table
Required Commercial Vehicle Lighting Equipment (Continued)

A Item	B Quantity	C Color	D Location	E Position	F Height Above Road Surface in Inches	G Required Lighting Devices/ Vehicles*
Vehicular Hazard Warning Flashers See Footnote # 12	2	Amber	Front	One lamp each side of vertical centerline at the same height and as far apart as practicable.	Both on same level, between 15 and 83.	1, 2, 3, 4, 5, 6, 7
	2	Amber or Red	Rear			
Backup Lamp; See Footnote # 14	1	White	Rear	Rear power unit	Optional	2, 3

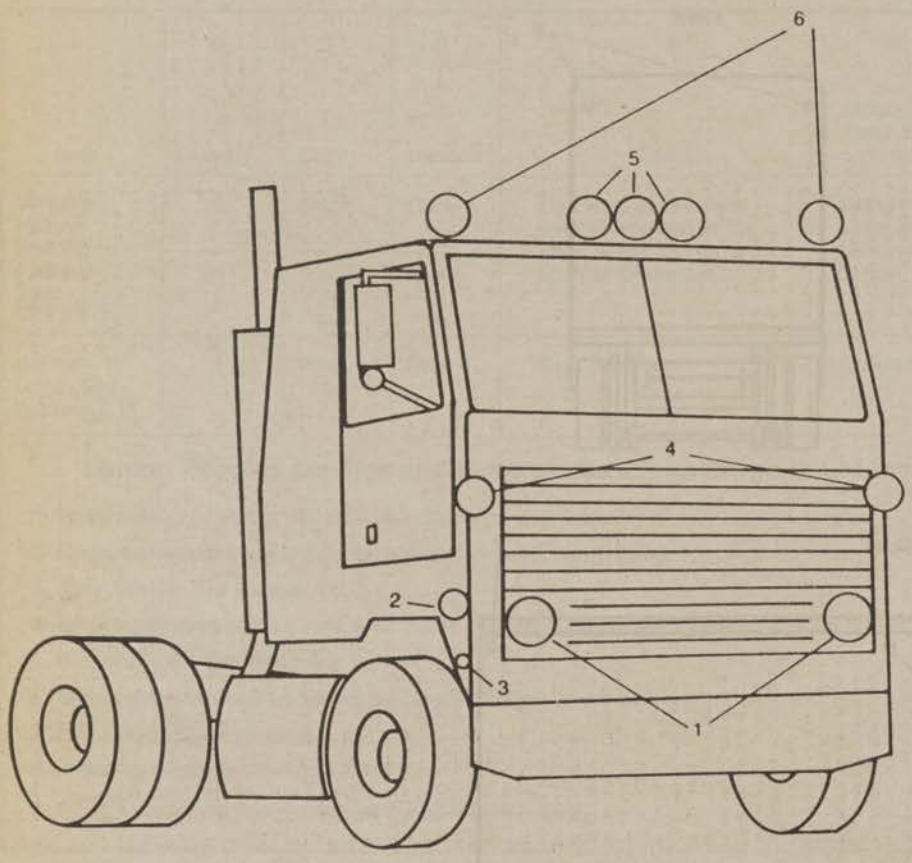
*Lighting Required per Type of Commercial Vehicle as Shown in Column H of Table

1. Small buses and trucks less than 80 inches in overall width.
2. Buses and trucks 80 inches or more in overall width. See Footnote # 1.
3. Truck tractors. See Footnote # 1, # 2.
4. Large semitrailers and full trailers 80 inches or more in overall width except converter dollies. See Footnote # 3, # 4.
5. Converter dolly. See Footnote # 5.
6. Small semitrailers and full trailers less than 80 inches in overall width.
7. Pole trailers. See Footnote # 6, # 7, # 8.
8. Projecting loads. See Footnote # 9, # 10.
9. All lighting devices must comply with FMVSS 571.108.

