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

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

ATLANTA, GA

WHEN: March 26; at 9 am.
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 Parts 210, 215, and 220

Increase in Private School Tuition Limitation

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases from $1,500 to $2,000 the maximum tuition that a private school may charge and be eligible to participate in the School Nutrition Programs authorized under the National School Lunch Act and the Child Nutrition Act. The programs affected are the National School Lunch Program, Part 210; the Special Milk Program, Part 215; and the School Breakfast Program, Part 220. This amendment is required by section 4205 of Pub. L. 99–661, which was enacted on November 14, 1986.

EFFECTIVE DATE: March 12, 1987.

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

SUPPLEMENTARY INFORMATION

Classification

This rule implements an increase in the private school tuition limitation which is retroactive to October 1, 1986, as specifically prescribed by statute and therefore is nondiscretionary. For this reason, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b) and 553(d), that prior notice and comment is unnecessary and contrary to the public interest and that good cause exists for making the rule effective upon publication. Further, the rule relieves a restriction and pursuant to 5 U.S.C. 553(d) may be made effective upon publication. Finally, since this rule merely implements cited statutory provisions, it constitutes an interpretive rule for which notice and comment rulemaking and a 30-day period before taking effect are not required by 5 U.S.C. 553.

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action 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 consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 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.

No new reporting or recordkeeping requirement is included which would require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520). The programs being amended are approved by OMB under the following control numbers: National School Lunch Program, 0584–0006; Special Milk Program, 0584–0005; and School Breakfast Program, 0584–0012.

The National School Lunch Special Milk, and School Breakfast Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, 10.556 and 10.553, respectively; and are subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983).

Background

Amendments made by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, excluded private schools with an average yearly tuition exceeding $1,500 per child from participating in the National School Lunch Program, Special Milk Program, and School Breakfast Program. The provision was intended to reduce Federal expenditures by directing benefits to children from households most in need.

Congress, in section 4205 of Pub. L. 99–661, amended section 12(b)(5) of the National School Lunch Act (42 U.S.C. 1760(b)(5)) and section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) to increase the private school tuition limit to $2,000 effective October 1, 1986. Therefore, private schools with average yearly tuition not exceeding $2,000 per child are now eligible to apply for participation in any of the school nutrition programs authorized under the National School Lunch Act and the Child Nutrition Act. Additionally, beginning July 1, 1988, the law requires the Department to adjust the tuition limit each July 1 to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available. Thus, the $2,000 per child average yearly tuition limit is effective through June 30, 1988, when the tuition limit will be adjusted, as necessary. The adjustment of the tuition limit will be addressed in separate rulemaking. To provide nationwide consistency in computing average yearly tuition, Parts 210, 215, and 220 currently define the term "tuition."

Although Pub. L. 99–661 was enacted on November 14, 1986, the effective date of the $2,000 tuition limitation provision is October 1, 1986. Consequently, based on the legislation, the Department is making an exception to the program regulations that allow retroactive commodity entitlement and cash reimbursement only for meals and milk served in the calendar month preceding the calendar month in which a written agreement to operate the program is executed.

The Department is allowing an exception to this provision to allow commodity entitlement and cash reimbursement retroactive to October 1, *provided* that: (1) Interested school food authorities make application to participate in the program(s); (2) a written agreement is executed not later than 30 days after the publication of this rule; and (3) the school food authority

can document that for any meals claimed, the requirements of the program regulations were met: (i) The meals and milk served met all requirements including items and quantities served; (ii) free and reduced price applications were on file and such meals were provided to eligible children; (iii) meal counts by type served are available, e.g. lunch/reduced price; and (iv) appropriate food service revenue and expenditure records are available. Any interested school food authority that cannot provide the necessary documentation for retroactive application of the rule to October 1, 1986, should make application as soon as possible and will be subject to the routine reimbursement procedures set out in the program regulations.

A definition, "High tuition private school", is being added to define a high tuition private school as a private school with an average yearly tuition exceeding $2,000 per child. Additionally, the definition of "School" is being revised to exclude high tuition private schools.

List of Subjects

7 CFR Part 210

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

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant program—Social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, Parts 210, 215 and 220 are 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.

2. Section 210.2 is amended by adding a new definition, "High tuition private school," and in the definition of "School", the first sentence in paragraph (a) is amended by removing the remainder of the sentence after the italicized words "except for" and adding, in their place, the words "high tuition private schools which are ineligible to participate in the Program." The addition reads as follows:

§ 210.2 Definitions.

* * * * *

"High tuition private school" means a private school with an average yearly tuition exceeding $2,000 per child. Such schools are ineligible to participate in the Program. Beginning July 1, 1988, the Secretary will annually review the tuition limit and make adjustments as necessary to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which data is available.

* * * * *

PART 215—SPECIAL MILK PROGRAM

1. The authority citation for Part 215 continues to read as follows:

Authority: Secs. 3, 10; 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779), unless otherwise noted.

§ 215.2 [Amended]

2. Section 215.2 is amended by adding a new paragraph (k–1) "High tuition private school," and paragraph (v)(1) is amended by revising the first sentence. The addition and revision read as follows:

(k–1) "High tuition private school" means a private school with an average yearly tuition exceeding $2,000 per child. Such schools are ineligible to participate in the Program. Beginning July 1, 1988, the Secretary will annually review the tuition limit and make adjustments as necessary to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which data is available.

* * * * *

(v) "School" means: (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings; *except for* high tuition private schools which are ineligible to participate in the Program. * * *

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. Section 220.2 is amended by adding a new paragraph (j–1) "High tuition private school," and paragraph (u)(1) is amended by revising the first sentence. The addition and revision read as follows:

§ 220.2 Definitions.

* * * * *

(j–1) "High tuition private school" means a private school with an average yearly tuition exceeding $2,000 per child. Such schools are ineligible to participate in the Program. Beginning July 1, 1988, the Secretary will annually review the tuition limit and make adjustments as necessary to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which data is available.

* * * * *

(u) "School" means: (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings; *except for* high tuition private schools which are ineligible to participate in the Program. * * *

* * * * *

Dated: March 6, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87–5305 Filed 3–11–87; 8:45 am]

BILLING CODE 3410–30–M

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7 CFR Part 215

Restoration of the Special Milk Program to Split-Session Kindergartens Which Do Not Have Access to Other Meal Service

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: Based on provisions of the Child Nutrition Amendments of 1986, this interim rule amends the regulations for the Special Milk Program. This interim rule allows children to participate in the Special Milk Program if they are attending split-session kindergartens and do not have access to any school meal service authorized under the Child Nutrition or National School Lunch Acts.

DATES: This rule is effective March 12, 1987. Comments must be postmarked on or before May 11, 1987.

ADDRESS: Comments should be sent to Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia

22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura at the address listed above or call (703) 756–3620.

SUPPLEMENTARY INFORMATION: The Administrator has determined pursuant to 5 U.S.C. 553 (b) and (d) that prior notice and comment are contrary to public interest and good cause exists for making this rule effective earlier than 30 days after publication because Pub. L. 99–661 specifies an effective date of October 1, 1986. However, due to the discretionary nature of the definition in this regulation pertaining to access to meal service by children attending split-session kindergartens, public comments are solicited on the definitions of "access" and "split-session."

This interim 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 Special Milk Program is listed in the Catalog of Federal Domestic Assistance under No. 10.556 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 interim rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 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.

No new reporting or recordkeeping requirement is included which would require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520). The program being amended is approved by OMB under the following control number: Special Milk Program, 0584–0005.

Background

Amendments made in 1981 by section 807 of Pub. L. 97–35 imposed limitations on a school's eligibility for participation in the Special Milk Program. Section 807 permitted only those schools which did *not* participate in another federally funded food service program authorized by the Child Nutrition Act of 1966 (CNA) or the National School Lunch Act (NSLA) to participate in the Special Milk Program. Therefore, 7 CFR Part 215 was amended on October 20, 1981 (46 FR 51363) to prohibit such dual participation. In other words, if a school participated in the Special Milk Program and any other Child Nutrition Program (such as the National School Lunch Program or the School Breakfast Program), it had to drop either the Special Milk Program or the other program(s).

The Child Nutrition Amendments of 1986 provide a limited exception to the general rule that the Special Milk Program may not be offered in schools when another meal service program authorized by the CNA or NSLA is also operated. Section 4209 of Pub. L. 99–661 amended section 3 of the CNA to provide an exception only for split-session kindergarten programs conducted in schools in which children do not have access to a meal service authorized under the CNA and NSLA. The Department wishes to emphasize that the exception applies only to split-session kindergarten programs without access to the school meal service. No other age groups, classes, or programs within schools may participate in the Special Milk Program if the school participates in another meal service program authorized by the CNA or NSLA.

Access to Meal Service

Prior to 1981, while many kindergarten children were not at school during the meal service, many at least had access to the Special Milk Program. However, since 1981 those kindergarten children who were not able to participate in the National School Lunch Program or School Breakfast Program offered by the school, due to scheduling problems or other practical difficulties, were also not able to participate in the Special Milk Program. To provide milk to these children in split-session kindergarten programs who do not have access to federally funded meal service as offered by the school to other children, a limited exception to the restriction on participation in the Special Milk Program imposed by Pub. L. 97–35 has now been provided by Pub. L. 99–661.

The Department recognizes that a wide variety of circumstances may influence a school's determination as to which split-session kindergarten programs may be accommodated in the meal service offered to other children. For example, bus schedules may make it impossible for spilt-session kindergarten program children to remain in the school for the lunch service. Therefore, the Department is not defining, in this interim rule, what constitutes "access" to the other meal service offered by the school. The Department believes that school food authorities can best determine when such access is impractical. However, the Department wishes to emphasize that as a general rule, whenever possible, access to program meal service benefits should be provided to all children attending participating schools. Although the Department is not defining "access" in this interm rule, it will consider the need for such a definition based on comment received from interested parties and program participants prior to publication of a final rule on this subject.

Split-Session Kindergarten

The limited exception provided by Congress applies only to split-session kindergarten programs. The Department wishes to emphasize that no other age group or grade is allowed such an exception by this interim rule. Since the exception to general practice is so narrowly drawn, the Department believes that it is necessary to define the term "split-session." Therefore, § 215.2(x–1) of this interim rule defines the term "split-session" to mean "an educational program operating for approximately one-half of the normal school day." The Department believes that this definition will serve to include all those kindergarten programs intended by Congress, while excluding those kindergarten programs operating for longer periods of time during the school day. Arguably, if the students are at school more than one-half the day, there should be adequate time for access to the meal service available to other children. The Department encourages commenters to address this new definition to determine whether additional clarification is necessary in a final rule.

Effective Date

Although Pub. L. 99–661 was enacted on November 14, 1986, the effective date of the split-session kindergarten provision is October 1, 1986. Consequently, based on the legislation the Department is making an exception to § 215.9(a) of the program regulations

that allows retroactive reimbursement only for milk served in the calendar month preceding the calendar month in which a written agreement to operate the program is executed.

The Department is allowing an exception to this provision to allow reimbursement retroactive to October 1, *Provided* That: (1) Interested school food authorities make application to participate in the program; (2) a written agreement is executed not later than 30 days after the publication of this rule; and (3) the school food authority can document that for any milk claimed, the requirements of the program regulations were met: (i) The fluid milk served met all requirements including quantity served; (ii) if elected by the school food authority, free applications were on file and free milk was provided to eligible needy children; and (iii) appropriate records of milk served (by price category) are available. Any interested school food authority that cannot provide the necessary documentation for retroactive application of the rule to October 1, 1986, should make application as soon as possible and will be subject to routine reimbursement procedures as described in §§ 215.8 and 215.9.

Restatement of General Purpose and Scope

This interim rule contains a complete restatement of the pertinent portions of section 3 of the CNA which establishes the Special Milk Program. The Department wishes to emphasize that no substantive change other than that contained in this interim rule is contained in the restatement. Rather, Pub. L. 99–661 reorganized section 3 and the Department has therefore made corresponding changes to the restatement of this section in this interim rule.

Comment Requested

Although this interim rule is in large part nondiscretionary, the Department specifically solicits comment on the definition of "split-session" contained in this interim rule and the need, if any, for an additional definition to define "access" to other meal service by split-session kindergartens.

List of Subjects

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 215 is amended as follows:

PART 215—SPECIAL MILK PROGRAM

1. The authority citation for Part 215 continues to read as follows:

Authority: Secs. 3, 10; 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779), unless otherwise noted.

2. Section 215.1 is revised to read as follows:

§ 215.1 General purpose and scope.

This part announces the policies and prescribes the general regulations with respect to the Special Milk Program for Children, under the Child Nutrition Act of 1966, as amended, and sets forth the general requirements for participation in the program. The Act reads in pertinent part as follows:

Section 3(a)(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as he may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) nonprofit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this Act or the National School Lunch Act, and (B) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a meal service program authorized under this Act or the National School Lunch Act.

(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 *et seq.*).

(3) For the purposes of this section "United States" means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia.

(4) The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as he administered the special milk program provided for by Pub. L. 89–642, as amended, during the fiscal year ending June 30, 1969.

(5) Any school or nonprofit child care institution which does not participate in a meal service program authorized under this Act or the National School Lunch Act shall receive the special milk program upon their request.

(6) Children who qualify for free lunches under guidelines established by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7) For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8) Such adjustment shall be computed to the nearest one-fourth cent.

(9) Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

3. In § 215.2, new paragraph (x–1) is added to follow paragraph (x) to read as follows:

§ 215.2 Definitions.

* * * * *

(x–1) "Split-session" means an educational program operating for approximately one-half of the normal school day.

* * * * *

4. In § 215.7, the first sentence of paragraph (a) is revised to read as follows:

§ 215.7 Requirements for participation.

(a) Any school or nonprofit child care institution shall receive the Special Milk Program upon request provided it does not participate in a meal service program authorized under the Child Nutrition Act of 1966 or the National School Lunch Act; except that schools with such meal service may receive the Special Milk Program upon request only for the children attending split-session kindergarten programs who do not have access to the meal service. * * *

* * * * *

Dated: March 6, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87–5304 Filed 3–11–87; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86–361]

Subpart—Citrus Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the citrus canker regulations by adding provisions

allowing, under specified conditions, the issuance of limited permits for interstate movement of calamondin and kumquat plants from quarantined areas to areas not designated as commercial citrus-producing areas. This action is necessary to relieve the current prohibition on the interstate movement of calamondin and kumquat plants without increasing the risk of spreading citrus canker disease.

EFFECTIVE DATE: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Acting Assistant Director, Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, USDA, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker, a disease caused by the bacterial pathogen, *Xanthomonas campestris* pv. *citri* (Hasse) Dowson, is a devastating disease which is known to affect plants and plant parts (including fruit) of citrus and citrus relatives (Family Rutaceae).

After the discovery of citrus canker in Florida, regulations captioned "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.*, and referred to below as the regulations) were established to regulate the interstate movement, from anywhere in Florida, of certain articles designated as regulated articles. Interstate movement of regulated articles may be permitted under limited permits, which require compliance with stringent conditions to prevent artificial spread of citrus canker.

We published in the **Federal Register** on September 8, 1986 (51 FR 31956–31958), a proposal to amend the regulations by adding provisions allowing, under specified conditions, the issuance of limited permits for the interstate movement of greenhouse-grown calamondin plants (*Citrus reticulata* and *Fortunella* sp.) and container-grown calamondin and kumquat plants (*Fortunella margarita*) from quarantined areas to areas not designated as commercial citrus-producing areas. Both calamondin and kumquat are highly resistant to citrus canker in general, and to the strains found in Florida in particular.

Our proposal of September 8, 1986, invited the submission of written comments on or before November 7, 1986. No comments were received. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

Executive Order 12291 and Regulatory Flexibility Act

This action is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause 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.

The revisions in this document relieve unnecessary prohibitions on the interstate movement of calamondin and kumquat plants. Under the requirements for issuance of limited permits, the movement of these plants will not increase the risk of artificial spread of citrus canker.

The overwhelming majority of gift shops and roadside stands selling calamondin and kumquat plants are small entities, as are a portion of the nurseries that grow and sell these plants. However, although sales of calamondin and kumquat plants should increase under this final rule, the economic impact will be minor as calamondin and kumquat are a small part of such small entities' selling and purchasing inventory.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant diseases, Plant pests, Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301, is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.75–6 is amended by adding a new paragraph (e) to read as follows:

§ 301.75–6 Conditions governing the interstate movement of regulated articles from quarantined areas.

* * * * *

(e) Calamondin and kumquat plants may be moved interstate from a quarantined area with a limited permit issued and attached in accordance with § 301.75–10 and either § 301.75–7(e) or § 301.75–7(f).

3. Section 301.75–7 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 301.75–7 Issuance and cancellation of certificates and limited permits.

* * * * *

(e) A limited permit shall be issued by an inspector for greenhouse-grown calamondin plants to be packaged and sold within Florida prior to interstate movement as individual plants, if such inspector:

(1) Determines that each individual plant will be sealed hermetically in a plastic bag at the nursery before moving from the nursery premises and will have no fruit attached.

(2) Determines that the calamondin plants have been grown in sterile medium on raised benches, and that cuttings used for propagation have only been taken from plants located on the same premises.

(3) Determines that the nursery where the plants were grown has not received any exposed material from any infested or exposed property.

(4) Determines that the nursery where the plants were grown has received three negative inspections for citrus canker by Federal and/or State of Florida inspectors, at 30-day intervals, prior to the date of shipment and that all plants were citrus canker free.

(5) Determines that each individual package will have a bold face statement which states that the plant is not for distribution within American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States.

(f) A limited permit shall be issued by an inspector for container-grown calamondin or kumquat nursery plants to be moved from the State of Florida to that area of the United States east of the Mississippi River and north of an imaginary line formed by the southernmost borders of Illinois,

Indiana, Ohio, New Jersey, and Pennsylvania, if such inspector:

(1) Determines that the plants will be transported in a sealed, rigid container or a completely enclosed vehicle.