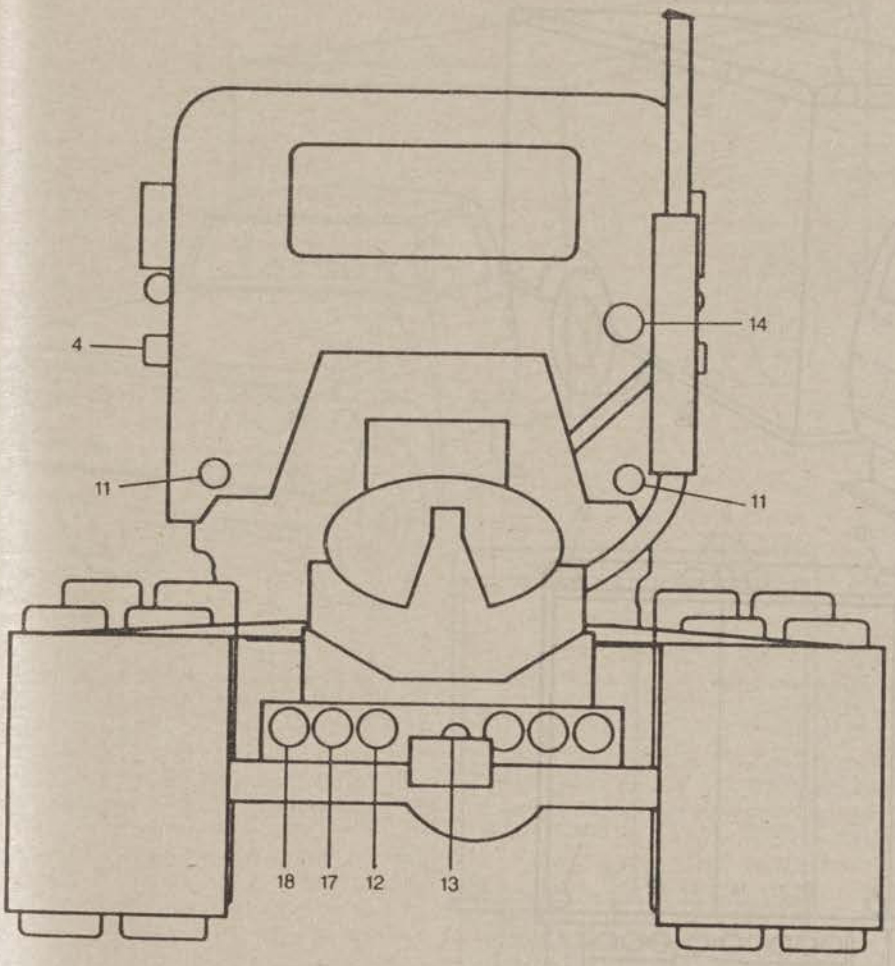
Large Trailers



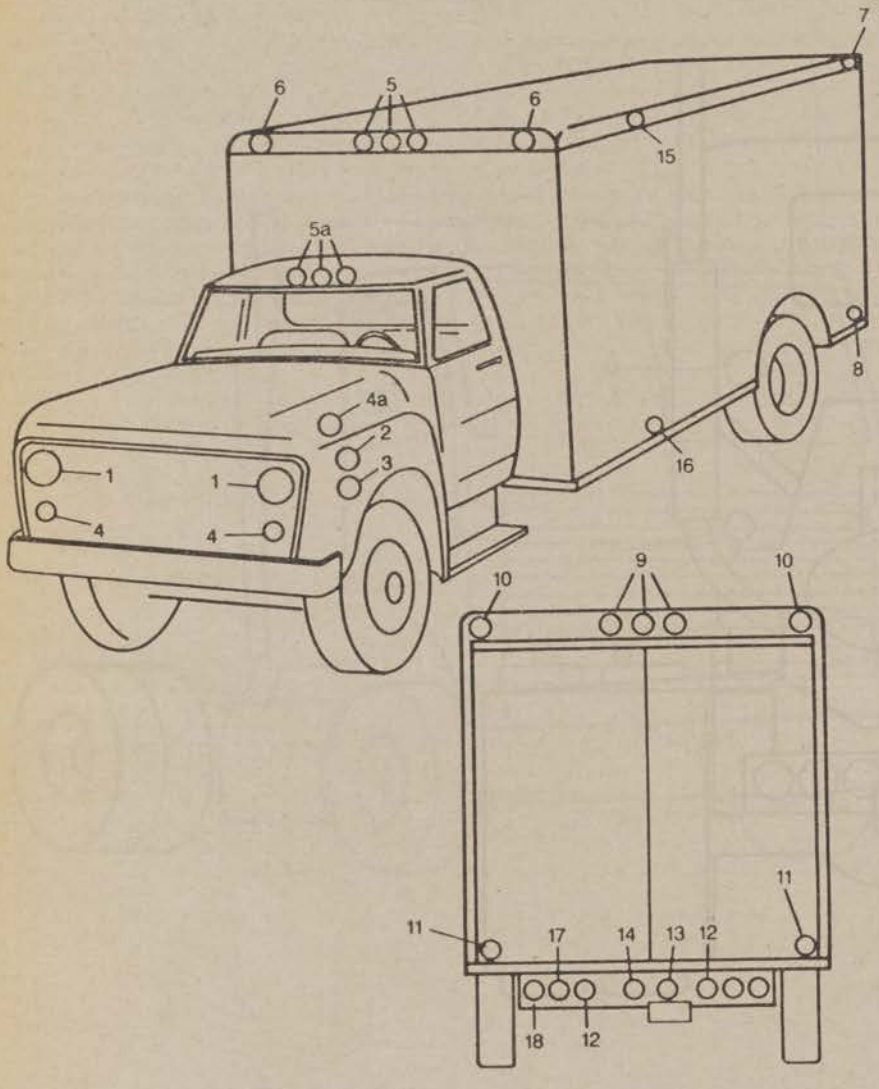
Truck Tractor
Front & Side View



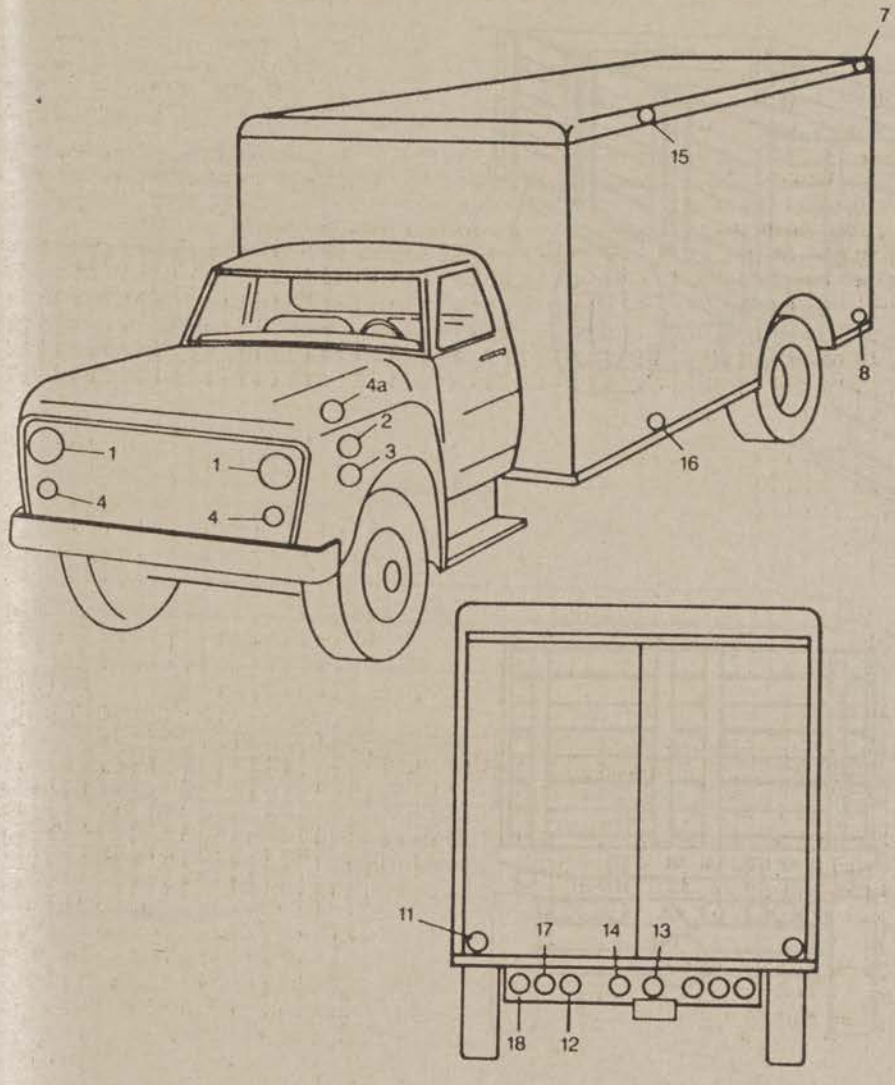
Truck Tractor
Rear View



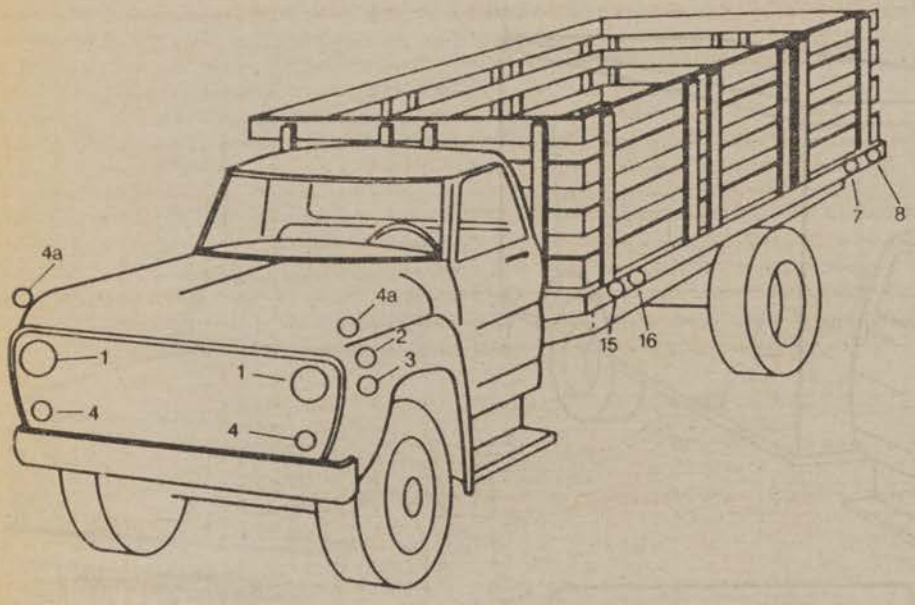
Over 80 Inches

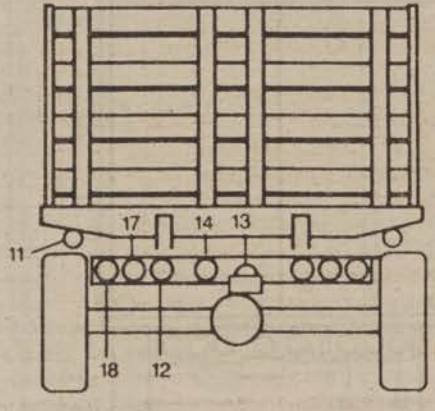


Under 80 Inches



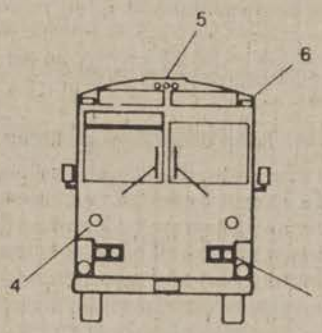
Under 80 Inches



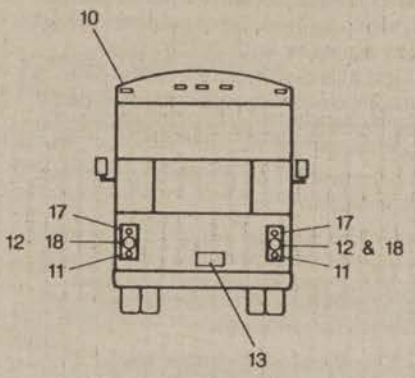


Large Bus

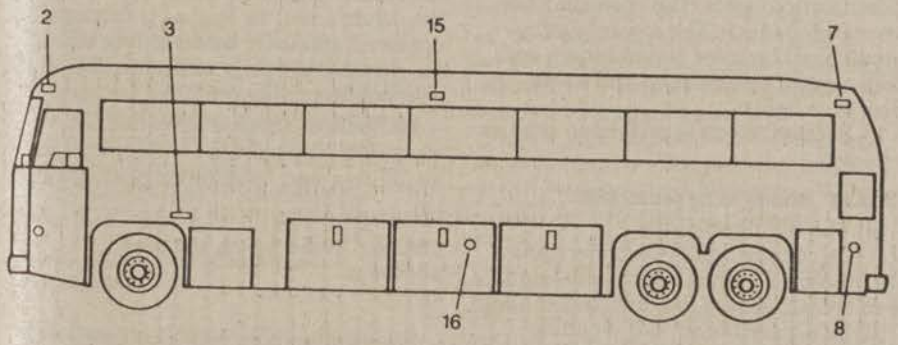
Front



Rear



Each Side



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4. Section 393.20 is amended by revising the first portion of the introductory text to read as follows:

§ 393.20 Clearance lamps to indicate extreme width and height.

Clearance lamps shall be mounted so as to indicate the extreme width of the motor vehicle (not including mirrors) and the extreme height: *Provided,* * * *.

* * * * *

§ 393.22 [Amended]

5. Section 393.22 is amended by removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

6. The footnote to § 393.24(c) is amended by adding paragraph (d), as follows:

§ 393.24 Requirements for head lamps and auxiliary road lighting lamps.

* * * * *

[* * *

(d) When reference is made in these regulations to SAE Standards or SAE Recommended Practices, they shall be as found in the 1985 Edition of the SAE Handbook:

(i) With respect to parts and accessories other than lighting devices and reflectors:

(ii) With respect to lighting devices and reflectors on motor vehicles manufactured on and after (*one year after effective date of this rulemaking*).

§ 393.25 [Amended]

7. Section 393.25 is amended by removing paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f), respectively, and revise the reference in the last sentence of redesignated paragraph (f), Stop lamp operation, to read "paragraph (e) of this section."

§ 393.26 [Amended]

8. Section 393.26 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

9. Section 393.27 is revised to read as follows:

§ 393.27 Wiring specifications.

(a) Wiring for both low voltage (tension) and high voltage (tension) circuits shall be constructed and installed so as to function properly. Wiring shall meet or exceed, both mechanically and electrically, the following SAE Standards as found in the 1985 edition of the SAE Handbook:

(1) Commercial vehicle engine ignition systems—SAE J557—High Tension Ignition Cable.

(2) Commercial vehicle battery cable—SAE J1127—Jan 80—Battery Cable.

(3) Other commercial vehicle wiring—SAE J1128—Low Tension Primary Cable.

(b) Required lamps shall be connected to the source of power with fittings or stranded wire. The source of power and the electrical wiring shall be of such size and characteristics that required lamps shall, when lighted, be capable of being seen by a person with 20/20 vision (Snellen) at a distance of at least 500 feet under clear atmospheric conditions during the time lamps are required to be lighted.

(c) Lamps shall be properly grounded to the vehicle.

Note.—This shall not prohibit the use of the frame or other metal parts of a motor vehicle as a return ground system provided truck-tractor semitrailer/full trailer combinations are electrically connected.

(d) The wire for the upper trailer circuit, where needed, shall control the upper clearance, marker, and identification lights. The wire shall be color coded black. The lower lighting circuit shall be color coded brown and shall control tail, marker, and lower clearance lights.

10. Section 393.28 is revised to read as follows:

§ 393.28 Wiring to be protected.

(a) The wiring shall—

(1) Be so installed that connections are protected from moisture, abrasion, road splash, grease, oil, fuel and chafing;

(2) Be accessible so that it can be repaired or replaced from the outside of a fully loaded and locked trailer;

(3) Be grouped together, when possible, and protected by nonmetallic tape, braid, or other covering capable of withstanding severe abrasion or shall be protected by being enclosed in a metallic sheath or tube;

(4) Be properly supported in a manner to prevent chafing;

(5) Not be so located as to be likely to be charred, overheated, or enmeshed in moving parts;

(6) Not be adjacent to any part of the fuel system; and

(7) Be protected when passing through holes in metal by a grommet of rubber, or other suitable material, or the wiring shall be metal-covered.

(b) The complete wiring system including lamps, junction boxes, receptacle boxes, conduit and fittings must be protected from the weather.

(c) Harness connections shall be accomplished by a positive mechanical means.

11. In Subpart C, § 393.41(a) is revised to read as follows:

§ 393.41 Parking brake system.

(a) Every commercial motor vehicle, except a converter dolly, shall at all times be equipped with a parking brake system adequate to hold the vehicle or combination under any condition of loading in a stationary position facing uphill and facing downhill on a smooth dry portland cement concrete roadway with a 20 percent grade.

* * * * *

13. Section 393.44 is revised to read as follows:

§ 393.44 Front brake lines, protection.

On every bus, if equipped with air brakes, except buses being transported in driveaway-towaway operations, the braking system shall be so constructed that in the event any connection to the brake system forward of the driver's seat or any brake line to any of the front wheels is broken, the driver can apply the brakes on the rear wheels despite such breakage. The means used to apply the brakes may be located forward of the driver's seat as long as it can be operated manually by the driver when the driver is properly restrained by any seat belt assembly provided for use.

14. Section 393.45 is amended by revising paragraphs (b) and (c) to read as follows, and by removing paragraph (d).

§ 393.45 Brake tubing and hose, adequacy.

* * * * *

(b) *Special requirements for metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing and brake hose.*

(1) Metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing, and brake hose installed on a commercial motor vehicle on and after (effective date of rule), must meet or exceed one of the following specifications set forth in the SAE Handbook, 1986 edition:

(i) Metallic Air Brake Tubing—SAE Recommended Practice J1149—Metallic Air Brake System Tubing and Pipe *REVISED* July 1976.

(ii) Nonmetallic Air Brake Tubing—SAE Recommended Practice J844 Nonmetallic Air Brake System Type B—OCT 80—and SAE J1131—JAN 76 Performance Requirements for SAE J844 Nonmetallic Tubing and Fitting Assemblies used in Automotive Air Brake Systems, JAN 1976.

(iii) Air Brake Hose—SAE Recommended Practice J1402 Automotive Air Brake Hose and Hose Assemblies JUN 85.

(iv) Hydraulic brake hose—SAE Recommended Practice J1401 Road Vehicle—Hydraulic Brake Hose Assemblies for Use for Non-Petroleum Base Hydraulic Fluid JUN 85.

(v) Vacuum Brake Hose—SAE Recommended Practice J1403 Vacuum Brake Hose JUN 85.

(2) Except as provided in paragraph (c) of this section, brake hose and brake tubing installed on a motor vehicle before the effective date of this rule must conform to 49 CFR 393.45 effective October 31, 1983.

(c) *Nonmetallic brake tubing.* Coiled nonmetallic brake tubing may be used for connections between towed and towing vehicles or between the frame of a towed vehicle and the unsprung subframe of an adjustable axle of that vehicle if—

(1) The coiled tubing has a straight segment (pigtail) at each end that is at least 2 inches in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(2) The spring guard or similar device has at least 2 inches of closed coils or similar surface at its interface with the fitting and extends at least 1½ inches into the coiled segment of the tubing from its straight segment.

15. Section 393.46 is amended by adding a new paragraph (f) as follows:

§ 393.46 Brake tubing and hose connections.

* * * * *

(f) Splices in tubing must use fittings that meet the requirements of SAE Standard J512—OCT 80 Automotive Tube Fittings as found in the SAE Handbook 1986 edition.

16. Section 393.50(a) is revised and paragraph (c) is removed as follows:

§ 393.50 Reservoirs required.

(a) *General.* Every commercial motor vehicle using air or vacuum for braking, shall be equipped with reserve capacity or a reservoir sufficient to ensure a full service brake application with the engine stopped without depleting the air pressure or vacuum below 70 percent of that pressure or degree of vacuum indicated by the gauge immediately before the brake application is made. For purposes of this section, a full service brake application is considered to be made when the service brake pedal is pushed to the limit of its travel.

* * * * *

§ 393.51 [Amended].

17. Section 393.51 is amended by removing paragraph (g).

18. In Subpart E, § 393.65 is amended by adding a new paragraph (h) as follows:

§ 393.65 All fuel systems.

* * * * *

(h) *Fuel gauge.* All fuel systems must be equipped with an operable gauge to indicate the amount of fuel available at any given time.

19. Section 393.67(f) is revised to read as follows:

§ 393.67 Liquid fuel tanks.

* * * * *

(f) *Certification and markings.* Each liquid fuel tank shall be legibly and permanently marked by the manufacturer with the following minimum information:

(1) The month and year of manufacture,

(2) The manufacturer's name on tanks manufactured on and after July 1, 1986, and

(3) A certificate that it conforms to the rules in this section applicable to the tank. The certificate must be in the form set forth in either of the following:

(i) If a tank conforms to all rules in this section pertaining to side-mounted fuel tanks: "Meets all FHWA side-mounted tank requirements."

(ii) If a tank conforms to all rules in this section pertaining to tanks which are not side-mounted fuel tanks: "Meets all FHWA requirements for non-sidemounted fuel tanks."

(iii) The form of certificate specified in paragraph (f)(3)(i) or (ii) of this section may be used on a liquid fuel tank manufactured before July 11, 1973, but it is not mandatory for liquid fuel tanks manufactured before that date.

20. A new § 393.68 is added to Subpart E and reads as follows:

§ 393.68 Natural gas fuel systems.

(a) A fuel system that uses non-liquefied compressed gas as a fuel for the operation of a commercial motor vehicle or for the operation of auxiliary equipment installed on, or used in connection with, a commercial motor vehicle shall be approved by a national recognized fire testing and research laboratory engaged either continuously or from time to time to some degree in fire testing or fire research or both and shall meet the following minimum requirements:

(1) Natural gas introduced into any system covered by this standard shall have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over ⅕ of the lower limits of flammable range.

(2) Fuel containers used in compressed natural gas must be manufactured, inspected, marked, and tested in accordance with Department of Transportation specification DOT-3AA cylinders, as well as fiberglass reinforced plastic (FRP) cylinders authorized under exemption. The exemption cylinders are loop (circumferentially) wrapped FRP cylinder with seamless steel or seamless aluminum cylinder liners; or manufactured in accordance with and meet the rules for construction of *Unfired Pressure Vessels, Section VIII, American Society of Mechanical Engineers, Boiler and Pressure Vessel Code* (ASME) 1984.

(3) Be labeled with the words "FOR CNG ONLY" in letters at least 1-inch high in contrasting colors and in a location which will be visible after installation.

(4) Fuel containers shall be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity and tested in accordance with CGA Pamphlet S-1.1. The pressure relief device system must be capable of preventing rupture of the container when subjected to a fire test. The fire test must be conducted in accordance with CGA Pamphlet C-14 for both cylinder and pressure vessels except the fuel container must be charged with fuel to a pressure of not more than 50% of the maximum filling pressure and tested in the orientation used on the commercial motor vehicle. The pressure relief device shall vent the fuel to the atmosphere.

(b) Each component of a nonliquefied compressed gas fuel system must be visually inspected for damage corrosion of any condition that may affect safety at least once each year, according to CGA C-6 (standards for visual inspection of compressed gas cylinders).

(c) Each fuel container must be removed from the vehicle and retested not later than two years after the most recent retest date marked on the container.

(1) The retest of a fuel container must be in accordance with 49 CFR 173.34(e). Any fuel container made from material that may be subject to stress corrosion cracking should be examined for this type of defect and removed from service if any evidence of cracking is present by any one of the following methods:

(i) Commercially available ultrasonic devices which can be used to detect sub-surface faults and to measure wall thickness.

(ii) Magnetic Particle Inspection to locate surface faults not readily visible to the naked eye.

(iii) Dye penetrant materials which show surface faults not readily visible to the naked eye.

(2) The safety relief device shall be permanently marked with the manufacturer's name, the temperature rating and maximum pressure rating and—

(i) The pressure in pounds per square inch (psi) at which the device is set to start to discharge; and

(ii) The discharge capacity in cubic feet per minute (CFM).

(3) Pressure relief devices shall meet the requirements found in 49 CFR 173.34(d).

(4) Pipe, tubing, fitting, gaskets, and packing material shall be compatible with the fuel under maximum allowable working pressure.

(5) Piping between a container and the first shutoff device shall be capable of withstanding a hydrostatic test of at least four times the maximum allowable working pressure of the container.

(6) Piping shall be fabricated and tested in accordance with American National Standard Code (ANSI BB1.3).

(7) Shutoff devices shall have a rated working pressure not less than the maximum allowable working pressure of the container used in the system.

(8) A motor vehicle fueling connection shall provide for a reliable and secure connection of the fuel system container to a source of high pressure natural gas and have a different fueling connection for each level of pressure fuel system.

(9) Each fuel container shall be mounted in a location that will minimize damage from collision as follows:

(i) No part of the fuel system shall protrude beyond the sides or top of the motor vehicle to which it is attached;

(ii) No portion of the fuel system shall be located ahead of the front axle or behind the rear bumper; and

(iii) The fuel system shall be securely mounted to the vehicle frame at least 12 inches above the roadway when the motor vehicle is laden.

(10) A manually operated shutoff device shall be installed on each fuel container. In addition, a master manual shutoff device shall be installed in an accessible location which will permit isolation of the container from the remainder of the fuel system.

(11) The shutoff device shall be securely mounted in a protected location to minimize damage from vibration and collision. The device shall be marked with the words "Manual Shutoff Device."

(12) A shutoff device shall be provided in the system to prevent the flow of gaseous fuel to the engine when the engine is not running even if the vehicles ignition is on.

(13) A motor vehicle equipped with a CNG fuel system shall bear a permanent plate, readily visible and located at the refueling connection showing—

(i) Manufacturer's name and address;

(ii) Serial number;

(iii) Model number;

(iv) CNG Fueled vehicle;

(v) Maximum allowable working pressure;

(vi) Container retest date;

(vii) Total container water volume in cubic inches;

(viii) Certification of system meeting this regulation;

(ix) Installer's name and address if different from manufacturer.

(d) The mounting rack shall be—

(1) Secured to the vehicle in such a manner as to withstand a static force applied in any direction of eight times the weight of a fully pressurized container.

(2) Electrically insulated from the container to prevent electrolytic action; and

(3) Designed to prevent container rotational displacements and be capable of disassembly to the degree necessary to replace a container or for inspection purposes.

(e) A provision shall be made to minimize vibration of piping, tubing, and fittings in vehicle installations.

(f) Grommets or similar devices shall be used where necessary to prevent abrasion of supply lines which pass through metal panels and shall provide a snug fit.

(g) Manual valves shall—

(1) Be made of material suitable for use with natural gas and shall be capable of withstanding a temperature of 800°F;

(2) Function satisfactorily at temperatures from −40°F to 250°F;

(3) Have handles and shall be securely attached to the rotor member of the valve.

(h) Emergency shutoff valves shall have no more than 90° rotation from "on" to "off" positions and shall be provided with rigidly secured stops to limit rotation. In the "off" position, valve handles shall be crosswise to the direction of flow at the valve inlet.

(i) Solenoid valves shall be suitable for the working pressure and fluids to which they will be subjected and shall comply with applicable provisions of UL 429—1982 Valves for Flammable fluids.

(j) Gas-air mixing devices shall—

(1) Be of corrosion resistent material or have a corrosion resistant finish;

(2) Have moving parts that operate freely and maintain operating integrity over the temperature range of –40 °F and 250 °F before and after continual operation.

(k) Fueling devices shall be grounded.

(l) The vehicle fueling connection shall provide for the reliable and secure connection of the fuel system container to a source of high pressure natural gas.

(m) A check valve shall be provided between the fill connection and the vehicle fuel distribution system.

(n) A different fueling connection for each level of pressure shall be provided for the vehicle fuel system.

(o) A quick disconnect type device shall comply with applicable construction provisions of the American National Standard for Quick Disconnect Devices for Use With Gas Fuel, ANSI Z21.41.

(p) Electrical equipment and wiring listed or certified by a nationally recognized testing agency, qualified to certify or list electrical equipment or writing, shall be deemed to be of an approved type.

(q) Circuit breakers or fuses shall be of a listed or approved type SAE J554b as found in the SAE handbook 1985.

(r) Measures will be taken to prevent CNG leakage into enclosed occupant compartment of vehicles using CNG fuel.

21. In Subpart G, § 393.76 is amended by revising paragraphs (e)(2)(iv) and (e)(2)(v), as follows:

§ 393.76 Sleeper berths.

* * * * *

(e) * * *

(2) Either:

* * * * *

(iv) A mattress filled with air and of sufficient thickness when inflated to prevent "bottoming-out" when occupied while the vehicle is in motion; or

(v) A mattress filled with a liquid and of such thickness as to prevent "bottoming-out" while occupied when the vehicle is in motion. The mattress must meet the following requirements:

(A) The fluid must not freeze at −20 °F.

(B) Must be treated with a flame inhibitor.

(C) Must not be heated by electrical means.

(D) Shall be so constructed that should the mattress leak the liquid will be absorbed without the occupant getting wet.

* * * * *

22. Section 393.83 is revised to read as follows:

§ 393.83 Exhaust systems.

(a) Every commercial motor vehicle shall be equipped with an exhaust system. No part shall be located where its location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

(b) No exhaust system shall discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe.

(c) The exhaust system of a bus powered by a gasoline engine shall

discharge to the atmosphere at or within 6 inches forward of the rearmost part of the bus.

(d) The exhaust system of a bus using fuels other than gasoline shall discharge to the atmosphere either:

(1) At or within 15 inches forward of the rearmost part of the vehicle; or

(2) To the rear of all doors or windows designed to be open, except windows designed to be opened solely as emergency exists.

(e) The exhaust system of every truck and truck tractor shall discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab.

(f) No part of the exhaust system shall be temporarily repaired with wrap or patches.

(g) No part of the exhaust system shall leak or discharge at a point forward of of directly below the driver/sleeper compartment.

(h) The exhaust system must be securely fastened to the vehicle.

23. A new Subpart J consisting of §§ 393.201 through 393.209 is added to Part 393 to read as follows:

Subpart J—Frames, Wheels, Steering and Suspension Systems

Sec.

393.201 Frames.
393.203 Cab and body components.
393.205 Wheels.
393.207 Suspension systems.
393.209 Steering wheel systems.

Subpart J—Frames, Wheels, Steering and Suspension Systems

§ 393.201 Frames.

(a) The frame of every commercial motor vehicle shall not be cracked, loose, sagging or broken.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken or missing.

(c) There shall be no welds on a truck frame rail between the axles, except as specified by the manufacturer.

(d) The frame rail flanges between the axles shall not be bent, cut or notched, except as specified by the manufacturer.

(e) All accessories mounted to truck tractor frame must be bolted.

(f) No holes shall be drilled into the top or bottom rail flanges, except as specified by the manufacturer.

§ 393.203 Cab and body components.

(a) The passenger compartment shall not have doors or door parts missing or broken. Doors shall not sag so that they cannot be properly opened or closed. No door shall be wired shut or otherwise secured in the closed position so that it cannot be readily opened. *Exception:* When the vehicle is loaded with pipe or bar stock that blocks the door and the cab has a roof exit.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame shall not be loose, broken, or missing.

(c) The hood must be securely fastened.

(d) All seats must be securely mounted.

(e) The front bumper must not be missing, loosely attached or protruding beyond the confines of the vehicle so as to create a hazard.

§ 393.205 Wheels.

(a) Wheels or rims shall not be cracked or broken.

(b) Stud or bolt holes on the wheels shall not be elongated (out of round).

(c) Nuts or bolts shall not be missing or loose.

§ 393.207 Suspension systems.

(a) *Axles.* No axle positioning part shall be cracked, broken, loose or missing. All axles must be in proper alignment.

(b) *Adjustable axles.* Adjustable axle assemblies shall not have locking pins missing or disengaged.

(c) *Leaf springs.* No leaf spring shall be cracked, broken or missing nor shifted out of position.

(d) *Coil springs.* No coil spring shall be cracked or broken.

(e) *Torsion bar.* No torsion bar or torsion bar suspension shall be cracked or broken.

(f) *Air Suspensions.* The air pressure regulator valve shall not allow air into the suspension system until at least 55 psi is in the braking system. The vehicle shall be level (not tilting to the left or right). Air leakage shall not be greater than 3 psi in a 5 minute time period when the vehicle's air pressure gauge shows normal operating pressure.

§ 393.209 Steering wheel systems.

(a) The steering wheel shall be secured and must not have any spokes cracked through or missing.

(b) The steering wheel free play shall not exceed the following parameters:

Steering wheel diameter	Manual steering system	Power steering system
16" or less	2"+	4½"+
18"	2¼"+	4¾"+
20"	2½"+	5¼"+
22"	2¾"+	5¾"

The steering wheel shall be secured and must not have any spokes cracked through or missing.

(c) *Steering column.* The steering column must be securely fastened.

(d) *Steering system.* Universal joints shall not be worn, faulty or repaired by welding. The steering gear box shall not have loose or missing mounting bolts or cracks in the gear box or mounting brackets. The pitman arm on the steering gear output shaft shall not be loose. Steering wheels shall turn freely through the limit of travel in both directions.

(e) *Power steering systems.* All components of the power system must be in operating condition. No parts shall be loose or broken. Belts shall not be frayed, cracked or slipping. The system shall not leak. The power steering system shall not have insufficient fluid in the reservoir.

[FR Doc. 87-3694 Filed 2-25-87; 8:45 am]
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49 CFR Part 396

[OMCS Docket No. MC-113; Notice No. 87-02]

Motor Carrier Safety Regulations; Inspection, Repair, and Maintenance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed changes to the Federal motor carrier inspection standards contained in Part 396 of the Federal Motor Carrier Safety Regulations (FMCSR). The revisions have been proposed in response to section 210 of the Motor Carrier Safety Act of 1984 and to comments received to an advanced notice of proposed rulemaking (ANPRM) published on January 10, 1985. The proposed revisions will require motor carriers to comply with Federal inspection standards, a State inspection program or an authorized self inspection program. By this notice, the FHWA is announcing that modifications to Part 393 (Parts and Accessories Necessary for Safe Operation) will be addresed in a separate notice of proposed rulemaking.

Elsewhere in today's **Federal Register**, in the same part, is published another NPRM entitled Parts and Accessories Necessary for Safe Operation (OMCS Docket No. MC-127; Notice No. 87-01). We request that the public consider these proposed rules together and make recommendations or suggestions on how both rulemaking actions can work together in a more efficient manner.

DATE: Comments must be received on or before April 27, 1987.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Office of Motor Carrier Standards, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill Thomas, Office of Motor Carrier Standards, (202) 366–2999; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 366–0843, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829) (the Act). The Act was signed into law by the President on October 30, 1984.

On January 10, 1985, the FHWA published an ANPRM at 50 FR 1245 seeking public comment concerning possible modifications to Parts 393 and 396 of the FMCSR. Approximately 50 comments were received concerning these potential changes. Due to the complexity of these two areas of rulemaking docket (i.e., MC–113). The Part 393 review will be addressed further in Docket Number MC–127, found elsewhere in today's **Federal Register.**

Background

This rulemaking action addresses section 210 of the Act, which requires the Secretary of Transportation to establish standards for the annual (i.e., periodic) or more frequent inspection of all commercial motor vehicles engaged in interstate or foreign commerce. A commercial motor vehicle is any self-propelled or towed vehicle which: (1) Has a gross vehicle or combination weight rating of 10,001 pounds or more; (2) is designed to transport more than 15 passengers, including the driver; or (3) is used to transport hazardous materials in a quantity which requires the vehicle to be placarded.