(2) Determines that the plants are from a nursery that has not received any exposed plant material from any exposed or infested property, and has no citrumelo or *Poncirus trifoliata* plants in the nursery since May 1, 1985.

(3) Determines that the plants have been produced entirely on site and that cuttings used for propagation have only been taken from plants located on the same premises.

(4) Determines that the nursery where the plants were grown has received three negative inspections for citrus canker by Federal and/or State of Florida inspectors, at 30-day intervals, prior to the date of shipment and that all plants were citrus canker free.

(5) Determines that a waterproof, boldface statement will be attached to each plant stating that the plant may be distributed only within that area of the United States east of the Mississippi River and north of an imaginary line formed by the southernmost borders of Illinois, Indiana, Ohio, New Jersey, and Pennsylvania.

Done in Washington, DC., this 9th of March, 1987

W.F. Helms

Deputy Administrator, Plant Protection and Quarantine Animal and Plant Health Inspection Service.

[FR Doc. 87-5254 Filed 3-11-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-05-AD; Amdt. 39-5580]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection for cracking and corrosion in lower body longitudinal skin lap joints and cracking in lower lobe body frames, and repair, if necessary. This amendment will extend the inspection requirements to airplanes with less than 12,000 flight hours and known corrosion. This action is necessary since lower body frame cracking adjacent to fuselage skin lap joint corrosion, if not corrected, could result in separation of the lap joint and rapid decompression of the airplane.

EFFECTIVE DATE: March 30, 1987.

ADDRESSES: Information on the required inspection and copies of the appropriate service bulletins may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued AD 86-09-07, Amendment 39-5306 (51 FR 17005; May 8, 1986), to require inspection for cracking and corrosion of certain fuselage lap splices on Boeing Model 747 airplanes with 12,000 flight hours of more, in accordance with Boeing Service Bulletin 747-53A2267, dated March 28, 1986.

Lap splice corrosion associated with a known frame cracking problem could degrade the fail-safe characteristics of the structure. AD 86-18-01 was issued to address the frame cracks; it required inspections for airplanes with 10,000 landings or more. After a recent FAA review of the two problems, it was determined that lap splice corrosion could exist prior to 12,000 flight hours. For aircraft operated on short flights, it would be possible for the corrosion to co-exist with frame cracks, which could result in failure of the frame and lap splice, with a corresponding rapid decompression. In addition, failure of the lap splice even without frame cracks could occur in the presence of extensive corrosion, which would result in decompression.

Since this condition is likely to exist or develop on other airplanes of the same type design, AD 86-09-07 is being amended to require inspection for cracking and corrosion in lower body longitudinal skin lap joints, in accordance with Boeing Service Bulletin 747-53A2267, for airplanes with less than 12,000 flight hours. In addition, Paragraph D. of the AD has been revised to specify application of corrosion preventative compound in accordance with the Boeing Service Bulletin 747-53A2267, Revision 1, dated September 25, 1986. The FAA has determined that this latter change will not increase the economic burden on any operator, nor will it increase the scope of this AD.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By amending AD 86-09-07, Amendment 39-5306 (51 FR 17005; May 8, 1986) by removing paragraphs A.1.a and A.1.b and by revising paragraphs A.1 and D. to read as follows:

A. 1. Inspect within the next 100 landings after the effective date of this amendment, or within 4,000 flight hours or 15 months from the last inspection of each lap joint area, provided no corrosion was found at that inspection, whichever is later.

D. Apply organic corrosion inhibiting compound in accordance with Boeing Service Bulletin 747-53A2267, Revision 1, dated September 25, 1986, or later FAA-approved revisions.

This amendment becomes effective March 30, 1987.

Issued in Seattle, Washington, on March 5, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-5220 Filed 3-11-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-06-AD; Amdt. 39-5581]

Airworthiness Directives; Boeing Model 707-300 Series Airplanes Modified in Accordance With Tractor Supplemental Type Certificate (STC) SA2699NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 707-300 series airplanes, modified with "quiet" nacelles in accordance with Supplemental Type Certificate (STC) SA2699NM, which requires inspection and rework, as necessary, for loose nose cowl extension attach bolts and related structure. This amendment is prompted by reports of loose or missing bolts. This condition, if not corrected, could result in loss of structural integrity of nose cowl attachment.

EFFECTIVE DATE: March 30, 1987.

ADDRESSES: The applicable service information may be obtained from Tracor Aviation, Inc., 495 South Fairview Avenue, Goleta, California 93117, Attention: Customer Services. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Salas, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: Operators of Boeing Model 707-300 airplanes modified by STC SA2699NM, have reported loose or missing attach bolts which retain the nose cowl extension to the forward engine flange of the compressor case. There are normally twenty-seven bolts used for this attachment. In one case, an operator reported as many as fourteen bolts loose or missing. In some cases, cracks have been found in the aft flange of the nose cowl extension as well as damaged spacers. The condition of loose attach bolts is attributed to production tolerances of the flange, spacer, and thread runout of the engine case and bolt. The loss of structural integrity that could result from this condition could cause substantial damage to airplane structure and/or loss of engine power.

The FAA has reviewed and approved Tracor Service Bulletin Q707-71-016, Revision 1, dated January 2, 1987, which describes inspection and rework for loose nose cowl extension attach bolts and/or spacers. The inspection consists of checking the bolts and spacers for condition. The rework consists of reinstalling the bolts with new washers and replaced spacers (if required) to obtain sufficent clamping force. The service bulletin also describes further inspection and repair of the engine case if the bolts cannot be properly re-torqued.

Since this condition is likely to exist or develop on other airplanes of the same type design and modified by the quiet nacelle installation of STC SA2699NM, this AD requires inspection and rework, as necessary, in accordance with the service bulletin previously mentioned.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 707-300 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA2699NM, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent loss of engine cowl, within the next 50 hours time in service, or within 30 days, whichever occurs earlier after the effective date of this AD, accomplish the following:

A. Inspect and rework as required, each engine nose cowl extension attach bolt, bolt spacer, aft flange of the nose cowl extension and the engine case in accordance with the accomplishment instructions of Tracor Service Bulletin Q707-71-016, Revision 1, dated January 2, 1987, or later FAA-approved revision.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Tracor Aviation, Inc., 495 South Fairview Avenue, Goleta, California 93117, Attention: Customer Services. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective March 30, 1987.

Issued in Seattle, Washington, on March 5, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-5215 Filed 3-11-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-170-AD; Amdt. 39-5584]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires structural inspections and repair, as necessary, of the aft lower cargo doorway frames on certain Boeing Model 737 airplanes. This AD is prompted by numerous reports of cracking in both vertical frame members at the aft lower cargo doorway. Continued operation with undetected cracked frames could result in skin cracks and rapid decompression of the airplane.

EFFECTIVE DATE: April 16, 1987.

ADDRESSES: The applicable service bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. James W. Hart, Jr., Airframe Branch, ANM-120S; telephone (206) 431-1920. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations in include an airworthiness directive which requires repetitive inspections of the aft lower cargo door frames on certain Boeing Model 737 airplanes in accordance with Boeing Service Bulletin 737-53-1096, was published in the **Federal Register** on September 29, 1986 (51 FR 34475). The comment period for the proposal closed on November 20, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all significant comments received.

Since publication of the NPRM, The Boeing Company has issued a Notice of Status Change (NSC) which advises that a visual inspection is considered adequate in place of the high frequency eddy current inspections. Additionally, the operators commented that their experience has shown that visual inspections will detect the frame cracks before the cracking becomes extensive. Therefore, both the operators and manufacturer recommend that visual inspections be permitted in lieu of high frequency eddy current inspections. The FAA has reviewed these comments and determined that visual inspections will be adequate to find cracking before the structural integrity deteriorates below limit load capability. The AD has been revised accordingly. This revision does not increase the burden of compliance for any person.

Another operator commented that the service bulletin does not provide a terminating modification and that until such is available, mandatory action should be withheld. The FAA does not concur. This problem is serious enough to require inspections, and repairs, if necessary, in accordance with FAA-approved procedures, to preclude rapid decompression or possible door blow out. To delay inspections until the service bulletin can be revised and issued is unacceptable and not in the interest of safety.

Another operator noted that the proposed repairs only covered frame cracks which stopped short of the midpoint of the frame web. This operator suggested that the AD provide instructions for longer cracks. The FAA does not concur. Repair instructions cannot cover all cracking possibilities. For this reason, operators are encouraged to contact The Boeing Company or the FAA for an FAA-approved repair for cases where cracks exceed the limitations of the published FAA-approved repair. The AD provides for this procedure.

Paragraph D. of the AD has been revised to require the concurrence of the FAA Principal Maintenance Inspector in requests for use of alternate means of compliance. The FAA has determined that this revision does not increase the economic burden on any operator, nor does it expand the scope of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 475 airplanes of U.S. registry will be affected by this AD, that approximately 36 manhours per airplane will be required to perform the necessary inspections, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators will be $684,000 for each inspection cycle.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 737 series airplanes listed in Boeing Service Bulletin 737-53-1096, dated July 24, 1986, certificated in any category.

To prevent rapid loss of cabin pressure resulting from undetected frame cracking, accomplish the following prior to the accumulation of 20,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 3,000 landings:

A. Conduct a close visual inspection of the forward and aft body frames adjacent to the aft lower cargo door for cracks, in the areas identified in Boeing Service Bulletion 737-53-1096, dated July 24, 1986, or later FAA-approved revisions. Thereafter, repeat the close visual inspections at intervals not to exceed 4,000 landings.

B. If cracks are found, repair prior to further flight, in accordance with an FAA-approved repair method.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance or adjustment of compliance times, which provides acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

All persons affected by this directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 16, 1987.

Issued in Seattle, Washington, on March 5, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–5219 Filed 3–11–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–220–AD; Amdt. 39–5583]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive, applicable to certain Boeing Model 747 airplanes, which currently requires repetitive inspections for cracking, and repair as necessary, of body frame structure and skin in the nose (Section 41) of the fuselage. The manufacturer has issued a revision to the service bulletin referenced in the AD, which recommends inspections and repair that, in certain areas, are more rigorous than those required by the existing AD. This amendment requires an expansion of the scope of the AD to correspond to the service bulletin by requiring additional inspections and accelerated compliance intervals to ensure necessary inspection of the airplanes.

EFFECTIVE DATE: April 16, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 86–23–06, Amendment 39–5467 (51 FR 41473; November 17, 1986), to require certain inspections for cracking, and repair as necessary, of body frame structure and skin in section 41 of the fuselage on certain Boeing Model 747 series airplanes in accordance with the procedures of Boeing Service Bulletin 747–53A2265, was published in the **Federal Register** on January 7, 1987 (52 FR 552).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The Air Transport Association (ATA) of America commented on behalf of its members. It expressed no objection to the proposed amendment.

After the issuance of the NPRM, the manufacturer issued a new Service Bulletin 747–53–2272, dated January 12, 1987, that defines specific procedures to effect terminating action for the inspection requirements of AD 86–23–06. Paragraph R. of the AD has been revised by adding the procedures described in this service bulletin as an approved procedure for accomplishing terminating action. This revision does not change the substance of the AD, as paragraph R. already provides for terminating action if performed in accordance with FAA-approved procedures. This change essentially adds information and has been made strictly for information purposes; it imposes no additional economic burden on operators.

After careful review of the available data, including the one comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the change noted above.

Since this amendment accelerates the initial compliance time for certain inspections of certain airplanes, without changing the means of compliance, it does not increase the cost of compliance with the existing AD. This amendment also requires the accomplishment of certain repetitive inspections that the existing AD allows to be deferred if certain conditions are met; since it is unknown whether those conditions will be met, it cannot be determined whether the requirements will impose any additional costs over those presently imposed by the existing AD.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By amending AD 86–23–06, Amendment 39–5467 (51 FR 41473; November 17, 1986), by revising paragraphs F., G., I., J., O., and R. to read as follows:

F. Except as provided in paragraph O., below, for airplanes, line numbers 1 through 603, immediately after the effective date of this Amendment, or within the next 500 landings after December 15, 1986, or prior to the accumulation of 16,000 landings, whichever occurs later, perform the following visual or X-ray inspections for cracking of the body frames and adjacent skin in the following areas on both sides of the airplane, in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions:

1. From body station 200 through 220 between stringers 0 and 13A; from body station 220 through 240 between stringers 0 and 6; from body station 240 through 400 between stringers 14 and 19; from body station 240 through 400 between stringers 26 and 34; from body station 400 through 480 between stringers 30 and 34; from body station 320 through 340 between stringers 0 and cabin window upper sill; from body station 400 through 520 between stringers 0 and 6; at body station 240 between stringer 34L and 34R in belly area; and at body station 320 between stringer 34 to nose wheel well.

2. Perform the inspections required by paragraphs D. and E., above.

G. Except as provided in paragraph O., below, for airplanes, line numbers 1 through 603, immediately after the effective date of this AD, or within the next 500 landings after

December 15, 1986, or prior to the accumulation of 19,000 landings, whichever occurs later, perform visual or X-ray inspections for cracking of the body frames and adjacent skin from body station 140 through 520 in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions.

I. If X-ray results give indications of cracking, visually inspect the structure to determine the full extent of frame cracking in accordance with the following schedule:

1. Prior to further flight for all findings that indicate possible skin cracking; cracks exceeding the limits of Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, in one or more frames; or cracking in two or more adjacent frames.

2. Within 150 landings for all findings that indicate partial severance of one frame not exceeding the limits of Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, provided no adjacent skin cracking or adjacent frame cracking is found.

J. If any cracking is found by visual inspection, repair in accordance with FAA-approved procedures prior to further flight, unless the conditions set forth in Paragraph H., Section III, of Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revision, are met. Visually inspect adjacent structures in accordance with Section III, of the service bulletin and repair, if necessary.

O. The initial upper deck right side inspection from body station 340 to 400 need be accomplished only if (1) any cracking is found, or if any cracking was previously repaired, on upper deck left side from body station 340 to 400, excluding any body station 360 frame web cracking at left stringer 3 adjacent to the crew escape hatch lower forward corner; or (2) if left side structure was previously replaced or modified.

R. Installation of new and improved body frame structure in accordance with FAA-approved procedures or Boeing Service Bulletin 747–53–2272, dated January 12, 1987, or later FAA-approved revisions, is considered terminating action for the repetitive inspections required by this AD for the structure replaced and other adjacent structure (considered to be stringers, clips, and skin associated with the frame).

This amendment becomes effective April 16, 1987.

Issued in Seattle, Washington, on March 5, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–5216 Filed 3–11–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–26–AD; Amdt. 39–5411]

Airworthiness Directives; Sperry SPZ–7000 Digital Automatic Flight Control System; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects an error in Airworthiness Directive (AD) 85–07–03R1, Amendment 39–5411 (51 FR 32198; September 10, 1986), applicable to the Sperry SPZ–7000 Digital Automatic Flight Control System installed in any helicopter. The amendment, as published, contained an error in reference to the affected computer part numbers.

EFFECTIVE DATE: March 17, 1987.

ADDRESSES: The applicable service information may be obtained from Sperry Corporation, Aerospace and Marine Group, P.O. Box 29000, Phoenix, Arizona 85038. This information may be examined at the Federal Aviation Administration (FAA), Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Thompson, Aerospace Engineer, FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM–173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; telephone (213) 297–1375.

SUPPLEMENTARY INFORMATION: On August 27, 1986, the FAA issued AD 85–07–03R1, Amendment 39–5411 (51 FR 32198; September 10, 1986), which provided optional terminating action for the operational restrictions on the Sperry SPZ 7000 Digital Automatic Flight Control System (DAFCS) in S.N.I.A.S. Model AS–365N helicopters. The terminating action is contingent upon the installation of the FZ–700 computer, part number 7003183–901, with modification "F." Subsequent to issuance of the AD, the FAA confirmed that the FZ–700 computer part numbers "7003138–901" and "7003138–902," as listed in paragraph B. of the AD, are incorrect. The correct part numbers are "7003183–901" and "7003183–902." Therefore, action is taken herein to make these corrections.

Since this action merely corrects an editorial error, it imposes no additional burden on any person. Notice and procedures hereon are unnecessary and contrary to the public interest, and good cause exists for making this correction effective in less than 30 days.

The FAA has determined that this document involves an action that only corrects an editorial error and does not impose any additional burden on any person. This action is, therefore, not major under Executive Order 12291 and not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. For these reasons, I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Correction

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration corrects § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By correcting AD 85–07–03R1, Amendment 39–5411 (51 FR 32198; September 10, 1986), FR Document 86–19862, as follows:

In paragraph B., change the FZ–700 computer part numbers to "7003183–902" and "7003183–901," respectively.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Sperry Corporation, Aerospace and Marine Group, P.O. Box 29000, Phoenix, Arizona 85038. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This action corrects Amendment 39–5411 (51 FR 32198; September 10, 1986).

This correction becomes effective March 17, 1987.

Issued in Seattle, Washington, on March 5, 1987.

Wayne J. Barlow

Director, Northwest Mountain Region.

[FR Doc. 87–5218 Filed 3–11–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 702

Pre-Sale Availability of Written Warranty Terms Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended the Pre-Sale Availability of Written Warranty Terms Rule ("Rule 702"), 16 CFR Part 702. The Rule, as presently written, specifies four methods that retailers may use to make warranties available to consumers prior to purchase. The Rule also governs duties of manufacturers in providing sellers with warranty materials.

The Commission has amended Rule 702 to omit specified retailer compliance options. In place of these specified options, the amended Rule 702 provides retailers with a choice of displaying the warranty text near the product or furnishing the warranty text and posting signs reasonably calculated to inform consumers that warranties are available upon request. The requirements of Rule 702's other provisions have been retained. The text of Rule 702 has been modified in minor respects to achieve consistency with the new standard.