As directed by Congress in the Motor Carrier Act of 1984, this revision to Part 396 concerning inspections poses an increase to the paper work burden on the motor carrier industry. The FHWA is seeking comments from interested parties on how to reduce this burden. Comments are particularly sought on unique or innovative approaches to this problem which could be used to benefit the industry in general by reducing this burden. Although the proposed rule envisions an increase in the burden, the FHWA has proposed to reduce the paperwork burden on the industry in a number of recent rulemaking initiatives, including a notice of proposed rulemaking published in the **Federal Register** on May 9, 1986, concerning Part 395, Hours of Service of Drivers, that proposed to reduce the paperwork burden on the industry by 4 million hours annually.

The successful completion of this rulemaking effort depends upon the receipt of diverse viewpoints and supporting data to this public docket. The FHWA seeks detailed answers to the following requests for information. Failure to provide complete data may not permit the FHWA to adequately consider the merits of an interested party's position. Information which provides a rationale for a particular position on a question is very important, as is data which estimates the cost impacts and benefits of the action under consideration.

ANPRM Comments

The ANPRM addressed numerous issues related to section 210 of the Act. Several directly impact this phase of the rulemaking proceeding. They are: (1) Whether other inspection systems exist which would be as effective as a periodic or more frequent inspection system, (2) what place self-inspection programs should have in the new Federal inspection standards, (3) what evidence of periodic inspection should be required by the new standards, (4) should the Commercial Vehicle Safety Alliance (CVSA)/Essential Element Examination (EEE)[1] roadside type of inspection be considered as effective as an annual [periodic] or more frequent inspection system, and (5) should the new inspection standards be applied only to the motor carrier industry. We will discuss the comments received in response to each of these issues.

Whether Other Inspection Systems Exist Which Would be as Effective as an Annual [Periodic] or More Frequent Inspection System

Many of the comments specifically addressed this issue. The Teamsters stated ". . . a meaningful inspection program must be conducted frequently enough to detect problems with equipment within a reasonable period of time from when they develop. . . . The inspection itself must be thorough enough to cover all equipment for which failure will affect the safety of the driver and the public." The California Highway Patrol stated "Whatever is decided on periodic inspection of commercial vehicles, it should never be construed to be adequate to replace existing carrier systematic inspection requirements or the random on-highway inspection of the MCSAP (Motor Carrier Safety Assistance Program) and CVSA states." The American Bus Association offered ". . . periodic inspection programs are the sole means of meeting the spirit of the Motor Carrier Safety Act. Typically, state periodic inspection programs offer comprehensive evaluation, objective standards, and a time and place of mutual convenience. CVSA type inspections can offer quality control of formal inspections. Roadside/random inspections will not be able to meet the criteria of thoroughness."

We generally concur with these comments. The FHWA finds that the comments do not identify other inspection systems which would be as effective as an annual or more frequent inspection and which ensure that each vehicle was inspected at least annually. In order to fulfill the requirements of the Act, we believe that a formalized and thorough periodic inspection requirement must be developed and implemented by the FHWA. The periodic inspection developed through this rulemaking process will not preempt further official examination of the vehicle's components in CVSA/EEE type inspections. In fact, the FHWA's MCSAP will require participating States to continue performing uniform roadside vehicle inspections in the future.

A review of the comments indicates that there is confusion regarding the FHWA's current inspection and maintenance requirements. Presently, the FMCSR require the driver to perform a pretrip and post-trip inspection of the vehicle driven that day. Both inspections involve an evaluation of the vehicle's componentry by the driver. Defects noted by the driver during the pretrip and post-trip inspection are to be repaired prior to the vehicle's further use.

The post-trip inspection procedure also includes the preparation of a vehicle inspection report detailing defects noted by the driver during the tour of duty. The vehicle inspection report is submitted to the motor carrier by the driver. Following the repair of the vehicle defects, the motor carrier must certify on the report that necessary repairs have been made.

[1] The CVSA inspection program is officially known as the North American Uniform Driver Vehicle Inspection Procedure and Out of Service Criteria. The EEE program is now officially known as the National Uniform Driver Vehicle Inspection Procedure and Out of Service Criteria.

In addition to the pretrip (section 392.7) and post-trip (section 396.11) inspections performed by the driver, the motor carrier is required to develop and implement a systematic inspection program (section 396.3), including prescribed maintenance records, for the vehicles it operates. These vehicles are required to be systematically inspected, repaired, and maintained. These requirements are usually implemented through routine maintenance at regular time or mileage intervals. Further, parts and accessories shall be in safe and proper operating condition at all times. These include those specified in Part 393 of this subchapter and any additional parts and accessories which may affect safety of operation. A thorough inspection of specific components of the vehicle at a set time interval will add to the current maintenance requirement of routine systematic maintenance of a commercial motor vehicle. We believe that the periodic inspection procedures and standards developed in this rulemaking action will complement the programs described above.

The FHWA is proposing to requre that this periodic inspection be performed at least once every 365 days. Comment is requested, however, on whether more frequent periodic inspection—quarterly, for instance—would be more appropriate in view of the large mileage accumulated by trucks in interstate commerce, with the potential for excessive wear, in relatively short periods, on crucial safety systems such as brakes. Comment is also sought on whether more frequent inspections would offer enough additional safety benefits to justify the burden they might impose.

A major difference between the periodic inspection program being developed in this rulemaking and the current roadside driver-vehicle inspection is that serious defects discovered during the roadside inspection will cause the driver or the vehicle to be placed out of service at the inspection site. Under the periodic inspection program, identified vehicle defects can be repaired by the motor carrier in a more convenient setting.

What Place Self-Inspection Programs Should Have in the New Federal Inspection Standards

The range of comments in response to this issue was quite diverse. However, due to a lack of authority provided by the Act, we must reject as not feasible, further consideration of requiring a State to establish commercial vehicle inspection locations and perform the periodic vehicle inspections with State personnel. Likewise, we must reject as not feasible consideration of establishing Federally owned and operated inspection sites for periodic commercial motor vehicle inspections. The costs and manpower resource requirements associated with the creation of a State or Federally operated inspection sites would be prohibitive.

The majority of commenters generally accept the premise of self-inspection. Two major positions were expressed, however, regarding the implementation of the self-inspection process.

Position 1—*Before self inspection is permitted, approval must be received from the State or from the FHWA.* In support of this position, the Michigan State Police stated "To just enact a self-inspection program with no monitoring procedures would spell disaster for any self-type program". The Carriers Insurance Company stated that ". . . there must be a system developed where a source other then [sic] the motor carrier conducts the vehicle inspection. It is far too easy for a motor carrier doing his own inspection to allow annual inspections to slide." The American Bus Association offered: "Many carriers conduct thorough and objective inspections far more often than these Federal standards require. It is the remaining small segment of the industry . . . those who either through lack of knowledge or lack of skill are unable to thoroughly conduct vehicle inspection to assure safe vehicle condition which could create difficulties for a self inspection program." The Atlantic Richfield Company stated "We believe that any self-inspection program should meet the federal and state requirements as a minimum; and that denial of the privilege of conducting a self-inspection program would occur after repeated violations." The vast majority of motor carriers have a preventive maintenance system set up around maintenance operations that occur on a regular or reasonably predictable basis. In general most systems are arranged so that certain items are checked at predetermined inspection intervals. What is included at each interval and the time or mileage between each inspection is related to the particular motor carrier's needs and equipment.

Position 2—*No governmental approval should be required before self-inspection can be conducted.* In support of this position, the California Highway Patrol stated that "We do not believe it is necessary to set standards or grant or deny carriers the privilege of conducting self-inspections because current law requires each carrier to maintain all equipment in a safe and proper operating condition." The Commercial Vehicle Safety Alliance stated that "If periodic inspection is only an addition to existing programs . . . there is no reason why self-inspection should not be permitted."

The FHWA agrees with many of the concerns expressed by the commenters supporting each of the positions. However, the FHWA believes that Position 2 is more feasible and most cost-beneficial to all concerned due to the inherent costs associated with the establishment of a procedure requiring specific program approval by the Government. Given the previously discussed regulatory requirements addressing motor vehicle maintenance and safe operation, and the additional monitoring of motor carrier operations as a result of the active participation by States in the MCSAP program, the FHWA does not believe that a self-inspection authorization system is necessary.

With this in mind, we propose generally permitting self inspection by motor carriers, with one major proviso. Where a State has in effect or in the future places into effect an inspection program which: (1) Is similar to the periodic inspection program developed through this rulemaking effort, (2) annually inspects all commercial motor vehicles registered in that State, and (3) requires the inspections to be performed by State personnel, at State authorized inspection facilities, or through a viable State administered self-inspection program for motor carriers, the motor carrier industry must comply with the State program.

For those motor carriers domiciled in states not having one of the state conducted or monitored inspection programs mentioned above, the motor carrier would be required to ensure that the required periodic inspection, developed through this rulemaking effort, is performed. The FHWA proposes to permit the periodic inspection to be performed by the carrier, provided it operates at least five (5) motor vehicles in commerce subject to these regulatory requirements, has a qualified inspector, and has adequate inspection facilities. This fleet size baseline is not unique, the insurance industry categorizes fleets as those with 5 or more vehicles.

The FHWA believes that permitting very small motor carriers to perform the periodic inspections on a self-inspection basis would make it extremely difficult for the FHWA to adequately monitor compliance with the Federal standards. Typically, larger motor carriers have permanent employees who are

responsible for maintenance and other safety programs, have permanent repair facilities equipped to perform vehicle inspections, and are more readily available for safety management audits by FHWA field personnel. For this reason, the FHWA is proposing that a motor carrier must operate 5 or more commercial motor vehicles in commerce subject to these requirements before it can perform the periodic inspections on a self-inspection basis. Due to the lack of information addressing this issue, we request the submission of any economic or safety data which indicates that the proposed fleet size baseline should be raised or lowered. Better maintenance practices are usually associated with larger motor carriers. However, that is not to imply that some smaller firms don't have as thorough a system of preventative maintenance. Comments are specifically requested on the number of vehicles a motor carrier must operate before self-inspection is allowed or if self-inspection should be allowed by all motor carriers regardless of the number of vehicles operated.

Comments are also welcomed concerning the procedures for counting the number of vehicles operated by a motor carrier. Specifically, should we take the average number of vehicles operated over some period, such as 1 year or 6 months? Or, in lieu of using the number of vehicles operated as the critical criterion for determining when self-inspection will be permitted, should the determination be based on the gross income of the motor carrier? If so, comment concerning the appropriate minimum gross income is necessary.

The FHWA is not proposing specific minimum standards for inspection facilities at this time. Comments concerning this issue are, however, requested. Consideration will be given to the establishment of minimum standards for both equipment and buildings, should the data supplied in response to this request warrant it.

As an alternative to self-inspection and for those motor carriers not operating at least 5 motor vehicles, the FHWA proposes to permit the periodic inspection to be conducted at a commercial garage, fleet leasing company, truck stop and other commercial facilities of a similar nature which have both qualified inspector(s) and adequate inspection facilities. The inspection standards appear to be comprehensive and thorough enough to ensure full coverage is given to each vehicle at least once a year. Comments concerning the merits of this proposal are requested.

The FHWA's field staff plus State staff will ultimately be responsible for monitoring the motor carrier's compliance with the periodic inspection requirement. This will be done during roadside vehicle inspections of commercial motor vehicles and during safety management audits at the motor carriers' place of business. Further, States participating in the MCSAP program will assist in monitoring compliance during roadside vehicles inspections conducted by state personnel. The FHWA is committed to aggressive enforcement of violations of the periodic inspection requirement. Under this proposal penalty provisions are outlined in § 396.17(g).

For those motor carriers performing self inspections (i.e., not administered by a State governmental agency) or having a commercial facility perform the required inspections, the issue of the qualification of the individual performing the inspection must be resolved. Once again, the range of comments with respect to this issue was quite wide. For example, the Teamsters stated that "Individuals performing such inspections should be a journeyman mechanic, knowledgeable in Parts 393 and 396. . . ." The majority of commenters on the other hand, felt that the critical issue was the ability to identify defects, not the capability of repairing them. The California Highway Patrol stated "Persons performing inspection whether private or governmental should be sufficiently trained to understand the safety systems they are evaluating. There is no reason for an inspector to be a mechanic. Many, if not the majority of those who conduct state and FHWA inspections are not mechanics. The inspector must be able to understand the inspection criteria and identify the defects it calls for. An employer can screen persons to determine if they are qualified to inspect a truck."

We agree with the majority of the commenters. An inspector need not be a mechanic to successfully identify mechanical defects. We are therefore seeking comments concerning the specific qualification of motor vehicle inspectors. The FHWA is proposing to require the motor carrier to ensure that the individual performing the periodic inspection, at a minimum, (1) understands the inspection criteria and can identify defective components, (2) can read and write the English language to the extent necessary to understand the inspection criteria and prepare the required documentation, (3) has mastered the methods and procedures used when performing an inspection, and (4) is capable of performing an inspection by reason of experience, training, or both. Comments concerning these or other minimum requirements are requested. FMHA is further proposing that the training and/or experience consist of one or more of the following: (1) Participation in a truck manufacturer sponsored training program or similar commercial training program designed to train students in truck operation and maintenance; (2) experience as a mechanic or inspector in a motor carrier maintenance program; (3) experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility; (4) experience as a commercial vehicle inspector for a State or Federal government. FHWA is proposing that the combined training and experience total at least 2 years. Comments concerning these or other minimum requirements are requested.

What Evidence of Periodic Inspection Should be Required by the New Standards

The majority of commenters believe that some type of evidence of periodic inspection must be carried or placed on the motor vehicle. Evidence suggested by the commenters ranged from a carrier issued sticker which is placed on a vehicle's door jamb, to a sticker prescribed by FHWA or the State and issued to the motor carrier under a self-inspection program, to a permanent sticker indicating that a motor carrier participates in a self-inspection program, to a copy of the inspector's inspection form.

The California Highway Patrol, on the other hand, does not believe any evidence of the periodically required inspection should be required on the motor vehicle. States which are part of the CVSA program select vehicles for inspection based on the presence or absence of CVSA stickers. Consequently, the presence of evidence that the vehicle has received the required periodic inspection would be of little benefit to the CVSA inspection program.

The FHWA believes that some evidence of the periodic inspection must be carried upon the motor vehicle. To fail to require evidence on-board the vehicle would greatly limit the ability of State and Federal enforcement personnel to monitor compliance with the periodic inspection requirement during roadside inspections. Without the ability to monitor compliance during these roadside inspections, we foresee much non-compliance with this legislatively mandated vehicle inspection requirement. This is due to the fact that the FHWA's only other

opportunity to verify compliance with the requirement is during the formal safety management audit of a motor carrier's place of business. While the FHWA performed approximately 4600 Safety Management Audits on a population of two hundred and eleven thousand (211,000) motor carriers of record (i.e., those motor carriers whom the FHWA is aware of and who are subject to FHWA jurisdiction) during Fiscal Year 1984, our capability to verify compliance at each carrier's place of business is severely limited. By requiring evidence of the periodic inspection to be carried on-board the vehicle, the likelihood of compliance with the periodic inspection requirement is dramatically increased, since identified non-compliance in this area can be used by our field staff to target carriers for a Safety Management Audit at the motor carrier's place of business. During a Safety Management Audit, compliance with all vehicle inspection standards and requirements of this subchapter will be reviewed by the field staff.

Therefore, we believe that evidence of the periodic inspection should be carried on-board the vehicle. Comments are requested on whether it would be sufficient to mark the side of the truck with the date of the periodic inspection, institute a system utilizing a sticker which would provide proof of inspection, or if a copy of the inspection form should be carried on-board the vehicle. One alternative would be to require a motor carrier to paint, stencil, or otherwise durably and legibly mark each motor vehicle with the letters "PI" which stands for "Periodic Inspection", followed by the date of the periodic inspection, in letters and numbers at least 1 inch high. The marking could be located at the right rear of the driver's compartment for trucks and truck tractor, on the right front of semi and full trailers, and on the right side of converter dollies and buses. Failure to have this information marked on the motor vehicle(s) would indicate that the required periodic inspection had not been performed. FHWA could determine the veracity of the markings by comparing the periodic inspection report maintained by the motor carrier in its files to the markings on the trucks.

The FHWA proposes to require that vehicles registered in States: (1) Requiring annual or more frequent State inspections or (2) having a self-inspection program monitored by the State, deemed adequate by the FHWA, use the evidence of inspection required by the State of registration. Should a State fail to require that evidence of the inspection be visible on the outside of the vehicle, the motor carrier must display the evidence required by the Federal inspection standards. Comments are sought concerning any other method of verification which would assist enforcement personnel in ascertaining whether or not the annual inspection was performed.

The periodic inspection report prepared at the time of inspection by the inspector(s), must: (1) Clearly identify the registered owner of the vehicle, (2) identify the motor carrier operating the vehicle, if other than the registered owner, (3) identify the inspector and the date and location of the inspection, (4) identify the license plate number and vehicle identification number of the vehicle being inspected, (5) identify the vehicle components inspected and the results of the inspection, including the identification of those components not meeting the minimum standards, and (6) identify the repairs made prior to that vehicle's further use in commerce subject to the jurisdiction of these requirements. Comments concerning this proposal are requested.

Should the CVSA/EEE (Roadside) Type of Inspection Be Considered "As Effective as an Annual [Periodic] or More Frequent Inspection System"

A CVSA type of inspection is designed to enhance uniformity in the regulation of commercial motor vehicle traffic. Any State having responsibility for commercial vehicle safety can join CVSA. The goals of CVSA are to improve highway safety, avoid duplication of inspection efforts, minimize delays for the operating industry, increase the number of on-highway inspections by concentrating on equipment items found to be those most often involved in a defect related accident, and improve the safety of equipment being operated on the highways. These goals and this type of inspection are in harmony with the Motor Carrier Safety Assistance Program. The Secretary of Transportation has the authority to make grants to the States for the development or implementation of national programs for the enforcement of Federal or State rules and regulations concerning motor carrier safety. The MCSAP is an ongoing cooperative endeavor between the Federal Government and States to enforce uniform Federal and State safety and hazardous materials regulations applicable to commercial motor vehicles and their drivers. The objective is to reduce truck and bus involvement in collisions by minimizing the hazards associated with large commercial motor vehicles on the Nation's highways.

The majority of the commenters pointed out the differences between the intent of the CVSA/EEE (roadside) inspections and the periodic inspection described in the Act. The Teamsters stated that "Although the EEE and CVSA roadside inspections address the more critical components on the unit, we believe the intent of Congress was for a more complete systematic inspection of all components that may affect highway safety." The Minnesota State Patrol stated ". . . EEE or CVSA procedure[s] are probably adequate for most roadside inspection if a full BMCS inspection is performed at least annually." The Truck Safety Equipment Institute stated in its comments, "Lamps, reflectors, emergency equipment and mirrors now go uninspected during the roadside check and this equipment is essential to safe vehicle operation. If these devices are either inoperable or missing, there exists a high accident potential ranked alongside of the current elements inspected in EEE." The State of Utah offered that "CVSA inspections are normally 'spot checks' or made randomly and are very effective in their own right. 'Annual or more frequent checks' are done on a routine basis, requiring renewal after a specific time. Each system has merit and considering the variations of different states, the interstate carriers should be required to comply with both."

The FHWA agrees with these commenters. The roadside inspection is very effective in monitoring the safe condition of certain critical vehicle components, the driver's qualifications, the driver's hours of service, the motor carrier's compliance with the Hazardous Materials Regulations, etc. However, there is no assurance that each vehicle will be inspected at least once per year under this program. Further, these inspections, by emphasizing a limited number of critical components, fail to evaluate the condition of the entire vehicle. We believe that this is necessary in order for there to be an improvement in highway safety. The adoption of a formalized and thorough periodic inspection, in addition to the normal preventative maintenance a motor carrier takes to maintain its vehicles in safe working order (as is now required by § 396.3) and the present roadside inspection program, will greatly improve the mechanical quality of the commercial motor vehicles operating on this Nation's highways. However, we welcome comments which would outline any methods meeting the overall intent of an annual inspection.

For example, comments focusing on the feasibility of a safety inspection covering only critical elements would ensure that both schools of thought would be considered in this rulemaking action.

Following the implementation of the Federal periodic inspection standards, the FHWA intends to monitor its effect upon the mechanical condition of the commercial motor vehicles operating on the Nation's highways.

Should the New Inspection Standards Be Applied Only to the Motor Carrier Industry

The Act does not provide the FHWA with the means by which it can require a State to adopt and use the Federal inspection standards developed in this rulemaking action. Consequently, the FHWA will make the inspection standards applicable solely to the motor carrier industry.

With this in mind, the FHWA intends to make those motor carriers subject to its jurisdiction responsible for compliance with the Federal inspection standards developed in this rulemaking. However, provision will be made in the new requirements for a State's development or continued use of a State inspection program or authorized self-inspection program provided that the State inspection program is approved by FHWA. Comments are sought as to whether or not State plans can vary from one another and, if so, how much of a variation should be allowed. Motor vehicles registered in these States would be required to comply with the State requirements.

If no formal State program exists, the motor carrier must ensure that its vehicles are evaluated in terms of the Federal standards at least once each year. We intend to propose a 12-month phase-in period during which compliance with the periodic inspection requirement will be recommended but not required. Twelve months following the date of publication of the final rule in the **Federal Register**, all commercial motor vehicles subject to the FMCSR must be inspected in accordance with the periodic inspection procedures.

The periodic inspection may be performed by the carrier, provided it operates at least five (5) motor vehicles in commerce subject to These regulatory requirements, has a qualified inspector, and has adequate inspection facilities. As an alternative, a motor carrier may have a commercial garage, fleet leasing company, truck stop, or other commercial facilities of a similar nature, which employ qualified inspectors and have adequate facilities perform the inspection as the motor carrier's agent.

Periodic Inspection Standards

The FHWA, in developing the proposed periodic inspection program, evaluated the inspection standards currently used by States performing commercial motor vehicle inspections, the CVSA/EEE roadside inspection standards, and the requirements contained in Parts 393 and 396 of the FMCSR. Detailed comments concerning these inspection standards, including data which estimates the cost impacts and benefits of the periodic inspection standards are requested. In the event a commenter recommends a revision to one of the proposed inspection standards, it is important that detailed justification for the revision be submitted along with recommended language for the revision. The proposed minimum inspection standards are similar to the inspection criteria currently utilized by Federal/State inspectors. Further, the standards are for the most part those universally accepted and used by the industry in inspecting their own vehicles. For example, the FHWA has recognized the importance of requiring a bulk container to be inspected on at least an annual basis. The transportation of bulk commodities such as milk, cement, corn syrup, and other commodities not requiring intermediate packaging is a concern necessitating an inspection of the containment system to ensure its integrity while being used on the public highway and to afford to the motoring public a sense of security.

We realize that these proposed standards are minimums and that the standards recommended by various manufacturers are more thorough and exacting. These minimums are not expected to inhibit and technological innovations made by vehicle component manufacturers but will provide those persons regulated with a set of minimum standards. These minimum standards are such that if the vehicle or vehicle component meets the performance standards required by the National Highway Traffic Safety Administration it would also meet these proposed minimum inspection standards. The FHWA is specifically seeking comments on these proposed minimum inspection standards and their inclusion in the regulations.

An alternative to this would be to prescribe in the regulations specific performance standards for the operating characteristics of the individual components covered in the annual inspection. A performance standard specifies the required minimum safe performance of a component but not the manner in which the performance is achieved. The industry could then develop and select devices that could meet or surpass the performance standard. The regulations would be concerned with the measurable performance of a component but not its design details. If this alternative were chosen, the FHWA could publish a separate inspection manual that compiled the current mechanical specifications on the components that are generally used by the industry that would meet the performance standards set in the regulations. Comments are also requested on prescribing performance standards in the regulations for the annual inspection and the publication of a separate inspection manual that compiles the current standards of the industry for the performance of specific components to meet the specified performance standards. Comments in favor of an inspection manual should be comprehensive in nature when outlining the methods, the procedures, and the standards whereby vehicles would be inspected.

Finally, the FHWA proposes to expand the driveaway-towaway exemption to include an exemption from the periodic inspection requirements. We believe this is necessary, since the periodic inspection procedures are not appropriate for vehicles being delivered to dealers for sale.

Because the impact of this proposal will not result in an annual effect on the economy of $100 million, a major increase in costs or prices, or significant adverse effects on the American economy, the FHWA has determined that this document does not contain a major rule under Executive Order 12291 but is a significant regulation under the regulatory policies and procedures of the Department of Transportation. This evaluation indicates that accident reduction resulting from the rule would amount to approximately $93 million per year. The incremental cost of compliance would be about $16 million annually. Thus, the net benefit to society would be on the order of $77 million per year, and would be expected to continue for the life of the rule. A draft regulatory evaluation has been prepared and is available for review in the public docket. Comments on this analysis are requested.

Based on the information available to the FHWA at this time, the action will not have a significant economic impact on a substantial number of small business entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 99–511), the recordkeeping provisions that are

included in this regulation are being submitted for approval to the Office of Management and Budget.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: February 13, 1987

Ray Barnhart,

Administrator.

In consideration of the foregoing, the Federal Highway Administration proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Part 396 as set forth below.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE [AMENDED]

1. The authority citation for Part 396 is revised to read as follows:

Authority: Sec. 210 of Pub. L. 98–554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 23 U.S.C. 315; 49 CFR 1.48 and 301.60.

2. Part 396 is amended by revising § 396.15(a) and adding §§ 396.17, 396.19, 396.21, 396.23 and 396.25 to read as follows:

§ 396.15 Driveaway-towaway operations, inspections.

(a) General. Effective [*12 months after date of publication of final rule in the* **Federal Register**] every motor carrier, with respect to motor vehicles engaged in driveaway-towaway operations, shall comply with the requirements of this part. Exception: Maintenance records required by § 396.3, the vehicle inspection report required by § 396.11, and the periodic inspection required by § 396.17 of this part shall not be required for any vehicle which is part of the shipment being delivered.

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§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle shall be inspected as required by this section. The inspection shall include, at a minimum, the parts and accessories set forth in § 396.25.

Note.—The term motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semi-trailer, full-trailer combination, the tractor, semi-trailer, and the full trailer (including the converter dolly if so equipped) shall each be inspected.

(b) Except as provided in § 396.23, a motor carrier shall inspect or cause to be inspected all motor vehicles subject to its control.

(c) A motor carrier shall not use a commercial motor vehicle unless the commercial motor vehicle has been inspected according to the terms of this section at least once during the preceding 365 days and is marked with the required evidence of inspection.