The amendments of Rule 702 are premised upon public comments and survey research. Comments were received pursuant to the Commission's Notice of Proposed Rulemaking published May 1, 1985, 50 FR 18495. Surveys were conducted in 1981 and 1983 to measure the impact of Rule 702 on regulated industries. In addition, a Warranty Evaluation Study was conducted in 1982 to measure the impact of Rule 702 on consumers.

This Notice sets forth and explains the amendments to Rule 702.

EFFECTIVE DATE: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Carole I. Danielson, Research Analyst, Division of Marketing Practices, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580 (202) 326–3115.

SUPPLEMENTARY INFORMATION: Rule 702 was submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* In 1984, the rule was approved by OMB and assigned Control No. 3084–0056. The Amendments made by this Notice were approved by OMB, under the same control number. This approval will expire April 30, 1989.

The remainder of this announcement is divided into five sections. Section A describes the existing Rule 702 and the rationale for the amendments. Section B summarizes the comments received in response to the May 1, 1985 Federal Register Notice. Section C discusses the impact of Rule 702 on small businesses. Section D explains the amendments, and Section E sets forth the text of the amended Rule 702.

Section A—The Existing Rule 702/ Rationale for Amendment

The Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* directs the FTC to establish rules requiring that the terms of the written warranties for consumer products be made available to consumers prior to purchase. 15 U.S.C. 2302(b)(1)(A). In 1975, the FTC promulgated the Pre-Sale Availability Rule, 16 CFR Part 702, which provides retailers with four permissible methods for making warranties available prior to sale:[1] (1) Displaying the text of the warranty on or "in close conjunction to" the product; (2) maintaining a copy of the warranty in a binder and either displaying the binder in a readily accessible area or posting a sign advising consumers of the availability of warranties for examination prior to sale; (3) displaying the warranty text on the package of the warranted product; or (4) posting a notice disclosing the warranty text near the product.

The Commission has amended Rule 702 to omit the specified retailer compliance options. In place of these specified options, the amended Rule 702 provides retailers with a choice of displaying the warranty text near the product or furnishing the warranty text for examination to any consumer upon request and posting signs informing consumers that warranties are available upon request.

Evidence gathered to date supports an amendment to Rule 702 which allows retailers more flexibility in determining the form of pre-sale warranty disclosure. First, the evidence shows that retailers often supply consumers with the warranty information that the Magnuson-Moss Warranty Act seeks to promote. Staff's interviews with industry members and an investigation using test shoppers indicated that although many retailers, especially small ones, are unaware of the Rule and not in technical compliance, warranties are generally made available prior to purchase to consumers who seek them, if they persist.[2] This finding is consistent with evidence from a consumer survey,[3] which shows that only a small minority of consumers who asked were denied copies of warranty texts.[4] This runs contrary to suggestions that warranty information would not be made available to consumers, absent the current requirements of the Rule. Hence, detailed regulatory requirements are unnecessary.

Second, the specific methods of compliance set out in the existing Rule, which dictate the manner in which retailers make warranties available to consumers, do not serve consumers well. For practical reasons, most retailers employ the binder method of disclosure specified in the existing Rule.[5] The evidence demonstrates, however, that consumers rarely consult warranty binders. In addition, the Warranty Evaluation Survey suggests that most consumers believe that warranties are displayed with or on warranted products.[6]

Third, the upon-request standard will benefit consumers by encouraging retailers to provide warranty information in more useful ways that may be discouraged by the language of the present rule. The amended standard will encourage creative approaches to warranty disclosure which should increase the level of warranty information provided to consumers. For example, under the revised standard, retailers may present warranty information together with other product information. The existing rule may have discouraged this approach because it requires that binders containing warranty information be labeled "Warranties." Moreover, to the extent that differences exist in the importance of warranty information for different

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[1] Other provisions of Rule 702, governing the duties of manufacturers and others, have not been amended.

[2] *See* Notice of Proposed Rulemaking, 50 FR 18495, 18496–18497 (May 1, 1985).

[3] *See* "Warranty Rules Consumer Follow-up: Evaluation Study Final Report," (Warranty Evaluation Study) which was conducted by an independent contractor, Market Facts, to measure consumer knowledge and attitudes toward warranties. The Study, completed in 1984, was placed on the public record in this proceeding. *See* especially discussion of consumer experience with warranty availability, at 43–49.

[4] Only 3.6 percent of respondents stated that the warranty was not available prior to purchase, and of these only a small number reported that they were unable to obtain a warranty when they actually asked for it. Another 8.2 percent did not know whether the warranty was available, and 17.1 percent did not look for it. Warranty Evaluation Study, at 44, Table 3–17.

[5] Many products are too small to be packaged in a box on which the warranty is printed or to which the warranty is attached. Additionally, many manufacturers do not imprint their warranties on the package of a product because they use the space for advertising or other purposes. Floor signs containing warranty terms are seldom used.

[6] *See* Warranty Evaluation Study, at 47, Table 3.18.

products, the amended Rule will allow consumer preference to dictate the optimal form of warranty disclosure on a product-by-product basis. The Commission anticipates that methods of disclosure will vary among different products and among different types of stores. Thus, warranties for major appliances might be displayed inside floor samples of the appliances while warranties for smaller products, such as watches, might be retained by the merchant and shown upon request.

Finally, the amended Rule will alleviate must of the burden imposed by the current Rule. The method of compliance used most often by large retailers, keeping warranties in binders, is time-consuming and imposes costly paperwork burdens. Staff estimates that the amendments will result in a saving of more than 3.5 million work-hours per year for retailers.

Section B—Summary of Comments

A notice of Proposed Rulemaking soliciting public comment on revisions to Rule 702 was published in the **Federal Register** on May 1, 1985, *see* 50 FR 18,495. The Notice explained the current Rule, the proposed amendment and evidence on the record to support the amendments. The rule proposed by the Commission provided for the repeal of the four existing methods of retailer compliance with the pre-sale availability requirement and for the promulgation of the "upon-request" standard adopted in this notice. The Notice also solicited comment on the sign posting requirement adopted herein, and set forth specific questions concerning the efficacy and enforceability of the proposed standard. After reviewing the comments, the Commission has decided to promulgate the proposed rule and to include in it a requirement, corresponding to the one contained in the existing rule, that retailers post signs to inform consumers of the presale availability of warranties.

Twenty written comments were received. The comments reflect the views of manufacturers, retailers, state and local enforcement agencies and consumer groups. On the whole, retailers and manufacturers expressed support for the proposed amendments because they would reduce unnecessary compliance burdens and encourage flexibility in the manner in which warranties are made available to consumers prior to sale. Consumer groups and state and local enforcement agencies, however, uniformly expressed disapproval of the proposed amendments and argued that the changes would discourage informed buying. Trade associations were divided: three of the respondents supported the amendments as a means to reduce compliance burdens and four opposed the changes primarily because the amended Rule would continue to place the duty of providing warranties on retailers.

The majority of respondents failed to address the specific questions posed in the Notice but instead raised additional issues or made general comments on the regulation of warranty availability prior to sale. A summary of the substantive issues raised by respondents follows.

1. Whether the Commission Should Include as Part of an Upon-Request Warranty Availability Requirement Provisions Requiring Retailers to Post Signs in Retail Outlets Mentioning the Pre-Sale Availability of Warranties

Several comments asserted that there was a need to alert consumers to the pre-sale availability of written warranties through signs posted in retail outlets. The proposed rule did not contain such a requirement, but the Commission solicited public comment on whether to add it. The State Consumer Protection Board of New York, the Consumer Affairs Office of Palm Beach County, Florida, and the Center for Auto Safety ("CAS") argued that retailers should be required to post signs (e.g., at all cash registers) mentioning warranties to raise consumer awareness of the pre-sale availability of warranties. CAS argued that the Warranty Evaluation Study's finding that a majority of consumers know that warranties are available before purchase does not support the Commission staff's conclusion that signs disclosing the availability of warranties are unnecessary. According to CAS, signs would serve as a crucial notice of warranty availability to a large minority of consumers who are unaware that warranties are available prior to purchase. CAS stated that evidence on the public record does not indicate that the revised Guides Against Deceptive Advertising of Guarantees ("revised Guides"), 16 CFR Part 239, 50 FR 18462 (May 1, 1985), which require disclosure of the pre-sale availability of warranties in warranty advertising, can compensate for the absence of signs at retail outlets. Second, CAS argued that the Warranty Evaluation Study does not demonstrate that consumers who are currently aware of the pre-sale availability of warranties will know how to obtain access to warranties under the upon-request proposal. According to CAS, signs would operate to inform consumers of how to get warranties under the amended Rule.

The National Retail Merchants Association ("NRMA") believes that signs notifying consumers of the availability of warranty information are unnecessary. NRMA argued that signs would impose an additional cost on retailers without providing a benefit to consumers. Since the revised Guides already ensure that consumers will be informed that warranty terms are available prior to purchase, NRMA believes mandatory sign-posting under the Pre-Sale Availability Rule would largely duplicate existing regulatory safeguards.

The Commission has assessed the need to alert consumers to the pre-sale availability of written warranties through signs posted at retail outlets and had determined that a provision requiring that signs be posted should be retained in the rule to facilitate consumer awareness about the availability of warranty information. The evidence before the Commission indicates that the cost of posting signs is relatively low. The staff has estimated that the cost of compliance is approximately 280,000 work hours per year. Against this low cost, there is a potential for enhancing consumer awareness of the availability of warranty information upon request. According to the Warranty Evaluation Study, many consumers did not know whether a warranty was available for examination before they purchased a particular product.[7] Signs would enable these consumers to learn of the pre-sale availability of warranties when warranties are available only on request. In view of the low cost of compliance and the potential benefits that may be derived from the posting of signs, the Commission has amended the rule to include a requirement that retailers who choose the upon-request method of compliance post signs reasonably calculated to apprise consumers of the pre-sale availability of warranties.

2. Whether the Standards for Compliance in the Proposed Amendments are Clear, Specific, and Enforceable

Some comments expressed concern that a more specific performance standard is required to define

[7] In the Study, consumers were asked whether or not a warranty for the product was available before some specific recent purchase. As noted, 8.2 percent were not sure, 17.1 percent did not look, and 3.6 percent stated the warranty was not available. Consumers were not asked, however, whether they were aware that warranties are required to be available before purchase for all products that carry warranties.

compliance with an upon-request standard. CAS and the State Consumer Protection Board of New York argued that the proposed "available upon-request" standard is too lax and open-ended. The respondents stated that retailers should be provided with stricter guidelines (e.g., a requirement that consumers be provided with a warranty within minutes of a request). According to CAS, the "upon-request" standard is unenforceable because compliance with the standard cannot be objectively determined by inspection. Under an "available upon-request" standard, CAS argues, a retailer can always say that failures to meet requests are isolated instances. Because the Rule cannot be enforced, CAS believes it will not be followed.

The Commission finds CAS's argument regarding the enforceability of an "upon-request" standard unpersuasive, since the problem cited by CAS would exist even with more specific requirements. The failure to include a particular warranty for a particular product could always be dismissed as isolated, and some investigation would still be necessary. Under any requirement, however, approaches such as test shoppers should provide an effective technique for confirming Rule violations when necessary.

It bears emphasis, however, that the amended rule requires retailers to make warranties available to consumers "readily." In requiring that retailers make warranties "readily available for examination," the Commission intends to insure that consumers are not unduly delayed in receiving warranty information from retailers. In determining whether retailers are complying with the rule, the Commission will examine factors such as the length of time between the consumer's request and the retailer's production of the warranty, the number of store employees the consumer is required to contact to obtain a copy of the warranty, and the number of locations within a store to which the consumer must go to obtain the warranty. Obviously, these should be kept to a minimum if retailers are to fulfill the mandate that the warranty be "readily" available. A retailer would not be in compliance with the Rule, for example, if consumers were forced to wait for warranties to be mailed to them or if they were advised to travel to other store locations to get them. Likewise, a merchant would not be in compliance if his employees were so poorly informed about a central location for warranties that they caused consumers to seek out a number of employees or visit several floors before finally locating the warranties.

In short, the amended rule is intended to afford retailers added flexibility in determining how best to comply with the statutory mandate of making warranties available to consumers prior to sale, but does not relieve them of their responsibility to provide warranties expeditiously. Retailers are responsible for insuring that their employees are aware of, and are equipped to comply with, the requirements of this rule, and should take the necessary steps to insure compliance.

Sears, Roebuck & Co. ("Sears") raised an additional concern: That the final phrase of the proposed upon-request standard which states that the warranty text be made readily available by display or by "furnishing" it upon request needs clarification. Sears is concerned that "furnishing" may be interpreted to mean handling each customer his or her own copy. If this is the case, Sears believes the cost of pre-sale availability compliance would be multiplied by a hundred-fold because numerous photocopies of warranties would be required in each selling unit. Sears suggested that the rule specify that warranties can be made available by display or by "inspection" by the consumer.

Sear's concern is misplaced. The language preceding the upon-request requirement, "readily available for examination," connotes that a product's warranty must be available for inspection, not that the full text of a warranty must be provided for each consumer to retain. The Commission reaffirms here that the amended Rule is intended to require only that retailers make warranties available for inspection. This should conclusively resolve any doubts concerning the Rule's interpretation.

3. Whether Manufacturers Should be Required to Affix Warranty Information on a Product's Package

The issue of whether the retailer or manufacturer should bear the primary responsibility for providing warranty information prior to sale was raised. The National Mass Retailing Institute ("NMRI"), MRMA, the National Retail Hardware Association/Home Center Institute ("NRHA"), and Zayre support amendments to the Pre-Sale Availability Rule which would require the manufacturer to include, as part of the packaging of its product, accurate warranty information which the retailer could then display. NMRI states that the *primary obligation* of informing consumers of warranties should fall on those making the warranties, i.e., the warrantors.

For several reasons, a requirement that manufacturers affix the warranty to the product or package of consumer products is rejected. First, the costs to manufacturers of putting the warranty on the product are likely to be substantial and far in excess of the costs under the current Rule or under the upon-request modification. Placing the burden of providing information on retailers is appropriate because total costs will be much lower. Second, several retailers interviewed by staff objected to the clutter which would result if most store items had a warranty tag. Third, a requirement that manufacturers affix warranties to the exterior of all products would be duplicative in the many cases where product warranty information is already available. For instance, refrigerators and other similar appliances frequently have the warranty inside the product. Fourth, we have no evidence that consumers are more likely to read warranties if they are affixed to each consumer product or are separately provided upon request. Absent a showing that consumers would benefit by having the warranty on the product, the Commission will not modify compliance requirements in a manner that is likely to impose substantial costs on manufacturers.

4. Whether the Rule Should Include Explicit Directives to Require Sellers Who Make Television Solicitations of Mail or Telephone Order Sales to Disclose That Warranty Terms are Available Upon Request

NRMA and the National Association of Broadcasters opposed the inclusion in the Rule of Explicit directives to require sellers who make television solicitations of mail or telephone order sales to disclose that warranty terms are available upon request. NRMA argued that the need for this provision is obviated by the revised Guides which require that a television solicitation of mail or telephone order sales which mentions a warranty disclose that warranty information is available upon written request.[8] NRMA believes that such a directive would discourage advertising.

The New York State Consumer Protection Board supports the inclusion of directives aimed at television

[8] The revised Guides require that when any solicitation for mail order sales or for telephone order sale mentions a warranty or guarantee for the advertised product, it must disclose that complete details are available. *See* 16 CFR 239.2 (1986).

solicitations of mail and telephone order sales because prominent television disclosures of the pre-sale availability of warranties is an effective means to educate the consumers about the availability of warranties in general.

The majority of commenters opposed the inclusion of such directives in the Rule. No commenters offered evidence about the extent to which consumers have been injured by the current absence of this requirement. Commenters who opposed this requirement expressed concern about the cost and time constraints of making such disclosures on television. In view of the likely costs and uncertain benefits of the proposal, the Commission concludes that explicit directives aimed at television sales should not be added to the Rule.

5. Whether the Commission Should Raise the $15.00 Floor for Products Subject to the Rule to $50.00

Sears, NMRI, NRMA and NRHA believe that the Rule's current requirement, that retailers provide warranty information on products that cost in excess of $15.00, should be eliminated. Instead, they argue that the rule should contain a new $50.00 threshold. NRMA stated that items for which consumers generally seek warranty information cost more than $15.00. Hence, NRMA argued, it is more consistent with the realities of the marketplace to increase the threshold amount to $50.00.

The evidence, however, does not support raising the threshold amount of $50.00. The Warranty Evaluation Study suggests that even for items costing less than $50, a substantial fraction of consumers consider warranties important enough to obtain information about them prior to purchase.[9]

6. Whether the Existing Rule Should Continue to Apply to Motor Vehicle Dealers

CAS argues that the distinct characteristics of new motor vehicles and motor vehicle dealers merit retaining a rule requiring the display in binders of applicable warranties. According to CAS, motor vehicle dealers differ from retailers who sell a large number of products. Dealers sell only the products of a few manufacturers which usually offer one basic warranty. Hence, CAS believes it is less burdensome for dealers to comply with the current Rule's binder provisions than it is for the ordinary retailer.

This request is rejected. There is no evidence that new automobile purchasers, as a group, require special protection in warranty matters. In fact, the Warranty Evaluation Study [10] showed that automobile purchasers tend to read warranties more often than purchasers of other consumer products.[11] In the absence of evidence showing that new car buyers require more information concerning warranty availability, or have more difficulty obtaining it, there is no basis for separate standards for new motor vehicle dealers.