(d) Except as provided in § 396.23(b), a motor carrier operating five or more commercial motor vehicles may perform the required annual inspection, if the motor carrier has facilities appropriate for commercial motor vehicle inspections and qualified inspectors, as required by § 396.19.

(e) In lieu of the self inspection provided for in paragraph (d) of this section, a motor carrier may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by § 396.19.

(f) It shall be the responsibility of the motor carrier to ensure that all components not meeting the minimum standards set forth in § 396.25 are repaired prior to that vehicle's further use in commerce subject to these regulatory requirements.

(g) Failure to perform the annual or more frequent inspection set forth in this section, shall cause the motor carrier to be subject to the penalty provisions provided by 49 U.S.C. 521(b). Likewise, an employee or agent of the motor carrier who, with or without the knowledge of the motor carrier, fails to properly inspect a motor vehicle according to the terms of this section, shall be subject to the penalties provided in 49 U.S.C. 521(b).

§ 396.19 Inspector qualifications.

(a) It shall be the motor carrier's responsibility to ensure that the individual(s) performing the required annual inspection is qualified. A qualified inspector must be sufficiently trained and qualified to understand the safety systems that are to be evaluated. Evidence of that individual's capability with respect to paragraphs (a) through (d) of this section, shall be retained by the motor carrier for the period during which that individual is performing annual motor vehicle inspections for the motor carrier, and for one year thereafter. The motor carrier, at a minimum, must ensure that the individual performing the inspection:

(1) Understands the inspection criteria set forth in § 396.21 and can identify defective components,

(2) Can read and write the English language to the extent necessary to understand the inspection criteria and prepare the required documentation,

(3) Has mastered the methods and procedures used when performing an inspection, and

(4) Is capable of performing an inspection by reason of experience, training, or both.

(b) The inspector shall have a combination of training and/or experience totaling at least two (2) years. Such training and/or experience may consist of:

(1) Participation in a truck manufacturer sponsored training program or similar commercial training program designed to train students in truck operation and maintenance;

(2) Experience as a mechanic or inspector in a motor carrier maintenance program;

(3) Experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility;

(4) Experience as a commercial vehicle inspector for a State or Federal government.

§ 396.21 Periodic inspection recordkeeping and marking requirements.

(a) The qualified inspector performing the inspection shall prepare a report which—

(1) Identifies the individual performing the inspection, including the individual's printed or typed name and signature,

(2) Identifies the registered owner of the vehicle,

(3) Identifies the motor carrier operating the vehicle, if other than the registered owner,

(4) Identifies the date and location of the inspection,

(5) Identifies the license plate number and vehicle identification number of the vehicle being inspected,

(6) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in § 396.25, and

(7) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section. As inspector failing to comply with this section will be subject to the penalties provided in 49 U.S.C. 521(b).

(b)(1) The original or a copy of the inspection report shall be retained by the motor carrier under whose control the vehicle operates for 30 consecutive days or more, for a period of one year. The inspection report shall be retained

where the vehicle is either housed or maintained.

(2) The month and year of the last inspection, preceded by the letters "PI" must be durably and legibly marked on each vehicle inspected in letters not less than 1 inch high. The marking must be located at the right rear of the driver's compartment for trucks and truck tractor, on the right front of semi and full trailers, and on the right side for buses and all other vehicles. For example, a tractor semi-trailer, full-trailer combination must have the letters "PI" followed by the month and year of the last periodic inspection marked on the tractor, semi-trailer, and the full trailer (including the converter dolly if so equipped).

(c) A motor carrier which leases or otherwise has control of a motor vehicle for less than 30 days must ensure that the motor vehicle is marked in accordance with paragraph (b)(2) of this section. If the vehicle is not marked in accordance with paragraph (b)(2) of this section, it must be inspected in accordance with this Part.

§ 396.23 Equivalent to periodic inspection.

(a) In place of, and as equivalent to, the periodic inspection required by §396.17, the motor carrier may accept a copy of an annual inspection report relating to an inspection performed in accordance with the minimum periodic inspection standards set forth in § 396.25. The annual inspection must have been performed during the preceding 365 days. When accepting such inspection report, the motor carrier must ensure that the motor vehicle is marked in accordance with § 396.21(b)(2).

(b)(1) When a State has an annual or more frequent State inspection program which meets the objectives of this section, whereby all commercial motor vehicles registered in that State: Are inspected by State personel; are inspected at State authorized commercial facilities; or are inspected by the motor carrier under the auspices of a State authorized self inspection program, the motor carrier shall comply with the State inspection program. Such compliance shall be deemed as fulfilling the inspection requirement of this section. Should a State fail to require that evidence of the inspection be visible on the outside of the vehicle, the motor carrier must display the evidence required by § 396.21(b)(2) and maintain a copy of the State inspection form in its files for one year.

(2) Should the FHWA determine that a State inspection program is not meeting the objectives of this section, the motor carrier must also perform the periodic inspection required by § 396.17 on all commercial motor vehicles registered in that State.

§ 396.25 Minimum periodic inspection standards.

All motor vehicles required to be periodically inspected by § 396.17 shall be evaluated in terms of the following minimum standards:

(a) *Lighting devices, reflectors, and electrical equipment.*

(1) All lights and reflectors required by part 393 must be present and capable of being operated at all times as follows:

(i) Any exterior bulb or sealed beam, required by Part 393 must light properly.

(ii) Turn signal and hazard warning lamps must flash between 60 to 120 flashes per minute.

(iii) Turn signal lamps must properly indicate right or left, when so switched.

(iv) Back-up lamps must turn off automatically when vehicle goes forward.

(v) Lamps and reflectors must not show a color other than that permitted by Part 393.

(vi) Lamps and reflectors must not have missing or broken lens covers.

(vii) Auxiliary equipment must not be placed on, in, or in front of any lamp.

(viii) Each lamp must be turned or inclined so that its light is properly directed.

(ix) All lamps and reflectors must be securely fastened to the vehicle.

(x) Headlamps must not be out of adjustment in either the upper or lower beam setting.

(xi) The "beam" indicator in the drivers compartment must operate when the headlamps are on high beam setting.

(xii) Headlamps must emit enough light to make a person or object visible at 350 feet under normal light conditions.

(2) Wiring shall be grouped together and protected by nonmetallic tape, braid, or other covering, or be enclosed in a metallic sheath or tube, capable of withstanding severe abrasion.

(3) Wiring shall not be located so as to be likely charred, overheated, or enmeshed in moving parts.

(4) Wiring shall not be adjacent to any part of the fuel system.

(5) The edges of all holes in metal through which wiring passes, unless the wiring is metal covered, shall be rolled or bushed with a grommet of rubber or other suitable material.

(6) Every storage battery shall be covered by a fixed part of the motor vehicle or protected by a removable cover or enclosure.

(7) All electrical wiring shall be mechanically and electrically adequate and free of shorts or open circuits. The presence of bare, loose, dangling, chafing, or poorly connected wires is prohibited.

(b) *Brakes.*

(1) Each commercial motor vehicle must have operative brakes on each axle required to have brakes.

(2) Brake drum(s) and rotor(s):

(i) Must not be cracked on friction surface extending to an open edge.

(Note.—Do not confuse short hairline heat check cracks with flexural cracks.)

(ii) Must not be scored deeper than .060 inches.

(iii) Drums must not have an inside diameter greater than the maximum diameter stamped on the drum, or greater than .090 inch over original drum diameter for unmarked drums.

(iv) Must not have external cracks (i.e, cracks on other than the friction surface) or any portion missing.

(3) Brake linings:

(i) Must not be cracked or have a missing piece(s), or be saturated with oil, grease, or brake fluid.

(ii) Must be firmly attached to the brake shoe.

(iii) Must have a thickness not less than ¼ inch at the thinnest point for cam brakes or less than ⅛ inch at the thinnest point for disc brakes.

(4) The brake system shall not have missing, broken, loose, or inoperative components including: shoes, springs, anchor pins, spiders, cam rollers, push-rods, and cam shaft brackets.

(5) The service brake system must fully release when the brake pedal is in the released position.

(6) Brake adjustment (i.e, chamber stroke) must be balanced across the axle.

(7) Parking brakes:

(i) Each commercial motor vehicle must be equipped with a parking brake system. The parking brake system shall be applied through the use of a single valve in the cab of the vehicle.

(ii) The parking brake system must be operative and capable of holding the vehicle on any grade on which it is operated.

(iii) The parking brake system must fully release when the control in the cab of the vehicle is placed in the release position.

(iv) The parking brake system shall not have missing, broken, loose, or inoperative components.

(8) Emergency brakes system. Each semi-trailer, converter dolly, and full trailer equipped with an air mechanical brake system must be equipped with an emergency brake system. The emergency brake system:

(i) Must apply automatically if the towed vehicle's air pressure in the supply line drops to between 20 to 45 psi and maintain full emergency brake application for at least 15 minutes.

(ii) Must be capable of being manually applied and released by a control device in the cab of the power unit. The control device must be readily accessible to the driver while in the normal drivers' position.

(iii) Must fully release when the manual control in the cab of the power unit is placed in the release position.

(9) Brake hose:

(i) Must not have any damage extending through the outer ply,

(ii) Must not have bulging or swelling when air or hydraulic pressure is applied,

(iii) Must not collapse when vacuum is applied,

(iv) Must not have audible or visible leaks,

(v) Must not have splices (i.e., sliding the hose ends over a piece of tubing and clamping the hose to the tube), or

(vi) Must not be cracked, broken, or crimped.

(10) Brake tubing:

(i) Must not have audible or visible leaks, or

(ii) Must not be cracked, broken, damaged by heat, or crimped.

(11) Brake pedal:

(i) There must not be excessive friction in the pedal linkage or components,

(ii) The pedal levers must not be misaligned or improperly positioned, and

(iii) The brake pedal pad must not be missing.

(12) For air brake systems:

(i) Minimum Criteria For Brake Adjustment. Brake adjustment (i.e., chamber stroke) for a commercial motor vehicle equipped with air mechanical brakes shall be less than the brake chamber stroke lengths specified below. Brake adjustment measurements shall be taken when the brake chamber air pressure is at 85 psi.

(A) Cam Brakes.

Brake chamber type (effective area in sq. in.)	Outside diameter [1] (inches)	Stroke with brakes adjusted	Brake chamber stroke (inches)
Bolt Type Brake Chamber Data			
6	5 1/4	[2]	1
9	6 3/16	[2]	1 1/8
12	6 15/16	[2]	1 1/8
16	8 1/16	[2]	1 1/2
24	9 3/16	[2]	1 1/2
30	9 7/8	[2]	1 3/4
36	11	[2]	2
Rotochamber Data			
9	4 9/32	[2]	1 1/4
12	4 13/16	[2]	1 1/4
16	5 13/32	[2]	1 5/8
20	5 15/16	[2]	1 5/8
24	6 13/32	[2]	1 5/8
30	7 1/16	[2]	2
36	7 5/8	[2]	2 3/8
50	8 7/8	[2]	2 3/4
Clamp Type Brake Chamber Data			
6	4 1/2	[2]	1
9	5 1/4	[2]	1 1/8
12	5 11/16	[2]	1 1/8
16	6 3/8	[2]	1 1/2
20	6 25/32	[2]	1 1/2
24	7 7/32	[2]	1 1/2
30	8 3/32	[2]	1 3/4
36	9	[2]	2
Wedge Brake Data			

Movement of the scribe mark on the lining shall not exceed 1/32 inch; and failure of the brake shoes to move requires that brake to be repaired.

[1] Dimensions listed do not include capscrew head projections for rotochambers and bolt clamp projections for clamp-type brake chambers.

[2] Should be as short as possible without brakes dragging.

(B) Disc Brakes.

Brake chamber type (effective area in sq. in.):	*Brake chamber stroke (in inches)*
12	1⅜
16	1⅝
20	1¾
24	1⅞
30	2

(ii) The air compressor belt(s) must not be worn, loose, or frayed so as to prevent proper operation of the compressor.

(iii) The air compressor must be capable of building air pressure from 50 to 90 psi at fast idle in less than five minutes.

(iv) The air intake cleaner must not be clogged.

(v) The vehicle must be equipped with a low pressure warning device which operates at 60 psi and below.

(vi) The air compressor's governor cut-out pressure must not exceed 135 psi, except on manufacturer's recommendation.

(vii) The air compressor's governor cut-in pressure must not be less than 80 psi, except on manufacturer's recommendation.

(viii) It must have sufficient reserve to permit one full brake application after the engine is shut off, without actuating the low pressure warning indicator.

(ix) A power unit which will be used to pull a semi or full trailer must be equipped with an operative air tractor protection valve.

(x) The vehicle must be equipped with an operative check valve between the air reservoir and the compressor.

(xi) Brake systems involving the use of compressed air shall not have air leaks.

(xii) The steering axle must not have a mismatch of either air chamber type (i.e., size), slack adjuster length, retracted pushrod lengths differing by more than ½ inch, or brake chamber stroke differing by ¼ inch.

(13) For hydraulic brake systems, including power assist vacuum-over hydraulic and engine driven hydraulic booster:

(i) The master cylinder must be filled to manufacturer's recommended level.

(ii) It must have pedal reserve with the engine running.

(iii) The brake hose(s) must not seep or swell under application pressure.

(iv) The power unit must have an operative check valve.

(v) The system, including the master cylinder and wheel cylinders, must not leak hydraulic fluid.