7. Whether "Mobile Homes" Should be Interpreted not to Constitute "Consumer Products"

The National Manufactured Housing Federation ("NMHF") recommended that factory built homes constructed in compliance with the Manufactured Home Construction and Safety Standards promulgated by the Department of Housing and Urban Development (24 CFR Part 3280) be exempted from Rule 702. According to NMHF, mobile homes do not fit the definition of "consumer product" under the Magnuson-Moss Warranty Act, 15 U.S.C. 2302, because preassembled residential dwellings, like residences assembled on-site are not "distributed in commerce," "used for household purposes" or "attached" to real property. Hence, NMHF requested that all residential dwellings be considered real property and therefore be exempt for the purpose of the Act.

This suggestion must be rejected. Regardless of the merit of this suggestion, we believe the proposal is well outside the scope of this rulemaking. No opportunity was given for comment on this issue and the issue is wholly different from those on which comments were sought.

8. Whether the Proposed Amendments to the Rule are Lawful

The Attorney General of New Mexico ("A.G.") argued that the Commission's proposed Rule is unlawful because it is not authorized by the Magnuson-Moss Warranty Act. According to the A.G., the Act imposes an affirmative duty on the Commission to ensure that consumers know they can obtain written warranties prior to the sale of a product. Although the Commission may determine the manner and form in which the warranty information is disclosed, the form must be clearly and conspicuously presented or displayed. The A.G. believes that under the proposed Rule, the "form" is not clearly and conspicuously presented because the retailer can wait to see if consumers request warranties; no affirmative disclosure is required. The A.G. therefore argues that the proposed amendment is not authorized by the Act, since it fails to ensure that consumers know that written warranties are available prior to sale.

Contrary to the A.G.'s contention, the upon-request standard is authorized [12] by the Act. The Act authorizes the Commission to "prescribe rules requiring that warranty terms be made available to consumers prior to sale." 15 U.S.C 2302(b)(1)(A). The proposed amendment which directs retailers to make warranties readily available upon request prior to sale is consistent with this statutory authorization and achieves the Congressional objective of increasing the availability of warranty information without imposing undue burdens on retailers.

Section C—Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act provides for analysis of the potential impact on small businesses of Rules proposed by federal agencies. *See* 5 U.S.C. 603, 605(b). The Commission has determined that a very high percentage of businesses subject to the Rule are "small" based upon Small Business Administration size standards. Unfortunately, the data obtained during the staff investigation do not provide a precise measurement of the economic impact the proposed Rule amendments would have on small businesses. The

[9] *See* Warranty Evaluation Study at 49, Table 3.19. *See also id.* at 123, Table 3.49.

[10] *Id.* at 59, Table 3.23.

[11] The correlation between pre-purchase warranty reading and product was studied. For 10 products studied, pre-purchase reading varied from a low of 5.2 percent of consumers of food processors to a high of 12.2 percent of consumers of clothes washers. Consumers of automobiles ranked second for pre-purchase warranty reading at 11.9 percent. *Id.* at 58. The fraction of buyers of new automobiles who obtained warranty information from some source before purchase was 70 percent, greater than for any other product. *Id.* at 49.

[12] The A.G.'s argument that the "form" prescribed for warranty presentation under the revised Rule is not conspicuous constitutes an inaccurate reading of the Magnuson-Moss Warranty Act's express statutory language. Indeed, the commenter misapplied the requirements of section 102(b)(1)(B), 15 U.S.C. 2302(b)(1)(B), to the statutory mandate that the Commission prescribe rules ensuring the pre-sale availability of warranties. 15 U.S.C. 2302(b)(1)(A). Section 102(b)(1)(B) grants the Commission authority to prescribe rules governing the manner and form in which *written representations* regarding warranty information are presented or displayed. This provision is separate from section 102(b)(1)(B)'s pre-sale mandate. Therefore, the A.G.'s argument that the "form" prescribed for warranty presentations in the proposed Rule is not conspicuous and violate Magnuson-Moss is premised on an inaccurate reading of the Act.

information gathered does indicate, however, that the proposed changes will have an impact on a large number of small manufacturers and retailers, to some degree, by reducing their compliance costs. This section of the Notice describes the small businesses covered by the Pre-Sale Availability Rule, discusses the compliance measures called for by the amendments to the Rule, and considers whether any alternatives to the amendment could minimize the impact on small businesses.

The Commission has determined that nearly all retailers (952,916 companies or 99.3 percent) and manufacturers (11,365 companies of 97 percent) that will be affected by the amendments to Rule 702 are considered "small" using the size standards promulgated by the Small Business Administration. If the companies are compared according to annual receipts, small retailers represent approximately 47 percent and small manufacturers represent approximately 23 percent of gross annual receipts in their respective industries.

The Commission has also determined that the amendments to the Rule will reduce retailers' compliance costs by increasing their flexibility to select the disclosure approach that best suits their individual operations. Although the current Pre-Sale Availability Rule gives retailers four options for compliance, most retailers elect the binder option because it is the only one of the four which easily makes use of the copies of warranties submitted by manufacturers. Many retailers complained that the binder option requires allocation of personnel and resources to update and monitor warranty binders, which consumers rarely use. Our store surveys have shown that binders are often difficult for consumers to locate and use because they are incomplete or poorly organized. Thus, although the current Rule attempted to provide flexibility, many retailers have found themselves restricted, in practice, to one approach that is cumbersome and of questionable efficacy.

The investigation of industry indicated that larger retail organizations with numerous branch stores compile the binders at a main office and distribute them to their branches. This centralized compliance approach appears to afford lower costs for large retailers, per store, than for a smaller retailer with fewer stores and a decentralized system. The amendments to Rule 702 should reduce or eliminate this disparity between large and small enterprises by permitting retailers to use a flexible approach that conforms to their particular method of doing business.

The investigation also showed that retailers' costs and inconvenience would be reduced if they were not required to maintain warranty binders but could, instead, respond individually to specific consumer requests for warranties. The methods for ensuring that warranties are available when requested would vary according to the product and store operation.

We do not anticipate that this amendment to retailers' compliance options will have any impact on large or small manufacturers.

As part of the Commission's evaluation of the Pre-Sale Availability Rule and in response to the Regulatory Flexibility Act, we have considered alternatives to the revisions to Rule 702 that could accomplish the goals of the Magnuson-Moss Warranty Act but minimize the economic impact on small entities. The alternatives considered include: (1) Different compliance requirements for small businesses; (2) simplification of compliance requirements for small businesses; (3) use of performance rather than design standards in the Rule; and (4) an exemption for small businesses.

One of the principal goals of the amendment to the Pre-Sale Availability Rule is to comply with the congressional mandate in section 102 of the Warranty Act while minimizing the economic impact on all affected businesses. Section 102(b)(1)(A) of the Warranty Act directs the Commission to prescribe a rule requiring that written warranties be made available to consumers prior to sale. All of the alternatives suggested by the Regulatory Flexibility Act have been considered. The third option—use of a performance standard—is at the heart of the amended Rule. The Commission rejected enacting an exemption for small businesses because the congressional requirement for pre-sale availability of warranties applies equally to all transactions, regardless of whether they involve a small manufacturer or a small retailer. In addition, staff research indicates that more than 95 percent of the companies are small. Consequently, it would not be possible to exempt small businesses from the scope of the Rule and at the same time comply with the congressional mandate. Different standards for small businesses are unnecessary given the flexible nature of the standards proposed.

Section D—Explanation of Amendments to Rule 702

Section 702.3(a)—Duties of Seller

This section replaces the existing provision of Rule 702 which provides retailers with four permissible methods for making warranties available prior to sale. Three of those methods involve the open display of the warranty text on or near the product. The fourth method relies on binders containing warranty texts, accompanied by notices or signs informing consumers of the availability of the binders. The Amended Rule continues the requirement that retailers make warranties available to consumers for inspection prior to the sale of any consumer product. Rather than specify the form in which the warranty is to be made available, however, the Amended Rule creates a general requirement that retailers make warranties "readily available" to consumers, either by displaying their text or by making them available for examination by consumers upon request and posting signs advising consumers of the pre-sale availability of warranties. Any of the methods of disclosure specified in the current Rule would satisfy the requirements of the proposed Rule. In addition, however, retailers can discharge their obligations under the Amended Rule by making warranties readily available to consumers for inspection upon request and posting signs advising consumers of the pre-sale availability of warranties.

Of the various modifications discussed with manufacturers and retailers, the "upon-request" modification received the greatest support. The results of the store surveys indicate that the Amended Rule will offer retailers a method for making warranties available prior to sale that is consistent with present practices. Interviews with retailers and survey by test shoppers suggest that warranties are generally made available to consumers who ask for them, if they persist. This is confirmed by the Warranty Evaluation Study, which showed that only a small number of consumers were denied copies of warranty texts by merchants from whom they actually requested warranty information.[13] In addition, the Amended Rule will authorize other methods of disclosure that benefit consumers but may be prohibited or discouraged by the strict language of the present Rule. For

[13] *See* Warranty Evaluation Study at 43 and 44. Only 3.6 percent of respondents stated that the warranty for a product was unavailable before sale, and an even smaller number said they had requested the warranty and been unable to obtain it.

example, the present Rule may discourage merchants from displaying warranty information together with other information by requiring that any binder containing warranties be entitled "Warranties." Under the amendment, merchants are permitted to display warranties together with other product information, in binders or otherwise.

The Commission anticipates that the Amended Rule will lead to disclosure methods that will benefit the consumer. The staff's research shows the binder method of disclosure is the option most commonly used by retailers to comply with the Pre-Sale Availability Rule, but that consumers rarely use the warranty binders. Affording retailers greater latitude in choosing the manner of disclosure would allow them to select the optimal form of warranty disclosure to meet the demands of consumers and the dictates of the Rule. The Commission anticipates that methods of disclosure will vary among different products and among different types of stores. Thus, warranties for major appliances might be displayed inside floor samples of the appliances while warranties for smaller products, such as watches, might be retained by the merchant and shown upon request. Stores that compete on the basis of price only might display warranties in close proximity to the warranted products while stores that compete on the basis of shopping environment might show warranties only upon request. In any event, warranties will be made readily available prior to purchase to any consumer who wishes to examine them. The sign posting requirement will enable consumers to learn of the pre-sale availability of warranties. Retailers are required to make warranty information readily available to consumers by maintaining warranties in reasonable proximity to the warranted products or by producing warranties without unreasonable delay to consumers who request them.

Section 702.1(g)—Definition of Binder (deleted)

This section, which defines the term "binder," is deleted because revised § 702.3(a) no longer specifies the use of binders.

Section 702.1(c)—Definition of Written Warranty

This section, which defines the term "Written Warranty," is revised to clarify that the final clause of the definition modifies both subparts of the definition. This revision is necessary to correct an earlier printer's error.

The Commission has not adopted any substantive changes in the options available to manufacturers to ensure that warranties are available to retailers because it appears from the staff's investigation that manufacturers have not experienced significant burdens in complying with the present Rule.

The Commission has also not amended the Rule provisions concerning mail order, catalogue, and door-to-door sales.

List of Subjects in 16 CFR Part 702

Warranties, Trade practices.

PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

For the reasons discussed above, the Commission hereby issues the following amendments to the Pre-Sale Availability Rule, 16 CFR Part 702.

1. The authority citation for Part 702 continues to read as follows:

Authority: 15 U.S.C. 2302 and 2309.

2. 16 CFR 702.1(c) is revised to read as follows:

§ 702.1 [Amended]

* * * * *

(c) "Written warranty" means—

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

* * * * *

§ 702.1 [Amended]

3. 16 CFR 702.1(g) is removed.

4. 16 CFR 702.3(a) is revised to read as follows:

§ 702.3 [Amended]

* * * * *

(a) *Duties of Seller:* Except as provided in paragraphs (c) through (d) of this section, the seller of a consumer product with a written warranty shall make a text of the warranty readily available for examination by the prospective buyer by:

(1) Displaying it in close proximity to the warranted product, or

(2) Furnishing it upon request prior to sale and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-5163 Filed 3-11-87; 8:45 am]

BILLING CODE 6750-10-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Correction

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule; correction.

SUMMARY: The Parole Commission is correcting the title of an offense example in the Offense Behavior Severity Index of the paroling policy guidelines contained in 28 CFR 2.20.

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: On February 26, 1987, the Parole Commission published a final rule in the **Federal Register** (52 FR 5761) which provided, among other things, guidelines for grading offenses associated with the freebased form of cocaine popularly known as "Crack." Rather than providing separate guidelines for the drug as had been proposed previously by the Commission, the new guidelines were incorporated within the existing offense example for cocaine. However, the title of the offense example, as published, did not correctly reflect this decision. The Commission, therefore, is making this correction.

The proposed change 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 procedure, Prisoners, Probation, 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. The title of Offense Example 921 in Chapter Nine, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20 is correctly revised to read as follows:

§ 2.20 [Amended]

921 Distribution or Possession With Intent to Distribute

Dated: March 4, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-5301 Filed 3-11-87; 8:45 am]

BILLING CODE 4410-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Transportation of Claimants and Beneficiaries

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) has amended its medical series of regulations (38 CFR Part 17) to authorize beneficiary travel payments to eligible veterans when specialized modes of transportation, such as ambulance or wheelchair van, are medically indicated. In addition, travel in conjunction with compensation and pension examinations for those who meet current beneficiary travel eligibility requirements will be authorized as well as travel beyond a 100-mile radius from the nearest VA medical care facility. The amended regulation also prohibits the expenditure of beneficiary travel funds for routine travel in conjunction with admission for domiciliary care, or travel for family members of veterans receiving mental health services from the VA except for such travel performed beyond a 100-mile radius from the nearest VA medical care facility for those who meet current eligibility requirements. It also authorizes the VA to provide transportation costs, when necessary, to transfer any veteran from one health care facility (either a VA or contract care facility) to another in order to continue ongoing VA-sponsored care.

DATES: The regulations have an effective date of April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Karen O. Walters, Chief, Policies and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2143.

SUPPLEMENTARY INFORMATION: There were a total of 138 comments received concerning the proposed regulatory changes published on pages 41807-41808 of the **Federal Register** of November 19, 1986.

Forty-eight comments were received from organizations and ninety were received from individuals. Two of the commentors expressed support for the proposal as published. All 136 dissenting commentors expressed opinions falling into two broad categories:

First—Concerns about accessibility to VA medical care, which include concerns about veterans who reside in geographically remote areas, financial hardship imposed by any travel payment cuts, impact on high-use ambulatory care patients (i.e., blinded veterans, spinal cord injured veterans, rehabilitative medicine, psychiatric patients, etc.), availability of public transportation, and availability of supplemental volunteer transportation services.

Second—Concerns about the perceived erosion of veterans benefits in general suggesting that the change may result in the demise of the VA medical care system and represent an abandonment of the VA's statutory responsibilities primarily with regard to the service-connected veterans population.

On the issue of accessibility to VA medical care, the 48 organizations which commented are unanimous in their opinion that Congress should be obligated to appropriate sufficient beneficiary travel monies to pay both mileage costs for those traveling by automobile and common carrier payments. Sixty-five of the individual commentors expressed this same opinion. An overriding concern governing the VA's budget has been to provide sufficient resources for the VA to meet its statutory obligations for veterans' benefits, including the provision of health care, in the most efficient manner possible within available resources. Congress appropriates a lump sum for VA medical care and the VA then decides how, within the VA's mission, these funds will be expended.

The VA has a responsibility, as exemplified in this regulatory amendment, to control expenditures for the transportation and travel expenses of veteran beneficiaries traveling to and from VA health care facilities in order that these lump sum medical care funds, appropriated primarily for the purpose of providing direct medical services, be used to allow maximum medical care resources to be available for hands-on patient care.

The perceived impact of this regulatory amendment is minimized somewhat by the availability of alternative arrangements for delivering services to eligible veterans in geographically remote areas where VA facilities and public transportation systems are not accessible. These include contract hospitalization, fee-basis outpatient care, and various outreach programs. Though studies reflect that VA services are fairly well distributed across regions with inpatient and outpatient care in VA facilities being augmented by the use of alternative arrangements, the VA recognizes that some veterans living in geographically remote areas (100 miles or more distant from a VA health care facility) may effectively lack access to VA health care under the proposed regulation amendment. Accordingly, the VA, after careful analysis, has provided for the partial payment of travel expenses to eligible persons incident to travel performed beyond a 100-mile radius of the nearest appropriate VA medical center facility. As amended, the regulations will provide that such reimbursement will be limited to payment for that portion of the veteran's travel in excess of 100 miles. This formula will be implemented through a deductible mechanism. Based on applying the existing $.11 mileage reimbursement rate, all such travel will be subject to a one-way deductible of $11.00. The final regulations also provide, in accordance with section 111(e)(2)(B) of Title 38 United States Code, that transportation will not be authorized for the cost of travel by privately-owned vehicle in any amount in excess of the cost of such travel by public transportation unless public transportation is not reasonably accessible or would be medically inadvisable. We believe such a formula will eliminate the hardship which many anticipated would arise from adoption of the proposed regulation.

Three commentors expressed concern about the residual effects these cuts will have on volunteer services, particularly

to the blinded veteran who is dependent upon volunteers for transportation to and from VA medical care facilities. The VA anticipates a renewed interest on the part of service organizations in the formation of a volunteer transportation network which is designed to expand the existing volunteer transportation services. Every effort is being made by the VA to encourage and cooperate in the development and implementation of these plans.

One commentor questioned the cost savings associated with the elimination of payments for public transportation, suggesting that the VA fails to offer eligible beneficiaries realistic and fair choices. Except as otherwise modified, these amendments authorize payment only for the cost of medically indicated specialized modes of transportation which do not include public transportation such as a bus, subway, train, airplane or privately-owned conveyance. How veterans who are not in need of or for whom medically indicated specialized mode travel is not authorized elect to transport themselves to or from a VA medical facility is a personal choice. In practice, implementation of this amendment should escalate the demand for public transportation since it is usually the most reasonable transportation alternative.

One organization expressed concern that the elimination of Government-directed travel payments in connection with compensation and pension (C&P) examinations used to determine a government benefit "could result in an arbitrary denial of a Congressionally mandated Statutory benefit . . . service-connected compensation payments." While the payment of beneficiary travel is discretionary, irrespective of the purpose of travel, the VA, after careful consideration is providing for the payment of all travel performed in conjunction with scheduled C&P examinations for veterans who are otherwise eligible.

With respect to the second category of concerns about the perceived erosion of VA benefits, 44 organizations and 86 of the 90 individuals, or a total of 130 commentors, registered concern about a perceived trend in the erosion of veterans benefits.

The VA Department of Medicine and Surgery's goal is to provide top quality medical care to eligible veterans and their beneficiaries to the extent to which funds are available as appropriated by Congress, and the VA works diligently toward that end.

It is noteworthy that VA outpatient visits for fiscal year 1986 totaled 20,188,132, a 3% increase in benefit utilization over the previous fiscal year. One reason for this increase is the varied and state-of-the-art medical care and equipment now offered to eligible veterans on an outpatient basis that include adult day health care; preventive health services; comprehensive outpatient care for service-connected veterans rated 50% or more, former POWs and veterans of WWI; outpatient care for veterans claiming exposure to Agent Orange or other toxic defoliants or to ionizing radiation; readjustment counseling for veterans of the Vietnam era; expanded eligibility for prosthetic and sensory aids, to mention but a few of the program expansions that have been authorized only within the past 10 years. As recently as October 28, 1986, with the passage of Pub. L. 99–576, "Veterans' Benefits Improvement and Health-Care Authorization Act of 1986", which the VA is implementing, the agency is expanding benefits through its new authority to furnish respite care and enhancement of the definition of home health services. On an inpatient basis, the VA treated 1,461,523 in FY 1986, as compared with 1,435,455, or a 1.8% increase over one year ago. An even larger increase was recorded for VA nursing home care in 1986 with 23,940 veterans being treated, a 17.1% increase over 1985. This was partly attributable to the activation of two new VA nursing home units which increased the overall bed component by 918 beds for a total of 11,317. Community nursing homes under contract to the VA treated 41,124 veterans in 1986 for a 5% increase over 1985. Both VA domiciliary and state home programs registered .9% and .4% increases, respectively. Surgical services performed 7,420 cardiac procedures, or 10.7% more than in FY 1985. This increased utilization of inpatient services, like those mentioned for outpatient services is attributed to expanded benefits in the form of cardiac catheterizations, bone marrow transplants, post-traumatic stress treatment units, large-scale rheumatology, geriatric research, education and clinical centers and units, respite care and hospice programs, immunology centers, expanded mental health services, computerized tomography, to mention but a few. The VA remains committed to providing quality medical care in this area of fiscal constraint.

Executive Order 12291

These final regulations are considered non-major under the criteria of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; will result in no significant increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. They will have no 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.

Regulatory Flexibility Act (RFA)

They also will impose no regulatory, paperwork or administrative burdens on small entities since the change concerns the eligibility of individual veterans and VA beneficiaries to VA payment for, or reimbursement of, their expenses for travel to or from VA medical facilities in certain circumstances. For the above reasons, the Administrator certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs, Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

(The Catalog of Federal Domestic Assistance numbers are 64.009, 64.101, 64.011)

Approved: February 17, 1987.

Thomas K. Turnage,

Administrator.

PART 17—[AMENDED]

38 CFR Part 127, *Medical,* is amended to read as follows:

§ 17.100 [Amended]

1. In § 17.100(d) remove the words "or member" wherever they appear.

2. In § 17.100(j) remove the words "pullman accommodations" wherever they appear.

3. In § 17.100 paragraphs (a)(3) and (g)(3) are removed; the introductory text and paragraphs (e), (f)(1), and (k) are revised; and paragraph (m) is added to read as follows:

§ 17.100 Transportation of claimants and beneficiaries.

Transportation at Government expense may be authorized for an individual who is eligible under this section when a VA physician has determined that a specialized mode of transportation is medically required. Special modes of transportation which

may be determined to be medically required include: ambulance, ambulette, air ambulance, wheelchair van, and other modes of transportation which are specially designed to transport certain types of medically disabled individuals. The term "special mode" does not include: public transportation such as bus, subway, train, airplane, or any automobile or similar conveyance. A hired car or taxi may be authorized as a special mode only for interfacility transfers, as authorized in paragraph (e) of this section, if use of such mode of transportation is less expensive than other authorized specialized modes of transportation. Transportation at government expense may also be authorized for eligible persons who reside at a location requiring the individual to travel a distance in excess of 100 miles to the nearest VA health care facility. Reimbursement for those residing more than 100 miles from the nearest VA health care facility will be limited by application of a deductible. That deductible amount will be the product of the mileage reimbursement rate established under 38 U.S.C. 111(e)(1), multiplied by a factor of 100 for each one-way trip, or 200 for a round trip. Transportation will not be authorized for the cost of travel by privately-owned vehicle in any amount in excess of the cost of such travel by public transportation unless public transportation is not reasonably accessible or would be medically inadvisable. Transportation will not be authorized for the cost of travel in excess of the actual expense incurred by any person as certified by that person in writing. Transportation will not be authorized unless the person claiming reimbursement is a service-connected veteran; a nonservice-connected veteran in receipt of VA pension benefits; or a person whose annual income, as determined under the provisions of 38 U.S.C. 503, is less than or equal to the maximum annual base pension rates provided in 38 U.S.C. 521. Travel expenses of all other claimants will not be authorized unless the claimant can present clear and convincing evidence, in a form prescribed by the Administrator, to show the inability to defray the cost of transportation; or except when medically-indicated ambulance transportation is claimed and an administrative determination is made regarding the claimant's ability to bear the cost of such transportation. Travel expenses will be authorized for the following purposes: (38 U.S.C. 111, as amended by Pub. L. 94–581, sec. 101, and Pub. L. 96–151, sec. 201)

* * * * *

(e) *Interfacility transfers.* Subject to the limitations of this section, VA may transport a patient who is eligible for benefits under this section, or may reimburse such patient for the expenses of authorized transportation, when such travel is necessary to transfer the patient from one health care institution to another, provided both institutions furnish the individual with treatment at VA expense, and the transfer is necessary for continuation of such treatment. (38 U.S.C. 111)

(f) *Discharge.* (1) Subject to the limitations of this section, upon regular discharge from hospitalization for treatment, observation and examination, or from nursing home care, return transportation to the point from which the beneficiary had proceeded; or to another point if no additional expense be thereby caused the Government.

* * * * *

(k) *Furnishing transportation and other expenses incident thereto.* In furnishing transportation and other expenses incident thereto, as defined, the VA may (1) issue requests for transportation, meals, and lodging; or (2) reimburse the claimant, beneficiary or representative, for payment made for such purpose, upon due certification of vouchers submitted therefor.

The provisions of §§ 17.100, 17.101 or 17.102 will be complied with in all instances when transportation costs are claimed. (38 U.S.C. 111)

* * * * *

(m) *Compensation and Pension Examination.* Transportation may be furnished incident to scheduled compensation and pension examinations. (38 U.S.C. 111)

[FR Doc. 87–5360 Filed 3–11–87; 8:45 am]
BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 19

[FCC 86–525]

Employee Responsibilities and Conduct; Acceptance of Gifts, Entertainment and Favors

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action clarifies certain ambiguities in our existing rules and specifies that Commissioners and employees are permitted to attend group functions and accept meals/refreshments, not lavish-in-kind, so long as a prior determination is made by the Commission's Office of General Counsel that attendance is desirable to assist employees in performing their official duties.

EFFECTIVE DATE: March 12, 1987.

ADDRESS: 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon B. Kelley, Office of General Counsel, (202) 632–6990.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 25, 1986.
Released: February 13, 1987.

By the Commission: Commissioner Quello concurring in the result.

In the matter of amendment of § 19.735–202 of the Commission's Rules.

1. Part 19 of the Commission's rules governing Employee Responsibilities and Conduct generally prohibits Commissioners and employees from accepting anything of monetary value from Commission regulatees or other interested persons.[1] In the past, it has not been clear to what extent Commissioners and staff may attend industry functions. It is necessary to provide clarification on this point so that Commission employees may avoid engaging in any activity that could result in, or create the appearance of, impropriety or undue influence as prohibited under the Commission's conflict of interest rules.[2]

2. Section 19.735–202 of the Commission's rules derives from Executive Order 11222 and the Office of Personnel Management's (OPM's) implementing regulations.[3] This Executive Order also permits agencies to adopt regulations providing for "such exceptions as may be necessary and appropriate in view of the nature of the agency's work and the duties and responsibilities of the employees," to implement the prohibition on the acceptance of gifts, including food and refreshments.[4] In this regard, the Office of Government Ethics has recently approved amendments to the Securities and Exchange Commission's (SEC's) rules.[5]

3. Because this Commission generally has deemed informal contacts with representatives of the telecommunications industry by its Commissioners and staff as an important supplement to formal appearances before and submissions to the Commission by such entities, Commission employees have been permitted to participate in programs, seminars or conferences sponsored by non-federal entities and aimed at

educating the industry, the telecommunications bar and the public.[6]

4. In addition to programs, seminars or conferences, Commissioners and staff are often invited to attend group functions, including breakfast, luncheon and dinner gatherings, sponsored by members of the telecommunications industry. The Commission deems such informal opportunities for the sharing of views with industry groups to be beneficial to the functioning of the Commission.[7] However, difficulties have arisen when the gatherings involve a meal or other hospitality.

5. Accordingly, the Commission has determined that it is appropriate to amend its rules to permit the flexibility necessary for Commissioners and staff to accept meals at group functions, not lavish in kind, so long as a prior written determination is made by the Commission's Office of General Counsel that attendance is desirable to assist employees in performing their official duties.[8]

6. In making determinations as to the propriety of Commission employees accepting invitations to group functions, the following standards will be applied: (1) Whether the function has some business purpose, such as, at a minimum, providing for an informal exchange of views on issues affecting the industry; (2) whether the function is a true group function, *i.e.*, not just a small party for a few Commission officials; (3) whether the costs associated with the function are consistent with nominal value limitations; and (4) whether attendance at the function could result in, or create the appearance of, impropriety or undue influence.[9] This precludes entertainment events or the acceptance of meals proffered in individual meetings with regulatees or other interested persons, unless a working session or inspection tour continues through a mealtime, or an employee is asked to speak at a breakfast, luncheon or dinner meeting.

7. We find that prior notice and public comment procedures are unnecessary to implement these revisions of general rules of agency practice and procedures. *See* 5 U.S.C. 553(b)(3)(A).

8. In view of the foregoing and pursuant to sections 4(i), 4(g)(2)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(g)(2)(A) and Executive Order 11222, 3 CFR, 1964–1965 Comp., it is *Hereby Ordered* that Part 19 of the Commission's rules is amended as set forth effective upon publication in the **Federal Register**.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Footnotes

[1] 47 CFR 19.735–202 (a)(1) through (3). These restrictions apply to those with whom the Commission transacts official business, and who (1) have or are seeking to obtain contractual or other business or financial relations with the Commission; (2) conduct operations or activities regulated by the Commission; or (3) have interests that may be substantially affected by the performance or non-performance of the Commission employee's official duties. Thus, persons who cannot directly benefit from the Commission's regulatory activities (*e.g.*, press organizations not affiliated with FCC licensees), are not considered to be interested persons within the meaning of this section.

[2] *See generally*, 47 CFR 19.735–201a, 19.735–203(a).

[3] Executive Order 11222, 30 FR 6469 (1965), prescribes standards of ethical conduct for Government officers and employees. There were subsequent, minor amendments to this Order. *See* Executive Order 11590, 36 FR 7831 (1971) and Executive Order 12107, 44 FR 1055 (1978). While independently promulgated, FCC regulations are based upon the minimum ethical standards developed by OPM at 5 CFR Part 735 in connection with their responsibilities under Executive Order 11222.

[4] *Id.*

The only exceptions to this general prohibition against the acceptance of gifts are listed in 47 CFR 19.735–202(b) of the Commission's rules. They include: (1) Gifts received from family and friends; (2) "food and refreshments or nominal value . . . on infrequent occasions" offered in the course of certain meetings; (3) unsolicited advertising or promotional material. Promotional material can usually be identified by some sort of company logo on the item.

[5] These amendments permit SEC Commissioners and staff to accept meals and refreshments, not lavish in kind, offered in the course of certain group functions that they attend in their official capacities and for the benefit of the agency, without regard to the identity of the sponsor. 50 FR 23286 (1985), to be codified at 17 CFR Part 200. The SEC relies on 15 U.S.C. 78d(c) (1983) (travel reimbursement), as its authority for amendment of its gift acceptance rules. We have similar authority at 47 U.S.C. 154(g)(2)(A) (1982), which we rely upon herein.

[6] *Id.*

[7] As the Conference Report to the 1982 amendments enacting 47 U.S.C. 154(g)(2)(A), our travel reimbursement authority, elaborates:

> In order to keep in touch with the industries and individuals they regulate, Commissioners and Commission employees have found it useful to . . . attend conferences, conventions, and meetings . . . These . . . range from Commissioners' participation in industry-wide conventions, to a bureau chief's panel appearance in an educational institution's symposium, to a division head's meeting to explain a new FCC rule to a small group of licensees. Given the rapid technological changes which are occurring in the telecommunications industry, and the continuing introduction of new communications services and facilities to the public, the ability of the Commission to . . . [attend such meetings] is a relatively significantly aspect of its service to the public.
>
> * * * * *
>
> The Committee recognizes that attendance by Commissioners and Commission employees at non-governmental conventions and meetings generates valuable exchanges between government officials and non-governmental groups and should be allowed to continue at reasonable levels. *See* H.R. Conf. Rep. No. 97–756, 97th Cong., 2d Sess. 26 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 2270–2272.

[8] Additionally, the Commission has determined that it is appropriate to amend its rules to permit Commissioners and staff to accept gifts of nominal intrinsic value, *e.g.*, plaques, certificates, which they are given for participating in programs, seminars and conferences, if such gifts are the type usually given by the particular sponsoring entity and are provided to all participants in the program.

[9] *See* note 2, *supra*.

List of Subjects in 47 CFR Part 19

Conflict of interests.

PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

47 CFR Part 19 is amended as follows:

1. The authority citation for Part 19 continues to read:

Authority: E.O. 11222; 3 CFR, 1965 comp., 5 CFR, 735.104, unless otherwise noted.

2. Section 19.735–202 is amended by revising paragraph (b)(2) and adding paragraph (b)(5), to read as follows:

§ 19.735–202 Gifts, entertainment and favors.

* * * * *

(b) * * *

(2) Food and refreshments, not lavish in kind, may be accepted when (i) offered free in the course of a meeting or other group function, not connected with an inspection or investigation, at which attendance is desirable because it will assist the Commission employee in performing his or her official duties; or (ii) provided to all panelists or speakers when a Commission employee is participating as a panelist or speaker in a program, seminar or educational conference.

The Commission's Office of General Counsel shall make a prior written determination as to the propriety of accepting invitations from regulated entities or interested persons as described in 47 CFR 19.735–202(a) (1)–(3), and shall keep a log of its decisions. Approval may be requested by any

Commission employee or the organizer of the group function.

* * * * *

(5) Gifts given for participation in a program, seminar or educational conference may be accepted only when such gifts are (i) of nominal intrinsic value; (ii) in the nature of a remembrance traditional to the particular sponsoring entity; (iii) provided to all participants in the program.

* * * * *

[FR Doc. 87-5228 Filed 3-11-87; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 32

[CC Docket No. 78-196 ; FCC 87-54]

Revision of the Uniform System of Accounts for Telecommunications Companies

AGENCY: Federal Communications Commission.

ACTION:. Final rule; reconsideration order.

SUMMARY: The Commission has reconsidered certain areas of the new uniform system of accounts in Part 32 of the Commission's rules adopted on May 1, 1986. These areas involve issues that have surfaced as a result of carrier preparation of accounting systems for the new requirements that are to be put into place on January 1, 1988. Most of the issues pertain to the technical aspects of the accounting system; however, two areas involve more than technical refinements. The Commission decided to establish criteria with respect to materiality for interperiod tax allocations and for correction of errors from prior periods. In addition, with respect to the expense matrix, the Commission reconfirmed its conclusion that amounts cleared from clearing accounts should retain their matrix identity in the new accounts to which they have been cleared. The Commission also denied a petition from the National Association of Regulatory Utility Commissioners (NARUC) to delay implementation of Part 32 of the Rules.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Hugh Boyle or Virginia Brockington, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order adopted February 3, 1987, and released February 18, 1987. 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. The complete text or this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

On May 15, 1986 the Commission issued a *Report and Order*, CC Docket No. 78-196 (51 FR 24745, July 8, 1986 and 51 FR 43493, December 2, 1986) adopting a new uniform system of accounts (Part 32) for two classes of carriers—Class A and Class B. This new USOA will replace the existing accounting systems for Class A, B, C, and D telephone companies (Parts 31 and 33).

As a result of provisions contained in that *Report and Order*, four petitions for reconsideration and/or clarification were filed with the Commission. The petitioners requested reconsideration or clarification of (1) The application of materiality determinations as they apply to comprehensive interperiod tax allocation items and to prior approval of the Commission before recording contingent liabilities; (2) the capitalization of items of central office equipment costing $200 or less; (3) the treatment of the sale of land and artworks; (4) certain recordkeeping requirements for reinstalled units; (5) the provisions of the expense matrix and related matters; (6) cost of removal; and (7) the implementation date.