(vi) The hydraulic hoses must not be abraded (chafed) through outer cover-to-fabric layer.

(vii) The fluid lines or connections must not leak, have constrictions, be crimped, be cracked or broken.

(viii) It must have an operative brake failure/low fluid warning light.

(ix) The brake pedal travel must not exceed 75 percent of total available travel.

(x) It must have sufficient reserve to permit one full brake application after the engine is shut off, without actuating the brake failure/low fluid warning indicator.

(14) For vacuum brake systems:

(i) It must have sufficient vacuum reserve to permit one full brake application after the engine is shut off, without actuating the "low vacuum" indicator.

(ii) The vacuum hose(s) or line(s) must not be constricted, abrade (chafed) through outer cover to cord ply, be crimped, cracked, or broken.

(iii) The vacuum hose(s) or line(s) must not collapse when vacuum is applied.

(iv) The low vacuum indicator must activate at not less than 8 inches Hg. (mercury).

(v) The indicator must not show "low vacuum" with brakes applied and engine at idle after 1 minute.

(vi) The air intake cleaner must not be clogged.

(vii) The brake pedal travel must not exceed 75 percent of total available travel.

(viii) The brake pedal must not fade under pressure.

(15) For electric brake systems:

(i) There must not be loose or dirty connections.

(ii) There must not be broken frayed, or unsupported wires.

(iii) There must not be broken wire supports.

(iv) The maximum amperage per brake must not be:

(A) More than 20 percent above the brake manufacturer's maximum current rating.

(B) More than 30 percent below the brake manufacturer's maximum current rating.

(c) *Fuel systems.*

(1) The vehicle's fuel system must not leak at any point.

(2) Each fuel tank must be properly closed with a cap designed for that tank.

(3) The mounting bolts or brackets securing the fuel tank to the motor vehicle must not be loose, broken, or missing.

(**Note:** Some fuel tanks use springs or rubber bushings to permit movement).

(4) The fuel tank must not extend beyond the widest part of the vehicle.

(**Note:** Each vehicle is to be considered individually. Consequently, a fuel tank mounted on a truck tractor must not extend beyond the widest part of the truck tractor).

(5) Gravity or syphon feed of fuel directly to the carburetor or injector is prohibited.

(6) Fuel crossover, return, and withdrawal lines which extend below the tank must be protected against damage.

(7) No part of the fuel tank may be forward of the front axle of a power unit.

(8) Fill pipe openings must not be located in the passenger or cargo compartment.

(9) Each fuel tank must meet the fuel tank certification requirements provided by § 393.67(f).

(10) Each compressed natural gas fuel system shall be inspected for corroded or abraded areas, dents, distortions, defects in welds and other conditions including leakage, that might render the cylinder or fuel system including lines, connections, and regulators unsafe for transportation.

(11) All compressed natural gas fuel system mounting brackets shall be inspected for corrosion or abraded areas, distortions, or defects in welds, and other conditions which would lead to failure of the fuel system mounting brackets. All fuel system mounting brackets shall secure the cylinder and other components so as to prevent any relative motion.

(12) All compressed natural gas fuel system lines, connections, regulators, and other components shall be inspected for proper operation and be free of leaks.

(d) *Coupling devices and towing methods.*

(1) Adjustable tow-bar or fifth wheel asemblies must not have locking pins missing or out of position.

(2) Each adjustable fifth wheel locking mechanism must be capable of remaining in the locked position.

(3) Adjustable fifth wheel locking mechanisms dependent on fluid energy or air pressure must not have any system leakage.

(4) The coupling device must not have any crack, break or damaged part.

(5) Mounting plates and brackets, including bolts, nuts, welds, rivets and pins (but not including adjustable features) must not be loose, worn or broken so as to permit ⅛ inch or more observable relative motion between the

mounting components and the frame or the vehicle.

(6) The fifth wheel and tow-bar must not have play lengthwise of the vehicle exceeding ½ inch between the upper and lower fifth wheel halves. Where provision is made for adjustment of a fifth wheel lower half or tow-bar, relative to the vehicle frame, there must not be more than ½ inch of play lengthwise of the vehicle in any such adjustment when locked or latched in position.

(7) Safety devices. A safety chain, cable, or other device must be properly attached, and may not be missing, worn, abraded or otherwise damaged to the extent that it is no longer reliable to hold the towed unit.

(e) *Tires.*

(1) Tires on a vehicle's steering axle must:

(i) Not have less than 4/32 inch tread when measured in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire, if the tire is without tread wear indicators.

(ii) Not have tread wear indicators contacting the road in any two adjacent grooves at three equally spaced intervals around the circumference of the tire.

(iii) Not have any part of the breaker strip or casing ply showing in the tread.

(iv) Not be cut, worn, or damaged in the sidewall to the extent the ply cord is exposed.

(v) Not be labeled 'Not for highway use' or display other marking which would exclude use on the steering axle.

(vi) Not lack radial tube stem markings on a tube-type radial tire.

Note.—These markings include a red band around the tube stem, the word 'radial' embossed in metal stems, or the word 'radial' molded in rubber stems.

(viii) Not mix bias ply and radial construction tires.

(ix) Not have the tire flap protruding through the valve stem slot in the rim.

(x) Not be regrooved, except as provided in § 393.75.

(xi) Not have a visually observable bump, bulge, or knot apparently related to tread or sidewall separation.

(xii) Not have a boot, blowout patch or other ply repair.

(xiii) Not carry weight exceeding the tire load limit. This includes an overloaded tire resulting from low air pressure.

(xiv) Not be flat or have a noticeable (e.g., can be heard or felt) leak.

(xv) Not be mounted or inflated in such a manner that it comes in contact with any part of the vehicle.

(2) In addition to complying with the standards set forth in paragraph (e)(1) of this section, a bus also must not be equipped with recapped or retreaded tire(s) on the steering axle.

(3) All tires, other than those found on the steering axle of a powered motor vehicle must:

(i) Not carry weight exceeding the tire load limit. This includes an overloaded tire resulting from low air pressure.

(ii) Not be flat or have a noticeable (e.g., can be heard or felt) leak.

(iii) Not have any part of the breaker strip or casing ply showing in the tread.

(iv) Not be cut, worn, or damaged in the sidewall to the extent the ply cord is exposed.

(v) Not be labeled 'Not for highway use' or display other marking which would exclude its use on the highway.

(vi) Not be mounted or inflated in such a manner that it comes in contact with any part of the vehicle.

(vii) Not have a visually observable bump, bulge, or knot apparently related to tread or sidewall separation.

(viii) Not have less than 2/32 inch tread when measured in any two adjacent major tread grooves at any three equally spaced intervals around the circumference of the tire, if the tire is without tread wear indicators.

(ix) Not have tread wear indicators contacting the road in any two adjacent grooves at three equally spaced intervals around the circumference of the tire.

(x) Not be regrooved or recut unless the word REGROOVABLE is molded on or into both sides of the tire.

(xi) Be of the same or equivalent size designation recommended by the vehicle or tire manufacturer, across a single axle.

(xii) Not mix bias ply and radial construction tires on the same axle.

(xiii) Not have a valve stem which:

(A) Leaks,

(B) Is damaged or positioned so as to hamper the checking of tire pressure or inflation, or

(C) Shows evidence of wear because of misalignment.

(4) Spare tires must be properly secured.

(f) *Wheels and rims.*

(1) The lock or side ring must not be bent, broken, cracked, improperly seated, sprung, or mismatched with other wheel components.

(2) The rim must not be cracked. (Not to be confused with rims purposely split or cut at manufacture).

(3) Disk or cast wheels must not be cracked.

(4) Stud or bolt holes on the wheel must not be elongated (i.e., worn out of round).

(5) Spoked wheels must not be cracked.

(6) Wheel nuts or bolts must not be missing, loose, have improper thread engagement, or fail to function as designed by the manufacturer.

(7) Wheels mounted on the power unit steering axle must not have been repaired by welding. This does not apply to the attachment, by welding, of the disc to the rim on steel disc wheel(s).

(8) Welds in wheels must not be cracked.

(9) All exterior spare tire(s) and wheel(s) must be securely fastened to the vehicle.

(g) *Emergency equipment.*

(1) Each commercial motor vehicle must be equipped with three bidirectional emergency reflective triangles, except as provided by Section 393.95(f).

(2) Fire extinguisher:

(i) A commercial motor vehicle used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 10 B:C or more.

(ii) A commercial motor vehicle used to transport nonhazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 5 B:C or more, or two fire extinguishers with a rating of 4 B:C or more.

(3) Each commercial motor vehicle must be equipped with at least one spare fuse of each size or kind used on the vehicle.

(h) *Cab and body components.*

(1) The vehicle must not have metal, glass, or other loose or dislocated parts protruding from the surface of the vehicle so as to cause a safety hazard to pedestrians or cyclists.

(2) The vehicle's front bumper must not be missing, loosely attached, or protruding so as to create a hazard to pedestrians, cyclist, or other vehicles.

(3) The vehicle must not be missing fenders which were present as original equipment.

(4) The passenger compartment must not have doors or door parts missing, broken, or sagging so that the door can not be properly operated. Further, doors must not be wired shut or secured by means other than a latch.

(5) The engine compartment hood:

(i) It must open.

(ii) The hood latch must securely hold the hood in its proper fully-closed position.

(iii) The hood hinges must not be broken or missing, and must be securely attached to the body.

(6) The floor and fire wall of the passenger compartment must not contain holes which would permit exhaust gases to enter the compartment.

(7) Seats:

(i) Must be securely anchored to the floor.

(ii) Adjustment mechanism must not slip out of position during braking and steering of the vehicle.

(8) Buses:

(i) Must have the driveshaft protection required by § 393.89.

(ii) Must have the standee line or bar required by § 393.90.

(iii) Must not have aisle seats, except as provided by § 393.91.

(iv) Must have all emergency doors marked in letters at least one inch in height with the words "Emergency Door" or "Emergency Exit."

(v) Must have all emergency doors marked with a red electric lamp which operates when the head lamps are operative.

(vi) Must have emergency exits, including push-out windows or doors which operate properly.

(i) Glazing and window construction.

(1) A motor vehicle must not be missing any glazing, except at a location permanently blocked by the vehicle's body or equipment.

(2) All glazing used in the motor vehicle must be approved safety glass. The windshield must be "AS 1" and all other glass must be "AS 2".

(3) In the area swept or wiped by the full proper length of the blade(s) of a properly functioning windshield wiper, the windshield:

(i) Must not have scratches or abrasions which are more than ½ inch wide and more than 6 inches in length.

(ii) Must not have holes or intersecting cracks.

(iii) Must not have nicks or chips larger than 1½ inches.

(iv) Must not have a crack whose edge can be felt on the wiper side of the windshield.

(v) Must not have discoloration extending more than 3 inches up from the bottom, more than 1 inch in from the right or left side, or more than 1 inch down from the top.

(4) The left front door window must roll down completely, in order to facilitate a driver's hand and arm traffic control signals.

(5) The windshield must not have a sign(s), poster(s), sticker(s), or other non-transparent material extending more than 4½ inches from the bottom of the windshield.

(6) Buses must have operable push-out windows, as required by § 393.61(c).

(j) *Frame and frame assembles.*

(1) Frame or cross members must not be cracked, loose, sagging or broken.

(2) Tire and Wheel Clearance: Under no circumstances shall the body or frame be capable of coming in contact with a tire or any part of the wheel assemblies.

(3) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken, or missing.

(4) Body spacer blocks used to keep the cab or body level with the chassis must not be missing.

(k) *Suspension systems.*

(1) U-bolt(s), spring hanger(s), or other axle positioning part(s) must not be cracked, broken, loose or missing. Note: After a turn, lateral axle displacement is normal with some suspensions. Forward or rearward operation in a straight line will cause the axle to return to proper alignment.

(2) Spring Assembly:

(i) The leaves in any leaf spring assembly must not be cracked, broken or missing.

(ii) A coil spring must not be cracked or broken.

(iii) A rubber spring must not be missing.

(iv) The leaves in any leaf spring assembly must not shift or be displaced in a manner that could result in contact with a tire, rim, brake drum or frame.

(v) A torsion bar spring to torsion bar suspension must not be cracked or broken.

(3) Torque, Radius or Tracking Components: Any part of a torque, radius or tracking component assembly or any part used for attaching the same to the vehicle frame or axle must not be cracked, loose, broken or missing. (This does not apply to loose bushings in torque or track rods.)

(4) Air Suspensions:

(i) The air pressure regulator valve must not allow air into the suspension system until at least 55 psi is in the braking system.

(ii) With the vehicle's air pressure showing normal operating pressure, the vehicle must be level (i.e., not tilting to the left or right).

(iii) With the vehicle's air pressure showing normal operating pressure, the suspension system (including the hoses, connections, and bellows) must not have air leakage greater than 3 psi in a 5 minute time period.

(l) *Axles and attaching parts.*

(1) Steering wheel free play must not exceed the following:

Steering wheel diameter	Manual steering system	Power steering system
16" or less	2"+	4½"+
18"	2¼"+	4¾"+
20"	2½"+	5¼"+
22"	2¾"+	5¾"+

Note: For power systems, the engine must be running and the fluid level, belt tension and condition must be adequate before testing.

(2) Steering column:

(i) There must not be any absence or looseness of U-bolt(s) or positioning part(s).

Note: Some steering column systems are designed to permit some movement.

(ii) There must not be any worn or faulty universal joint(s) or universal joints obviously repaired by welding.