The Commission reconsidered the provisions pertaining to materiality in § 32.22, Comprehensive Interperiod Tax Allocation; § 32.25, Unusual Items and Contingent Liabilities; and § 32.26, Materiality. After a review of conclusions reached in a previous order considering generally accepted accounting principles, the Commission found that the bases of those conclusions are still sound and, therefore, believes that no revision to § 32.26 is necessary. However, the Commission did reconsider the burdens that would be imposed on the carriers if it required carriers to adopt interperiod tax allocations for all tax timing differences. The Commission amended its requirement for interperiod tax allocation and limited it to any item or group of similar items considered in the aggregate which yield debit or credit entries which exceed or would exceed 5 percent of the gross deferred income tax expense debits or credits during any calendar year over the life of the timing difference. Below this cut off, the companies could defer or not defer tax effects of differences between pretax accounting income and taxable income at their discretion.

With respect to prior period adjustments, the Commission estsblished a cut-off limitation of $100,000. Under that amount carriers would be permitted to use regular operating accounts for corrections of prior periods, without Commission approval. However, the Commission declined to establish any similar criteria for contingent liabilities stating that a change would be premature.

With respect to certain equipment now being classified in Part 31 under § 31.221, Central office equipment, the Commission also declined to make any change because the kinds of equipment that the commenters were concerned about appeared to be covered by a provision pertaining to expensing of minor items under § 32.2000(a)(4) of Part 32.

The Commission also denied the request to eliminate the gains or losses on the sale of land and artworks from the operating accounts and decided to amend the language in Part 32 to allow for an element of managerial discretion in maintaining the original date for reinstalled units. Among other things, the Commission clarified its intention that amounts cleared from the expense accounts would retain their expense matrix element identification in the accounts to which cleared; clarified its intention concerning other amounts recorded in Account 6534, Plant Operations Administration Expense, and Account 6535, Engineering Expense; denied requests to delete the requirements to use direct labor hours as a measurement for clearance; decided to revise the instructions for clearance in § 32.5999(f)(5) to specify that the subsidiary record shall include amounts transferred to Account 3100, Accumulated Depreciation; denied the request to amend the new USOA to require the establishment of a "service organization" and clearing account process for data processing activities; and decided to amend the language in § 32.2000(a)(2) to allow for uniformity in accounting for the cost of removal of contributed plant. The Commission also denied the NARUC request for an extension of the implementation date.

Ordering Clauses

Accordingly, *It Is Ordered*, That the petitions filed by Pacific Bell and Nevada Bell, United Telephone System, United States Telephone Association, and Southwestern Bell are granted to

the extent discussed herein and otherwise *Denied.*

It Is Further Ordered, That under authority contained in sections 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 220, Part 32, *Uniform System of Accounts for Telecommunications Companies,* of the Commission's Rules is amended as shown in the Appendix, effective January 1, 1988.

It Is Further Ordered, That the petition of the National Association of Regulatory Utility Commissioners to extend the effective date of the new USOA to January 1, 1989 is *Denied.*

List of Subjects in 47 CFR Part 32

Uniform system of accounts for telecommunications companies.

William J. Tricarico,

Secretary.

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

47 CFR Part 32 is amended as follows:

1. The authority citation for 47 CFR Part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j), and 220, unless otherwise noted.

2. Section 32.22 is amended by revising paragraph (a) to read as follows:

§ 32.22 Comprehensive interperiod tax allocation.

(a) Companies shall apply interperiod tax allocation (tax normalization) to all book/tax timing differences which would be considered material for published financial report purposes. Furthermore, companies shall also apply interperiod tax allocation if any item or group of similar items when aggregated would yield debit or credit entries which exceed or would exceed 5 percent of the gross deferred income tax expense debits or credits during any calendar year over the life of the timing difference.

Book/tax timing differences, other than those resulting from accelerated depreciation or waiver, however, shall be phased-in over a period of five years as directed by this Commission. The tax effects of book/tax timing differences shall be normalized and the deferrals shall be included in the following accounts:

4100 Net Current Deferred Operating Income Taxes
4110 Net Current Deferred Nonoperating Income Taxes
4340 Net Noncurrent Deferred Operating Income Taxes
4350 Net Noncurrent Deferred Nonoperating Income Taxes

In lieu of the accounting prescribed herein, any company shall treat the increase/reduction in current income taxes payable resulting from the use of flow through accounting in prior years and the phase-in years as an increase/reduction in current income tax expense.

* * * * *

3. Section 32.25 is revised to read as follows:

§ 32.25 Unusual items and contingent liabilities.

Extraordinary items, prior period adjustments and contingent liabilities shall be submitted to this Commission for review before being recorded in the company's books of account. Corrections of errors in prior periods which are below $100,000, however, may be recorded in operating accounts without prior approval.

4. Section 32.2000 is amended by revising paragraphs (a)(2) and (f)(6) to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

* * * * *

(a) *Purpose of telecommunications plant accounts.* * * *

(2) The telecommunications plant accounts shall not include the cost or other value of telecommunications plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of telecommunications plant shall be credited to the accounts charged with the cost of such construction. Amounts of non-recurring reimbursements based on the cost of plant or equipment furnished in rendering service to a customer shall be credited to the accounts charged with the cost of the plant or equipment. Amounts received for construction which are ultimately to be repaid wholly or in part, shall be credited to Account 4360, Other Deferred Credits; when final determination has been made as to the amount to be returned, any unrefunded amounts shall be credited to the accounts charged with the cost of such construction. Amounts received for the construction of plant, the ownership of which rests with or will revert to others, shall be credited to the accounts charged with the cost of such construction. (Note also Account 7110, Income from Custom Work.)

* * * * *

(f) *Standard practices for establishing and maintaining continuing property records.* * * *

(6) *Reinstalled units.* When units to which average costs are not applied, i.e., specific and fixed location units, are removed or retired and subsequently reinstalled, the date when the unit was first charged to the appropriate plant account shall, when required for adequate service life studies and reasonably accurate retirement accounting, be shown in addition to the date of reinstallation.

* * * * *

5. Section 32.5999 is amended by revising paragraph (f)(5) to read as follows:

§ 32.5999 General.

* * * * *

(f) *Expense Matrix.* * * *

(5) *Clearances.* This subsidiary record category shall include amounts transferred to Construction accounts (see § 32.2000 (c)(2)(iii)), other Plant Specific Operations Expense accounts and/or Account 3100, Accumulated Depreciation (cost of removal; see § 32.2000 (g)(1)(iii)), as appropriate, from Accounts 6112, Motor Vehicle Expense, 6113, Aircraft Expense, 6114, Special Purpose Vehicles Expense, 6116, Other Work Equipment Expense, 6534, Plant Operations Administration Expense, and 6535, Engineering Expense. There shall also be transfers to Construction or other Plant Specific Operations Expense accounts, as appropriate, from Account 6512, Provisioning Expense. With respect to these expenses, companies may establish such clearing accounts as they deem necessary to accomplish substantially tbe same results, provided that within 30 days of the opening of such accounts, companies shall notify the Commission of the nature and purpose thereof. Additional clearing accounts affecting other expense areas may be established with prior approval of the Commission. Should companies elect, the initial incurred subsidiary record category identification may be carried through to the final accounts without this Commission's approval.

* * * * *

[FR Doc. 87-4937 Filed 3-11-87; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-361; RM-5356]

Radio Broadcasting Services; Ralls and Lorenzo, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C2 for Channel 252A at Lorenzo, Texas, and modifies the license of Station KVOQ-FM to specify operation on the new frequency, at the

request of KB Radio. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 17, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–361, adopted February 10, 1987, and released March 3, 1987. 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. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 252A to 251C2 for Lorenzo.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–5230 Filed 3–11–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–166V, Amdt. No. 173–199]

Hazardous Materials; Uranium Hexafluoride

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Emergency final rule.

SUMMARY: This document revises the final rule published on November 18, 1986 in the **Federal Register** [51 FR 41631] under Docket HM–166V, by removing the requirement that all uranium hexafluoride (UF_6) cylinders be cleaned in accordance with specific procedures contained in Appendix A of the American National Standards Institute (ANSI) Standard N14.1–1982. This action is necessary on an emergency basis, due to health and safety hazards that may be associated with use of cleaning procedures in Appendix A, ANSI Standard N14.1–1982 for packagings other than new packagings. The effect of this action is to remove potential hazards identified with required cleaning procedures for packagings containing UF_6.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Technical Division, Office of Hazardous Materials Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4545.

SUPPLEMENTARY INFORMATION:

On November 18, 1986, RSPA published a final rule under Docket HM–166V, entitled "Hazardous Materials; Uranium Hexafluoride", amendment numbers 172–107 and 173–198 at 51 FR 41631. These amendments strengthened the hazardous materials regulations (HMR, 49 CFR Parts 171 through 179) applying to the transport of UF_6. Specifically the amendments required that containers for UF_6 be constructed, inspected, tested, cleaned and repaired in accordance with a consensus standard, ANSI Standard 14.1–1982. In addition, the amendments placed limitations on filling cylinders and transporting of filled cylinders.

Subsequent to publication of the final rule, RSPA learned that the new requirements had disqualified a large number of existing UF_6 cylinders, thereby causing serious problems for shippers of this material. In response to five petitions for reconsideration, RSPA on December 24, 1986, published at 51 FR 46674 a revision of the final rule, which both delayed, until June 30, 1987, the requirement that cylinders be constructed in accordance with ANSI Standard 14.1–1982 and modified the packaging requirement by authorizing not only ANSI Standard 14.1–1982 but previous editions of that standard. The revision also announced that a public meeting would be held on March 2, 1987, to discuss issues related to RSPA's rules on the transport of UF_6. The revision did not alter or delay requirements for cleaning cylinders.

On March 2, 1987, the public meeting was held at the U.S. Department of Transportation. Commenters cited potential disruption in defense and civilian nuclear activities if approximately 50,000 UF_6 packagings were removed from transportation by the new regulation.

In the final rule, cleaning procedures specified in Appendix A of ANSI Standard 14.1–1982 were incorporated in 49 CFR 173.420(a)(1) and made applicable to the cleaning of new and used packagings for UF_6. During the March 2, 1987 meeting, several attendees noted that the cleaning procedures in Appendix A are not suitable for cleaning used packagings. Specifically, the Appendix A procedures require that hydrostatic testing be performed prior to cleaning the interior. The commenters believed that introduction of water into a packaging containing a residue of UF_6 during hydrostatic testing could cause a reaction between UF_6 and the water. This reaction produces hydrogen flouride (HF), a corrosive material which may damage the interior of the packaging and could potentially be released and injure persons in the area. RSPA agrees with these commenters and this emergency final rule is being issued to change § 173.420(a)(1) to reference cleaning procedures in ANSI Standard N14.1–1982, which contains procedures for cleaning both new and used packagings, and to delete the reference to Appendix A of the standard, which is suitable for new packagings only.

Other issues discussed in the March 2, 1987 meeting are under consideration by RSPA and not addressed in this final rule.

Under the provisions of section 553 of the Administrative Procedure Act, agencies are permitted to issue a rule in final form when notice and public procedure are impracticable, unnecessary or contrary to the public interest. This final rule eliminates an erroneous and potentially hazardous regulatory requirement and delay of its implementation is believed to be contrary to the public interest. Therefore, I find, under 5 U.S.C. 553, that notice and public procedures on the rule and delay in its effective date are contrary to the public interest.

The RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging, Radioactive materials.

In consideration of the foregoing, 49 CFR Part 173 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for 49 CFR Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 1809; 49 CFR 1,53(e), 1.53, App. A to Part 1, 49 U.S.C. 1655, 1655(c).

2. In § 173.420, paragraph (a)(1) is revised to read as follows:

§ 173.420 Uranium hexafluoride (fissile and low specific activity).

(a) * * *

(1) Before initial filling and during periodic inspection and test, packagings shall be cleaned in accordance with American National Standard N14.1–1982.

* * * * *

Issued in Washington, DC, on March 9, 1987, under authority delegated in 49 CFR Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–5357 Filed 3–11–87; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 70341–7041]

Pacific Halibut Fisheries

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

ACTION: Emergency interim rule and request for comments.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, issues an emergency rule under 16 U.S.C. 773c to implement a regulatory proposal that was adopted by and requested by the International Pacific Halibut Commission as part of its annual 1987 regulations. This regulation imposes a minimum size limit on the sport fishery in U.S. waters south of the U.S.-Canada boundary in order to conserve Pacific halibut stocks and help rebuild and sustain them at an adequate level.

DATES: This rule is effective from March 9, 1987, until modified, superseded, or rescinded. Comments are due by April 8, 1987.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206–526–6150; or Executive Director, International Pacific Halibut Commission, P.O. Box 95009, University Station, Seattle, Washington 98145–2009, telephone 206–634–1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC). under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC on March 29, 1979), has adopted new regulations to govern the Pacific halibut fishery in 1987. When formally approved by the two governments, these regulations will be published in the **Federal Register**, on behalf of the IPHC, and will inform persons subject to the regulations of the restrictions and requirements for halibut fishing in U.S. waters in 1987.

The immediate implementation of a component of these new regulations, the establishment of a 30-inch minimum size limit for all halibut taken and retained by sports fishermen in U.S. waters south of the U.S.-Canada border (IPHC Statistical Area 2A) is essential for proper conservation and management of the Pacific halibut stock located in Area 2A. The IPHC has determined that fishermen have, for at least the past two years, harvested halibut at a rate which is equal to or greater than the annual production of halibut in Area 2A needed to maintain the stock at the existing level. The IPHC decided at its annual meeting in January 26–29, 1987, to reduce the catch by non-Indian fishermen by about 25 percent. The commercial catch reduction will be accomplished by reducing the commercial catch quota for 1987 in the forthcoming IPHC regulations. The IPHC elected to reduce the sport catch by shortening the fishing season and by implementing a minimum size limit. The halibut catch by sport fishermen in Area 2A waters was about 218,000 pounds in 1985 and an estimated 300,000 pounds in 1986. Because the sport fishing season is set a year in advance, it has already begun without an effective size limit. Therefore, it is necessary to implement by this emergency interim rule a minimum size limit of 30 inches for the sport fishery until the IPHC regulations are formally approved by the Canadian and U.S. Governments. The 30-inch minimum size limit is expected to reduce the harvest in pounds of halibut taken by 16 percent, and to reduce the numbers of halibut taken by 38 percent in Area 2A. The IPHC supports this rule. The United States and Canada are expected to approve the IPHC minimum size limit. The Coast Guard has been consulted and this action has also been endorsed by the Pacific Fishery Management Council.

This action is time critical and requires implementation without prior public comment and without delaying its effectiveness although public comment is invited for 30 days after the effective date. It was the intent of IPHC, and the common understanding of the affected parties that this regulation would be promulgated as soon as practicable to accomplish the purpose of the restriction. Early action is necessary to avoid the need to implement an even more restrictive minimum size and/or shortened sport fishing season later in the year to accomplish the intended reduction of the sport catch in Area 2A.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Northern Pacific Halibut Act and other applicable law. Absent emergency issuance, it would be necessary to terminate sport fishing for halibut in Area 2A by midsummer to accomplish the IPHC's intended reduction of the sport catch. In view of this, the Assistant Administrator finds there is good cause to promulgate this regulation on an emergency basis and that it is impracticable and contrary to the public interest to require notice and advance public comment, and to delay the effective date of the regulations under the provisions of section 553(b) and (d) of the Administrative Procedure Act.

The policy of NOAA is whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this rule to the Regional Director at the address above. Comments must be received by the date specified above.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(e)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with

an explanation of why it is not possible to follow the procedures of that order. In addition, NMFS has determined that this rule is not a major rule within the terms of E.O. 12291 because it will not have a major effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

The implementation of a minimum size limit for the sport fishery by this regulation is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act.

This rule does not contain any collection of information requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: March 9, 1987.

Carmen J. Blondin,

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

PART 301—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

2. In the table of contents, a new section designation is added, to read as follows:

Sec.

301.2 Sport fishing for halibut.

3. A new § 301.21 is added, to read as follows:

§ 301.21 Sport fishing for halibut.

(a) The minimum size limit for sport-caught halibut in all waters off the coasts of California, Oregon, and Washington (including the Strait of Juan de Fuca and Puget Sound) is 30 inches (76.2 cm.) with head on as measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

(b) No person may fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size limit or the number of fish caught, possessed, or landed.

[FR Doc. 87–5359 Filed 3–9–87; 4:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 48
Thursday, March 12, 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

Farmers Home Administration

7 CFR Part 1944

Rural Rental Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulation for processing section 515 rural rental housing (RRH) loans. These amendments are necessary to comply with the Rural Housing Amendments of 1983. Clarifications of some existing policies and procedures are also proposed. The intended effect of these amendments is to make FmHA's regulation consistent with the Rural Housing Amendments of 1983 and to provide clearer instructions for processing RRH loans.

DATES: Comments must be received on or before May 11, 1987.

ADDRESSES: Submit written comments in duplicate to the office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(b) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Eileen Nowlin, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, Room 5337, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382–1604.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Vance L. Clark, Administrator, Farmers Home Administration, has determined that the proposed action will not have a significant impact on a substantial number of small entities because the proposed revisions provide clarification of existing regulations and the annual volume of the program is anticipated to continue to decline. FmHA anticipates funding approximately 850 applications Nationwide.

Environmental Impact Statement

This document has been reviewed according to 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

1. This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Catalog of Federal Domestic Assistance Titles and Numbers: 10.415 Rural Rental Housing Loans.

General Information

Background and Statutory Authority

On November 18, 1983, the Ninety-Eighth Congress passed legislation known as the Housing and Urban-Rural Recovery Act of 1983, hereinafter referred to as the "83-Act." The legislation was enacted November 30, 1983, upon signature by the President. Only the language of the 83-Act is available; there are no known congressional committee minutes available to provide a background discussion to the provisions of the 83-Act. Other proposed changes are corrective and clarifying.

Primary proposed changes in Subpart E of Part 1944 are:

(a) Sections 1944.211(a)(10)(i), (ii), (iii) and (iv) state the requirements of an eligible general partner, including the financial requirements needed by the general partner.

(b) Sections 1944.212(b) and (c)(1), (2), and (3)(i), (ii) and (iii) establish the standards for housing and related facilities rehabilitated or repaired with funds provided by FmHA.

(c) Section 1944.212(s) states that loan funds are available to construct demonstration projects meeting the criteria outlined in the section.

(d) Section 1944.212(t) provides that section 502 inventory properties may be transferred for use as rental or cooperative units under section 515 to private nonprofit organizations or public bodies.

(e) Section 1944.213(d) limits cost increases to those outlined in the section.

(f) Section 1944.215(a)(1) sets maximum living areas for housing financed with FmHA funds.

(g) Section 1944.215(a)(9) is changed to specify that the requirements for

handicapped units may be modified if the applicant submits a market survey prepared by a local or State government agency or an independent organization serving handicapped people which shows that a different percentage of accessible or adaptable units is appropriate. The current regulation specifies that any market survey approved by FmHA would be adequate.

(h) Section 1944.215(a)(11) through (16) state criteria for cost containment of projects financed with FmHA funds.

(i) Section 1944.215(g)(3) states that at least 95 percent of rental assistance available for a newly constructed project must be used for very low-income tenants.

(j) Section 1944.215(i)(2)(i), (ii) and (iii) detail additional requirements of group home occupants.

(k) Section 1944.215(q)(4) provides preference to loans for projects located on specific tracts of land provided by States, units of local government or others in FmHA determines the land suitable for RRH.

(l) Section 1944.215(q)(5) provides that rural rental housing projects can be located on more than one site under conditions outlined in this subpart.

(m) Section 1944.231(b)(4) provides that FmHA will only require the applicant to demonstrate that a market exists for persons and families eligible for rental assistance when the applicant proposes a projects which is dependent on FmHA rental assistance.

(n) Section 1944.231(b)(5) sets the conditions for demonstrating the market for projects which are expected to use assistance that is similar to FmHA's rental assistance but which is provided by a State or political subdivision thereof.

(o) Section 1944.232(b)(1) gives a formula to determine the size of projects using a form of rental subsidy other than FmHA's rental assistance or HUD's Section 8.

(p) Section 1944.232(b)(2) states the criteria for projects in communities with less than 2,500 population where less than 24 rental units appear to be feasible under Plan II but for which rental subsidy other than FmHA's rental assistance or HUD's Section 8 is available.

(q) Sections 1944.232, 1944.233 and 1944.238 have been moved to §§ 1944.245, 1944.246 and 1944.247 respectively. Since they contain only administrative information, these sections will no longer be published. However, they will be available in any FmHA office.

(r) Paragraph II of Exhibit A–6 specifies how applicants are to show need and demand for an RRH project.

(s) Exhibit A–7 provides a guide outline of a professional market study.

(t) Exhibits B and B–1 are removed. It has been administratively determined that they are not necessary because the provisions are detailed in Subpart C to Part 1930 of this chapter.

(u) Exhibits H–1 and I are removed. These exhibits, which are Memoranda of Understanding, will be available in any FmHA office.

(v) Exhibits J, K and L are removed. They are Forms FmHA 1944–33, 1944–34 and 1944–35 respectively. They are available in any State or District FmHA office.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, and Rural housing.

Accordingly, FmHA proposes to amend Subpart E of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

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

2. Subpart E, §§ 1944.201 through 1944.250, Exhibits A, A–2, A–3, and A–6 are revised; Exhibit A–4 is amended by removing the "Rental Housing Survey Graphical Display" on page 3; Exhibit 7 is revised and redesignated as Exhibit A–8; and a new Exhibit A–7 is added, to read as follows:

PART 1944—HOUSING

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

Sec.

1944.201 General.
1944.202 Objective.
1944.203 1944.204 [Reserved]
1944.205 Definitions.
1944.206 1944.210 [Reserved]
1944.211 Eligibility requirements.
1944.212 Loan purposes.
1944.213 Limitations.
1944.214 Rates and terms.
1944.215 Special conditions.
1944.216 1944.220 [Reserved]
1944.221 Security.
1944.222 Technical, legal, and other services.
1944.223 1944.230 [Reserved]
1944.231 Processing preapplications.
1944.232 Rental Assistance from sources other than FmHA.
1944.233 1944.234 [Reserved]
1944.235 Actions subsequent to loan approval.
1944.236 Loan closing.
1944.237 Subsequent RRH loans.
1944.238 [Reserved]
1944.239 Complaints regarding discrimination is use and occupancy of RRH.
1944.240 Exception authority.
1944.241 OMB control number.
1944.242 1944.250 [Reserved]
Exhibit of Subpart E—How to bring rental housing to your town.
Exhibit A–1—Legal services agreement.
Exhibit A–2—Survey of existing rental housing.
Exhibit A–3—Rental housing survey.
Exhibit A–4—Rental housing survey summary.
Exhibit A–5—Housing allowances for utilities and other public services.
Exhibit A–6—Information to be submitted with preapplication for rural rental housing (RRH) loan.
Exhibit A–7—Outline of a professional market study.
Exhibit A–8—Information to be submitted with Application for Federal Assistance (short form).
Exhibit B—Guide letter for use in informing interim lender of FmHA's commitment.
Exhibit C—Articles of incorporation (not for profit).
Exhibit D—Bylaws.
Exhibit E—RRH loans and the HUD Section 8 housing assistance payments programs (existing units).
Exhibit F—RRH loans and the HUD Section 8 housing assistance payments programs (new construction).
Exhibit F–1—Section 8 housing assistance payments program: information for new construction.
Exhibit F–2—Suggested Proposal Certification Format (Section 8/515 program).
Exhibit F–3—Equal opportunity site and neighborhood standards checklist.
Exhibit F–4—Certification by the applicant.
Exhibit F–5—Guide letter for architect's certification.
Exhibit F–6—Suggested project completion certification format (Section 8/515 program).

Subpart E—Rural Housing Loan Policies, Procedures and Authorizations

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making rural rental housing (RRH) loans under sections 515 and 521 of the Housing Act of 1949.

§ 1944.202 Objective.

The basic objective of RRH loans is to provide eligible occupants with

economically designed and constructed rental housing and related facilities suited to their living requirements.

§§ 1944.203–1944.204 [Reserved]

§ 1944.205 Definitions.

(a) *Board and directors.* The governing body and members of the governing body of an organization.

(b) *Consumer cooperative.* A corporation which

(1) Is organized as a cooperative;

(2) Will operate the housing on a nonprofit basis solely for the benefit of the occupants; and

(3) Is legally precluded from distributing, during the life the loan, any gains or profits from operation of the housing. For this purpose, any patronage refunds to occupants of the housing would not be considered gains or profits. A consumer cooperative may accept nonmembers as well as members for occupancy of the housing.

(c) *Development cost.* The cost of constructing, purchasing, improving, altering or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. It includes necessary archeological, architectural, engineering, environmental, legal, and other appropriate technical and professional fees and charges. Costs incurred in the formation or incorporation of a limited profit or profit motivated applicant orgainzation, costs of syndication, and costs of loan packaging are excluded. Nonprofit organizations may meet the requirements as indicated in § 1944.212(1) of this subpart. For nonprofit organizations and State or local public agencies, the loan may include initial operating expenses of up to 2 percent of the development cost. Development cost does not include fees, charges or commissions such as payments to brokers, negotiators or other persons for the referral of prospective applicants or solicitation of loans. In the case of State or local public agencies, the costs incurred in the relocation of individuals may be included as part of the total development cost in accordance with § 1944.215 (u) of this subpart.

(d) *Elderly or handicapped persons.* A person who is at least 62 years old. The term elderly (senior citizen) also means persons with the following handicap or disabilities, regardless of age:

(1) *Handicapped.* (i) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which:

(A) Has lasted or can be expected to last for a continuous period of not less than 12 months; or which can be expected to result in death;

(B) Substantially impedes the ability to live independently; and

(C) Is of such a nature that such ability could be improved by more suitable housing conditions.

(ii) In the case of a blind person who is at least 55 years old (within the meaning of "blindness" as determined in Section 223 of the Social Security Act), and who is unable because of the blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

(2) *Disabled.* In the case of developmental disability, a person with a severe, chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental or physical impairment;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self care,

(B) Receptive and expressive language,

(C) Learning,

(D) Mobility,

(E) Self-direction,

(F) Capacity for independent living,

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

(e) *Elderly family.* A household where the tenant or co-tenant is at least 62 years of age, disabled or handicapped as defined in paragraph III of this Exhibit. An elderly family may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped or disabled person's care and well-being. (To receive an elderly family deduction the elderly, disabled or handicapped person must be the tenant or co-tenant.)

(f) *Elderly housing with supportive services.* Housing that affords and assisted independent living environment that offers the elderly, disabled or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and support service(s) required to achieve, maintain, or return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Elderly housing with supportive services is also:

(1) Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements, each single family dwelling is considered a unit.

(2) A group living arrangement where one or more elderly, disabled or handicapped persons may share living space within a rental unit and in which a resident assistant is required. Such housing may be one or more single family dwellings or a multi-unit structure.

(g) *Eligible tenants.* Elderly, disabled, handicapped or very low-, low- or moderate-income households or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement and who meet the eligibility requirements of paragraph VI of Exhibit B to Subpart C of Part 1930 of this chapter. The tennants must:

(1) Be eligible households, usually living in the local community and the surrounding area, and be capable of caring for themselves. However, in the case of elderly projects with supportive services, this may include elderly or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. All tenants must meet the following criteria:

(i) Must not be totally dependent on others and be able to vacate the unit for their own safety in emergency situations.

(ii) Be able to provide for their own sustenance in projects that provide less than full food service.

(iii) The tenant or legal guardian must possess the legal capacity to enter into a lease agreement.

(iv) The tenant or co-tenant must be of legal age.

(2) For a direct loan or a loan developed under Plan I, be:

(i) An elderly, disabled or handicapped person with a very low, low, or moderate income, or

(ii) Any household with a very low or low income.

(3) For loans developed under Plan II, be a person(s) with a very low, low or moderate income.

(4) For all loans, be a person(s) with a very low, low or moderate income or an elderly, disabled or handicapped person(s) without regard to income.

(5) In the case of cooperative housing projects, all members (occupants) must have a very low, low, or moderate income except that any member who is admitted as an eligible member of the cooperative may not subsequently be deprived of his/her membership or tenancy by reason of no longer meeting the income eligibility requirements as outlined in Exhibit C of Subpart A of Part 1944 of of this chapter.

(h) *Established rural community.* A community includes cities, towns, boroughs, villages and unincorporated places which have the characteristics of an incorporated area and are easily identifiable as established concentrations of inhabited dwellings and private and public buildings located in rural areas as defined in § 1944.10 of Subpart A of Part 1944 of this chapter.

(i) *Gains or profits.* For the purpose of paragraphs (y) and (z) of this section, gains and profits do not include dividends payable on stock which is nonvoting, limited as to the amount of dividends that can be paid thereon and limited as to liquidation value in the event of corporate dissolution.

(j) *Group living.* Housing occupied by one or more elderly, disabled or handicapped person sharing living space within a rental unit in which a resident assistant is required. The housing may be one or more single household dwelling or a multi-unit structure. Each single household dwelling is considered a unit.

(k) *Household.* One or more persons who maintain or will maintain residency in one rental unit, but not including a resident assistant or chore service worker.

(l) *Housing.* Structures in a rural area which are or will be suitable for, and available to, eligible occupants on a rental basis for dwelling use. The structures may include related facilities where appropriate. For the purpose of a loan developed under this subpart, generally be to provide housing for eligible households living in the local community and the surrounding area capable of caring for themselves.

(m) *Individual.* A natural person.

(n) *Limited partnership.* A partnership consisting of one or more general partners who are jointly and severally responsible for conducting the business of the partnership, and one or more special partners contributing cash in a specific amount as capital to the common stock, who are not liable for the debts of partnership beyond the funds contributed.

(o) *Limited profit basis.* An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance wth the requirements outlined in § 1944.215(1) of this subpart. The applicant will legally obligate itself to regulate rents, charges, rate of return and methods of operation.

(p) *Low-income household.* A household having an adjusted annual income within the maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

(q) *Members and membership.* Include stockholders and stock when appropriate.

(r) *Moderate-income household.* A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

(s) *Mortgage.* Includes any appropriate form of security instrument.

(t) *Note.* Evidence of obligation of debt, including such instruments as bonds or other forms of obligation.

(u) *OGC.* "OGC" means the Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(v) *Organization.* A private nonprofit corporation, profit corporation, consumer cooperative, association, State or local public agency, trust, partnership or limited partnership.

(w) *Owner-builder.* A qualified builder-applicant who has experience and has demonstrated the ability and capability to build the RRH project.

(x) *Plan I and Plan II.* The two interest credit plans in Exhibit B of Subpart C to Part 1930 of this chapter.

(y) *Private nonprofit corporation.* A corporation which:

(1) Is controlled by private persons or interests;

(2) Is organized and operated for purposes other than making gains or profits for the corporation or its members;

(3) Is legally precluded from distributing to its members any gains or profits during its existence; and

(4) In the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipal corporation which will operate the housing for the same or similar purposes.

(z) *Profit basis.* An individual or organization applicant who will operate the housing at rental rates low- and moderate-income persons, senior citizens and handicapped persons can afford, and whose return on their initial investment will not be limited to a certain percentage per year.

(aa) *Profit corporation.* A corporation which:

(1) Is controlled by private persons or interests;

(2) Permits the making of gains or profits for the corporation or its members;

(3) Is authorized to do business in the State; and

(4) Can legally carry out the purposes of the loan.

(bb) *Project.* A project is the total number of rental housing units in one community such as a densely settled area, town or village and operated under one management plan with one loan agreement/resolution. The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project under § 1965.68 of Subpart B of Part 1965 of this chapter.

(cc) *Resident assistant.* A person(s) residing in a housing unit who is essential to the well-being and care of the elderly, disabled or handicapped person(s) residing in the unit and who is not related by blood, marriage or operation of the law to these tenants. The resident assistant is not considered to be part of the household and is not subject to the eligibility requirements of a tenant. The resident assistant receives compensation from sources other than FmHA. A resident assistant is not a chore service worker.

(dd) *Rural area.* Open country or rural places as defined in § 1944.10 of Subpart A of Part 1944 of this chapter.

(ee) *Related facilities.* Related facilities may consist of community rooms or buildings, cafeterias, dining halls, appropriate recreation facilities and other essential service facilities such as central heat and cooling, sewerage, light systems, ranges and refrigerators, clothes washers and dryers, and a safe domestic water supply. Under special conditions such as an elderly housing project with supportive services or a project housing handicapped tenants, space may be provided for cateterias, dining areas, an infirmary, therapy room, special bathing room and other special areas needed by the elderly and handicapped tenants when determined to be economically feasible. The cost of kitchen equipment such as stoves, ovens, steam tables and other such items may be included in the loan. However, the cost of specialized equipment such as that used for training and therapy will not be included in the RRH loan. When ranges, refrigerators, dishwashers and other kitchen

equipment are included, they will be attached to the real estate in a manner to prevent easy removal.

(ff) *Security value.* The present market value of the real estate offered as security for the loan as determined by the loan approval official less the unpaid principal balance plus past due interest on any other liens against it. Other liens will include any prior liens and junior lines to be or likely to be taken or subordinated at or immediately after loan closing. The security value of the real estate offered as security will be determined in accordance with provisions of Subpart B of Part 1922 of this chapter.

(gg) *Very low-income household.* A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

§§ 1944.206—1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RRH loan, the applicant must:

(1) Be an individual who is a citizen of the United States or a legally admitted alien for permanent residence in the United States; an organization as defined in § 1944.205(t) of this subpart; or an American Indian tribe, band, group or nation (including Alaskan Indians, Aleuts, Eskimos and any Alaskan native village), which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512). Applicants must provide housing for eligible occupants as defined in § 1944.205(g) of this subpart.

(2) Be unable to provide the housing from its own resources. With the exception of a State and local public agency, be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow the applicant to rent the units for amounts that are within the payment ability of eligible low- and moderate-income, senior citizen or handicapped occupants.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For profit organizations, the assets of the individual members or stockholders will be considered.

(iii) For nonprofit organizations, the assets of the individual members will not be considered.

(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made.

(4) Own the housing and related land or become the owner when the loan is closed. In addition to the owner of full marketable title, an applicant may be a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or American Indian tribal lands which are not available for purchase. However, the State Director must determine that long-term leasing of sites by nonpublic bodies is a well established practice and leaseholds are fully marketable in the area. The following conditions must be met when considering leasehold interests:

(i) The applicant must be unable to obtain fee title to the property.

(ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(iii) The amount of the RRH loan against the property will not exceed the estimated market value determined in accordance with Subpart B of Part 1922 of this chapter.

(iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(v) The borrower's interest must not be subject to summary foreclosure or cancellation.

(vi) The lease must:

(A) Not restrict the right to foreclose the RRH mortgage or to transfer the lease.

(B) Permit FmHA to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA to occupy or sublet the property and sell the leasehold for cash or credit if the leasehold is acquired through foreclosure (or voluntary conveyance in lieu of foreclosure), or if the borrower abandons the property.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the RRH loan, to transfer the leasehold, subject to the RRH mortgage, to a transferee with assumption of the RRH debt.

(vii) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instruction.

(5) Have in cash or in readily convertible securities the initial operating capital and other assets

needed for a sound loan. RRH loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) Initial operating capital should be sufficient to pay for such costs as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms and other initial operating expenses. The initial operating capital required will be at least 2 percent of the total development cost of the project. It will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution prior to the start of construction of loan closing (whichever is first) and will be used for authorized purposes only.