(iii) The steering wheel must be properly secured.

(3) The steering wheel:

(i) Must not have any spokes cracked through or missing.

(ii) Replaced steering wheels must not be noticeably smaller than the original factory equipment.

(4) Wheel bearing loseness must not exceed ¼ inch when measuring relative movement between the brake drum or disc and the backing plate or splash shield.

(5) The front axle beam and all steering components other than the steering column must not have a crack(s) or any obvious welded repair.

(6) The steering gear box must not have loose or missing mounting bolts or a crack(s) in the gear box or mounting bracket(s).

(7) There must not be looseness of the pitman arm on the steering gear output shaft.

(8) Power Steering:

(i) The auxiliary power assist cylinder, pump mounting, or connector must not be loose or broken.

(ii) The power steering belts must not be frayed or cracked, and must have proper tension.

(iii) Hoses, tubes or connectors must not show evidence of being rubbed by moving parts.

(iv) System must not show evidence of fluid leakage.

(v) Fluid must not be below recommended levels.

(9) For ball and socket joints, there must not be any movement under steering load of a stud nut(s). Further, any motion, other than rotational, between any linkage member and its attachment point is prohibited.

(10) Tie rods and drag links must not have loose clamps or clamp bolts, or have any looseness in any threaded joint.

(11) There must not be a loose or missing nut(s) on the tie rods, pitman arm, drag link, steering arm or tie rod arm.

(12) There must not be any modification to the steering or any other steering condition that interferes with free movement of any steering component.

(13) Adjustable axle assemblies must not have locking pins missing or not engaged.

(14) All axles on the motor vehicle must be in proper alignment with the longitudinal axis of the vehicle.

(m) *Bulk container, dry or liquid.*

(1) The bulk container shell must be inspected for corroded or abraded areas, dents, distortions, defects in welds, and other conditions, including leakage, that might render the bulk container unsafe for transportation services.

(2) The piping, valves, vents, closures, and gaskets must be inspected for corroded areas, defects in welds, and other conditions, including leakage, that might render the bulk container unsafe for transportation service.

(3) Devices for tightening manhole covers must be operative and there must be no evidence of leakage at manhole covers or gaskets.

(4) Missing bolts and nuts must be replaced. Loose bolts and nuts must be tightened.

(n) *For purposes of this section a Bulk Container means—an article of transport equipment which is—*

(1) of a permanent character and strong enough for repeated use;

(2) specifically designed to facilitate the carriage of goods without intermediate packaging; and

(3) of the following design characteristics:

(i) a cargo tank, dry or liquid;

(ii) a cargo tank type vehicle;

(iii) a cargo container;

(iv) a intermodal container; or

(v) a hopper-type dry bulk transport.

(o) *Other equipment.*

(1) Exhaust System:

(i) Truck or truck tractor:

(A) Must have an exhaust system.

(B) Must not be leaking at the manifold gaskets, manifold and exhaust pipe gasket, muffler and muffler connections, and any other point in the exhaust system, or discharging at a point forward of or directly below the driver/sleeper compartment.

(C) Must not have excessive vibration in the exhaust line.

(D) Must be securely fastened to motor vehicle. Securement must be by appropriate hardware such as bolts, brackets, clamps, and hangers. It must not be by the use of wire.

(E) Must not pass through the passenger compartment.

(F) Must not have patches on the muffler, resonators, exhaust pipe, or tail pipe.

(G) Must not have the exhaust openings to atmosphere pinched, closed, or otherwise restricted.

(ii) Buses:

(A) Gasoline powered—must not exhaust in excess of 6 inches forward of the rearmost part of the bus.

(B) Other than gasoline powered—must not exhaust in excess of 15 inches forward of the rearmost part of the bus, or forward of a door or window (other than emergency exists) designed to be opened.

(C) Must not have patches on the muffler, resonators, exhaust pipe, or tail pipe.

(D) Must be securely fastened to motor vehicle. Securement must be by appropriate hardware such as bolts, brackets, clamps, and hangers. It must not be by the use of wire.

(2) Windshield Wipers:

(i) The power unit must have operable windshield wipers and washers.

Note.—If a motor vehicles was originally equipped (manufactured) with only 1 wiper, only one wiper is required; if originally equipped (manufactured) with 2 or more wipers, all wipers are required.

(ii) The windshield wipers must not have defective wiper blades (i.e., wiper blades are torn, or smear or streak windshield after five cycles).

(iii) The windshield wipers must operate for a full stroke and must return to the proper "park" position out of the driver's view area when shut off.

(iv) The windshield wiper blade(s) or arm(s) parts must not be missing, or severely damaged.

(v) The windshield wiper arm must force the wiper blade to contact the windshield firmly.

(vi) The windshield wiper controls must operate properly and must be located within the driver's reach while at the controls of the vehicle.

(3) Mirrors required by § 393.80 must:

(i) Be present.

(ii) Not obstruct forward vision of driver.

(iii) Not be cracked, pitted, discolored, or clouded to the extent that rear vision is obscured.

(iv) Hold adjustment so as to provide a clear view of the areas the mirror(s) were designed to reflect.

(v) Not have object(s) or material hung from or blocking mirrors.

(vi) Be securely mounted on a stable support.

(vii) Reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such motor vehicle.

(4) Heater/Defroster. If originally equipped with a heater/defroster, the power unit must have a properly functioning device for removing condensation from the inside of the windshield.

(5) Horn:

(i) Each power unit must be equipped with an operative horn and horn switch.

(ii) The horn or horn switch must be securely attached to the vehicle.

(iii) The horn switch must be readily accessible to the vehicle operator.

(iv) The horn must be audible, under normal conditions, at a distance not less than 200 feet.

(v) A siren, bell, or whistle shall not constitute a horn.

(vi) The horn wiring shall be properly maintained. The horn shall not be actuated by grounding two naked wires or by a similar method.

(6) Speedometer. Each power unit shall be equipped with an operative speedometer accurate to within plus or minus 5 m.p.h. at a speed of 50 m.p.h.

(7) Rearend protection. Each motor vehicle must be equipped with a rearend protection device meeting the requirements of § 393.86.

(8) Seat belts:

(i) Required seat belts must be present.

(ii) Seat belt webbing must not be frayed, split, or torn.

(iii) Seat belt anchorages or attachment fittings:

(A) Must not be loose.

(B) Must not be badly corroded.

(C) Must not be missing.

(D) Must be fastened to the belt.

(iv) Seat belt buckles must not be loose or inoperative.

(v) All seat belt anchor bolts must be present and securely fastened to the floor.

(9) Vehicle interior noise levels: Following the test procedure found in § 393.94(c), the interior sound level at the driver's seating position must not exceed 90 dB(A). The measurements must be taken with a sound level meter which meets the requirements of the American National Standards Institute Standard ANSI S1.4–1971 Specification for Sound Level Meters, for Type 2 Meters.

[FR Doc. 87–3693 Filed 2–25–87; 8:45 am]

BILLING CODE 4910-22-M

federal register

Thursday
February 26, 1987

Part III

Department of Education

Bilingual Vocational Instructor Training Program; Proposed Priority and Applications Notices

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Bilingual Vocational Instructor Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Priority for Fiscal Year 1987.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes that an absolute priority to reserve funds for inservice training projects be made for the Fiscal Year 1987 grant competition under the Bilingual Vocational Instructor Training Program.

DATE: Comments on this proposed priority must be received on or before March 30, 1987.

ADDRESS: Comments should be addressed to Ron Castaldi, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education (Room 519 Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Ron Castaldi. Telephone (202) 732–2359.

SUPPLEMENTARY INFORMATION:

Program Information

The Bilingual Vocational Instructor Training (BVIT) program was established in 1976, as one of three Bilingual Vocational Training programs. The two other programs are the Bilingual Vocational Training (BVT) and Bilingual Vocational Materials, Methods and Techniques (BVMMT) programs. The BVIT program provides financial assistance to conduct training programs for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

To date, the majority of applications submitted and funded under the BVIT program have been for preservice programs. Most of these have been four-year, baccalaureate-level programs. Discussions with local BVT program directors, however, indicate that there is a shortage of well-trained personnel in BVT programs, and that quality inservice training for BVT program personnel is needed on an ongoing basis. As it currently operates, the BVIT program does not meet this need for inservice training.

The purpose of reserving funds for inservice training projects under the BVIT program is to address the need for trained personnel in BVT programs, thereby increasing the effectiveness of BVT programs.

Priority

In accordance with 34 CFR 75.105(c)(3), the Secretary proposes to establish an absolute priority to reserve funds under the Bilingual Vocational Instructor Training Program in Fiscal Year 1987, for projects that provide inservice training for instructors, aides, counselors, or other ancillary personnel participating in bilingual vocational and training programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed reservation of funds for inservice training projects.

All comments submitted in response to this proposed notice will be available for public inspection during and after the comment period in Room 519, Reporters Building, 300 7th Street SW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 2441(b).

Dated: February 9, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–4035 Filed 2–25–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.099A]

Inviting Applications for New Awards Under the Program for Bilingual Vocational Instructor Training for Fiscal Year 1987

Purpose: Provides financial assistance for conducting training for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

Deadline for Transmittal of Applications: April 29, 1987.

Deadline for Intergovernmental Review Comments: June 29, 1987.

Applications Available: February 27, 1987.

Available Funds Anticipated: For fiscal year 1987, $552,900 has been appropriated for bilingual vocational instructor training programs. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate these funds. However, the deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notice.

Estimated Range of Awards: $25,000 to $180,000.

Estimated Average Size of Awards: $92,150.

Estimated Number of Awards: 6.

Project Period: 18 months.

Applicable Regulations:

(a) When adopted in final, the proposed priority published in this issue of the **Federal Register**, Applicants should prepare their applications based on this proposed priority. If substantive changes are made in the final priority, applicants will be given an opportunity to revise or resubmit their applications; (b) The regulations in 34 CFR Part 408; and (c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Criteria for Evaluating Applications: The Secretary assigns the fifteen points, reserved in 34 CFR 408.30(b), as follows: five points to the Selection Criterion (a)—Need—in 34 CFR 408.31(a) for a total of 25 points for that criterion; and ten points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 408.31(b) for a total of 30 points for that criterion.

For Applications or Information Contact: Ron Castaldi, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U. S. Department of Education, 400 Maryland Avenue, SW. (Room 519, Reporters Building), Washington, DC 20202, Telephone (202) 732–2359.

Program Authority: 20 U.S.C. 2441(b).

Dated: February 19, 1987.

John Pucciano,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 87-4034 Filed 2-25-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84 0771]

Inviting Applications for New Awards Under the Program for Bilingual Vocational Training for Fiscal Year 1987

Purpose: Provides financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare these individuals for jobs in recognized occupations and new and emerging occupations consistent with the Carl D. Perkins Vocational Education Act (20 U.S.C. 2441(a)).

Deadline For Transmittal of Applications: April 29, 1987.

Deadline for Intergovernmental Review Comments: June 29, 1987.

Applications Available: February 27, 1987.

Available Funds Anticipated: In fiscal year 1987, $2,764,500 has been appropriated for the bilingual vocational training program. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate these funds. However, the deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notice.

Estimated Range of Awards: $150,000 to $325,000.

Estimated Average Size of Awards: $276,450.

Estimated Number of Awards: 10.

Project Period: 18 months.

Applicable Regulations: (a) The Bilingual Vocational Training Program Regulations, 34 CFR Part 407; and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Criteria for Evaluating Applications: The Secretary assigns the fifteen points, reserved in 34 CFR 407.30(b), to the Selection Criterion (c)—Program Factors—in 34 CFR 407.31(c) for a total of 25 points for that criterion.

For Applications or Information Contact: Ron Castaldi, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 519, Reporters Building), Washington, DC 20202. Telephone (202) 732-2359.

Program Authority: 20 U.S.C. 2441(a).

Dated: February 19, 1987.

John Pucciano,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 87-4036 Filed 2-25-87; 8:45 am]

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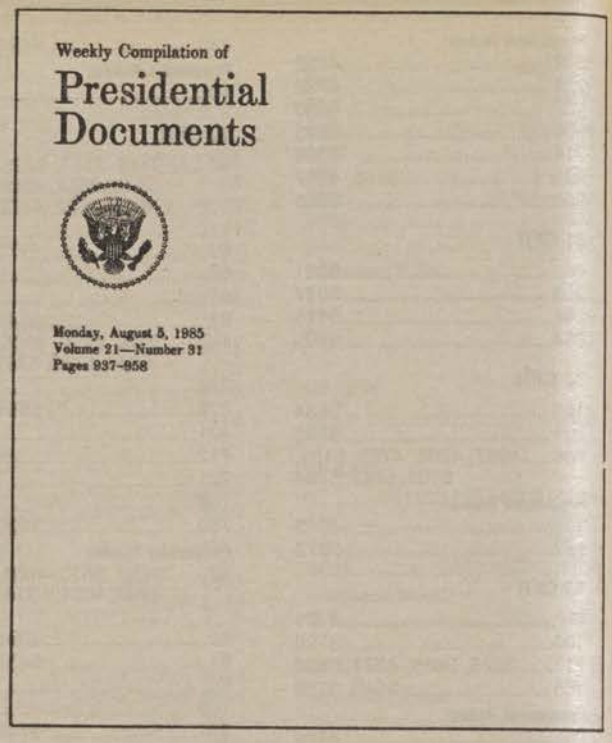

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