(ii) When the applicant is to provide other movable equipment and furnishings, the initial capital with be increased sufficiently to cover the cost of these items. This applies to RRH and rural cooperative housing (RCH) loans closed after October 27, 1980 and is not retroactive to existing loans made prior to that date or to transfer cases after that date.

(iii) If the borrower provided the initial 2-percent operating capital from its own funds, after 2 years, but before 5 full budget years of project operation, the State Director may authorize the borrower to make a onetime withdrawal from project funds an amount not to exceed the borrower's beginning cash contribution to the initial operating capital as described in the loan agreement or resolution. The following conditions apply:

(A) The loan was closed on or after October 27, 1980;

(B) The loan agreement or resolution signed by the borrower is Form FmHA 1944–33, "Loan Agreement;" Form FmHA 1944–34, "Loan Agreement;" or Form FmHA 1944–35, "Loan Resolution."

(C) The project has at least a 95 percent occupancy level at the time of the withdrawal request.

(D) The withdrawal will not affect the financial integrity of the project. The borrower must demonstrate that all prudent maintenance is being planned and performed and payment of necessary project expenses is not being deferred.

(E) The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or tne next year of operation.

(F) The State Director has reviewed and approved any required borrower reports before the initial operating capital is withdrawn.

(iv) In the case of a group living arrangement, the applicant/borrower will not include in the budget items (Form FmHA 1930–7, "Statement of Budget and Cash Flow," line 38) any salary, wages or expense items ot compensate the resident assistant(s). These expense items must be provided by other sources. However, this will not preclude the resident assistant from receiving compensation for any duties performed by a resident manager or caretaker in a typical RRH project.

(6) Possess the ability, experience and the legal and financial capacity to incur and carry out the undertakings and obligations required for the loan.

(7) Agree to comply with all FmHA requirements, such as those set forth in the loan resolutions, loan agreement, the form of note, the mortgage and FmHA regulations.

(8) Provide necessary management to assure the successful operation of the project. Management services may be provided by the applicant, a management firm or an agent. If the borrower or a member of the borrower organization does not live close enought to the project to provide the general supervision, a management firm or an individual located in close proximity who is experienced and has full authority to act on behalf of the owner must be retained. Generally, projects of more than 12 units should have a resident manager/contact person on the site. Projects which are not large enough to justify a resident manager must, at a minimum, have a tenant who agrees to serve as a contact person or have a person easily accessible to the project who will be a contact person able to speak on behalf of project management or the owner. An attractive sign should be placed in a conspicuous location providing name, address, and telephone number of the local contact person who is able to speak on behalf of the project management.

(9) In the case of a private nonprofit organization:

(i) If operating in one community and its trade area, meet the following additional requirements.

(A) Each member must be limited to one vote in the affairs of the organization.

(B) A majority of the members must reside in the community of the trade area where the housing will be located.

(C) The board of directors must not number less than five and must be selected by a procedure that insures that

the interests of minorities and women are adequately represented.

(D) The directors must be members of the organization.

(E) At least five of the directors must be recognized as leaders in civic, governmental, fraternal, religious and other community organizations of the community where the housing will be located.

(F) The organization must have and maintain a broadly-based membership representing or reflecting a variety of interests in the community. For a loan of less than $500,000, the organization should have at least 25 members. The number of members should be increased for larger projects.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in the appropriate FmHA State supplement. The State Director, with the assistance of OGC, will develop a model set of articles of incorporation and bylaws for the State which will be consistent with the provisions of Exhibits C and D, modified as appropriate in accordance with the State law.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(9)(i) of this section with the exception of § 1944.211(a)(9)(i)(B):

(A) The membership base should be representative of the area being served with at least five members representing a variety of interests from each community where the housing will be located. Each member must be limited to one vote in the affairs of the organization.

(B) The board of directors should be representative of each community or trade area where the housing is located.

(C) The total number of directors shoud not be less than five and the directors must be members of the organization.

(D) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraphs (a)(9)(ii) (A) and (B) of this section.

(10) In the case of a limited partnership the general partners:

(i) Must have the 5 percent borrower contribution required by § 1944.213(a)(2) of this subpart if the applicant entity has not been legally established. This contribution must be in the form of cash, readily convertible securities, land or a combination thereof. The general partners must also have the initial 2 percent operating capital as required by § 1944.211(a)(5) of this subpart. These contributions will not be provided in the form of a loan from a financial institution or other source, a loan from the general partner to the applicant entity or by an irrevocable letter of credit.

(ii) Will be required to contribute cash or land, or a combination thereof, to the capital of the partnership in an amount as indicated in § 1944.213(a)(2) of this subpart. The general partner's capital investment contribution amount as established on the books/records of the partnership will not be transferred, sold, exchanged, divided, fractionalized, or dissolved without prior written approval of FmHA. If the limited partnership has been formally established, its 5-percent borrower contribution and its 2-percent initial operating capital must be unencumbered and must be freely owned by the applicant entity.

(iii) Will be required to maintain a minimum aggregate of 5 percent financial interest of the current losses, profits and cash distribution from all sources and operation of the project.

(iv) Must agree that new general partners can be brought into the organization only with the prior written consent of the Government.

(11) Be willing to honor the long term committment associated with receipt of a Section 515 loan. Borrowers or principals of borrower organizations who have sold or transferred loans less than 5 years old will not be considered eligible for further participation in the program as borrower or principal (i.e., a general partner in a limited partnership) for at least 5 years from the date of the loan assumption closing. The State Director may make an exception to this provision only if the transfer or sale was authorized and closed prior to January 22, 1985, or under the hardship provisions of § 1965.65(a)(4) of subpart B of Part 1965 and the applicant meets all other eligibility requirements.

(12) Submit a certified audited financial statement prepared by a certified or licensed public accountant if the applicant and/or general partners have a financial interest in more than five preapplications in one State within a 12-month period. Any deviation from this policy will require written exception from the State Director.

(i) Applicants submitting multiple preapplications within one State, either as individuals or as a general partner in a limited or general partnership, will be limited to not more than five authorized applications or 20 percent of the respective State's Section 515 annual allocation, whichever is less. The State Director may increase this 20 percent limitation in States that have small RRH allocations. The 12-month period will be considered from the date of the first Form AD-622.

(ii) Applicants requesting federal assistance in more than one State will be limited to receiving not more than 10 loans nationwide. State Directors must check the Multi-Family Housing Information, Status, Tracking and Retrieval System (MISTR) in order to ascertain where applicants are doing business with FmHA. Any deviation from this section must be requested in writing from the Administrator.

(b) *Authorized representative of applicant.* FmHA will deal only with the applicant or a bona fide representative of the applicant and the representative's tehnical advisers. An authorized representative of a nonprofit applicant must have no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment or the purchase of the equipment or the purchase of the land for the housing site.

(c) *Tenants eligibility.* Eligibility. requirements for tenants are specified in Exhibit B to subpart C of Part 1930 of this chapter.

§ 1944.212 Loan purposes.

RRH Loans may be made to qualified applicants to:

(a) Contract new housing.

(b) Purchase existing buildings for moderate or substantial rehabilitation under paragraph (c) of this section. Loans will not be made for the purchase of adequate housing not in need of rehabilitation.

(c) Rehabilitate existing buildings only when moderate or substantial modifications to the structures are necessary to meet the requirements of decent, safe and sanitary living units. Rehabilitation is not minor items of development work such as painting, cleaning and improvements to related facilities.

(1) All rehabilitation work to be performed must be classified as either moderate or substantial rehabilitation as defined below:

(i) *Moderate Rehabilitation.* All work directly involved in the rearrangement of interior space, the replacement or finish materials or components of the electrical, plumbing, heating or conveyance systems of an existing multi-family residential building. Work and improvements are considered to be more than routine maintenance and repair.

(ii) *Substantial Rehabilitation.* All work directly involved in the rearrangement of interior space that involves alteration of load bearing partitions and columns; the replacement

of the electrical, plumbing, heating or conveyance systems; and the addition to and/or major conversion of existing multi-family residential buildings or other building structures.

(2) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the residents of the structure after rehabilitation.

(3) Rehabilitation must be planned and accomplished so that the resulting housing will:

(i) Meet the appropriate National, State and/or local building code requirements for rehabilitation.

(ii) Create a suitable and appealing living environment and be substantially equivalent to new construction in quality, livability, design and all other aspects.

(iii) Have a total development cost equal to or less than that of new construction in the same area.

(4) The applicant must submit complete plans and specifications for rehabilitiation for FmHA's review and approval. The plans, specifications and other pertinent documents must be in sufficient detail to leave no question as to the work to be performed or the materials to be used.

(5) The rehabilitated project must generally meet the provisions of § 1944.215(a) of this subpart.

(6) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) can be designated for commercial use on a lease basis. RRH loan funds, however, cannot be used to finance *any* cost associated with that commercial space. In order to determine the correct RRH loan amount for the residential portion of such a structure, the following guidelines will apply:

(i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.

(ii) The costs that can be easily and appropriately identified as being part of either the commercial or residential portion of the structure should be separated.

(iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair or renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential occupants) will be prorated between the two uses based on the percentage of equipment load (example—central boiler or air conditioning) which would be necessary for each portion of the structure.

(iv) For the purposes of the loan limitations in § 1944.213(a)(1) and (a)(2) of this subpart, the term "development cost" means the development costs associated with or prorated to the residential use of the structure, and the term "security value" is the security value of the project exclusive of the value contributed to the land and structure(s) by the commercial space. The capitalization approach to value is one means by which FmHA may establish the value contributed by the commercial space.

(v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA security requirements of § 1944.221 of this subpart.

(7) The applicant may not lease any authorized commercial space permitted in accordance with paragraph (c)(5) of this section without the prior written consent of the State Director. The advice of OGC will be obtained prior to loan closing as to any modifications needed in the mortgage, loan agreement or loan resolution to enforce this requirement. In addition, the District Director may not consent to any lease unless:

(i) The lease contains a provision by which the lessee agrees to vacate the premises if FmHA withdraws its consent to the lease.

(ii) The proposed use of the leased space has a mutually supportive relationship to the needs of the residential tenants and to the use of the residential portion of the structure.

(iii) The terms of the lease and the proposed use of the leased space do not jeopardize the interests of the tenants of the project or the continued use of the residential portion of the structure.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this subpart.

(d) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with Subpart B of Part 1922 of this chapter (available in any FmHA office). Purchase price in excess of estimated present market value will not be used in determining the applicant's initial investment.

(2) Loan funds will not be used to buy land from an applicant or a member of an applicant organization or from another organization in which any member of the applicant organization has an interest except that, with prior approval of the State Director, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant organization.

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, when:

(i) The cost of the excess land is a reasonable portion of the loan.

(ii) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan and has legal authority to acquire and administer the land.

(e) Develop and install water supply, sewage disposal, streets, heating, cooling and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legal right to use the facility for a period of at least 25 percent longer than the life of the loan and the title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the RRH project or funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the project. The applicant will agree in writing to the application, as extra payments on the RRH loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(f) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center when the project is large enough to justify the facility. In all projects, passive recreation, such as outdoor seating, for elderly projects and active facilities, such as tot lots, for family projects will be provided.

(3) Central cooking and dining facilities when the project is large enough to justify them to supplement the kitchen facilities in each unit. All equipment purchased with loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables, should be attached to the real estate in a manner to prevent easy removal. The applicant must provide a long range plan for the benefit of the tenants which addresses the long-term availability of assistance from local organizations and other State or Federal agencies such as the Area Agency on Aging, the local office of the State

Vocational Rehabilitation Agency, or State developmental disabilities or mental health agency. If assistance is not available from local organizations or other State or Federal agencies, the applicant must be able to operate the facilities with its own funds other than rent or lease the facilities to an individual organization or firm with the ability to operate the facilities. In the case of a lease, the payment to the borrower should be sufficient to cover the annual operating expenses, debt services and reserve account attributable to the leased portion of the project. The cost of the food and other support services will not be reflected in the FmHA budget that shows the operation and maintenance cost of the housing project. This will not preclude tenants who voluntarily use the service from paying a separate charge for these services. If needed in the community, FmHA may permit facilities in the project larger than those required solely by the tenants provided other sources of funds are available to pay a prorata share of the cost. When the facilities are provided with loan funds, the following conditions must be met:

(i) The meals must be wholesome and economical. A minimum of one cooked meal per day, at least 5 days per week, must be provided. If tenants are charged for meals, the charges must be separate from their rental charges.

(ii) If the entity that operates the facility is eligible to accept food stamps under the regulations of the Food and Nutrition Service (FNS) of the USDA, the entity must be authorized by FNS to accept food stamps from the tenants for the purchase of meals.

(iii) The services to be provided and the fees to be charged (if any) must be fully documented by a signed statement from the applicant if it will provide the services, or in a lease agreement if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement:

This agreement will not be effective until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative.

_____

(Date)

Farmers Home Administration

By _____

_____

(Title)

(4) Space for a small infirmary for emergency care only when justified.

(g) Construct office and living quarters for the resident manager and other operating personnel if the facilities would be to the advantage of the project and the Government. The State Director should make a determination and the justification will be included in the docket.

(h) Construct fallout shelters or similar structures.

(i) Purchase and install ranges, refrigerators, drapes, drapery rods and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual rental units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

(j) Purchase and install essential equipment which upon installation becomes a part of the real estate. Sections 1944.205(cc) and 1944.213(b) contain further guidance on the use of loan funds to purchase certain equipment.

(k) Provide landscaping, seeding or sodding of lawns, and other necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(l) Pay related costs such as fees and charges for legal, archeological, architectural, engineering, environmental and other appropriate technical and professional services. The fees and charges may be paid to an applicant or to an officer, director, trustee, stockholder, member or agent of the applicant provided those fees and charges are reasonable and typical for that area and are earned. Legal, technical and professional fees do not include the costs incurred in the formation or incorporation of the limited profit basis or profit basis applicant entity or the payment of a loan packaging or development fee. Ordinarily, FmHA will furnish the needed guidance for the development of an RRH loan docket and project. However, the State Director may authorize the use of loan funds to enable a nonprofit corporation or consumer cooperative to pay a qualified consulting organization or foundation, operating on a nonprofit basis, to assist it in formation or incorporation and for the development and packaging of its loan docket and project and to pay legal, technical and professional fees incurred in the formation or incorporation of the applicant entity. In the latter case, the State Director must determine that:

(1) *Either*—

(i) The applicant, with available FmHA assistance, cannot meet all requirements for a sound loan without the services, or

(ii) The services would permit significant financial savings to the Government, either directly or by lightening the workload involved in processing applications.

(2) The charges are reasonable in amount, considering

(i) The amount and the purpose of the loan

(ii) The payment ability of the borrower, and

(iii) The cost of similar services in the same or similar rural areas.

(m) Pay construction interest as follows:

(1) In the case of multiple advances, loan funds will not be used to pay construction interest. Accrued interest during construction will be capitalized when construction is substantially complete and the project is ready for full operation. When requested by the borrower, each month the District Director will provide the borrower monthly computations of the amount of interest that is accruing during the construction period.

(2) Interest accrued on projects using interim financing may be included in the loan amount.

(n) Pay customary charges necessary to obtain interim financing.

(o) Pay initial operating expenses up to 2 percent of the development cost for nonprofit organizations and State and local public agencies.

(p) Purchase housing from an interim lender that holds fee simple title to an RRH project upon which construction commenced pursuant to § 1944.235(c)(1) and after issuance of a letter of commitment to the interim lender in accordance with Exhibit B of this subpart, when all of the following conditions exist:

(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown in Exhibit B to this subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA issued a letter such as that shown in Exhibit B to this subpart for the construction of the project.

(3) The project is substantially complete (see § 1944.235(c)(1) (vi) of this subpart), all work has been satisfactorily completed in a

workmanlike manner in accordance with the originally approved drawings, specifications and contract documents, and is in compliance with Subpart A of Part 1924 and Subpart D of Part 1804 of this chapter (FmHA Instructions 1924–A and 424.5).

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this subpart have been met.

(q) Purchase an RRH project in which the original applicant/borrower or the contractor has defaulted before the project is completed and in which a letter of commitment dated prior to July 26, 1978, was issued to an interim lender.

(r) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.215(u) of this subpart.

(s) To construct demonstration projects involving innovative housing units and systems which do not meet existing published standards, rules, regulations or policies, but do meet the intent of providing decent, safe and sanitary rural rental housing. Only the Administrator may authorize loan funds to be used for this purpose.

(t) To finance the conversion of section 502 units in inventory to a section 515 project in accordance with requirements of this subpart and Subpart C to Part 1955 of this chapter. Loans for this purpose can be made only to public agencies and private nonprofit organizations. Units should be repaired or rehabilitated prior to conversion to section 515 housing.

§ 1944.213 Limitations.

(a) *Loan limits.* The amount of the RRH loan(s) on each project is limited to the maximum amount of the State Director's loan approving authority unless the National Office provides prior written authorization. To request National Office authorization, the State Director must submit the preapplication, detailed information on the need and market for the project, and his/her recommendations. This must be done before Form AD–622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan has been determined eligible. Additional loans may be made on the same or contiguous site without regard to this limitation if the previous project is completed and has been successfully operating for at least 12 months. A clear market demand must be evidenced for any additional units to be provided. Each loan will also be subject to the following additional requirements:

(1) For private nonprofit corporations, consumer cooperatives, State or local public agencies and other nonprofit organizations, the amount of the RRH loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(u) of this subpart.

(2) For all other applicants, the amount of the RRH loan(s) will be limited to no more than 95 percent of the development cost or 95 percent of the security value of each project, whichever is less. The applicant's contribution must be in the form of cash or land or a combination of both.

(3) For all applicants, the amount of the loan after capitalized construction interest is considered will not exceed the loan limits in paragraphs (a)(1) and (a)(2) of this section. However, Predetermined Amortization Schedule System (PASS) loans closed with multiple advances on a day other than the first of the month may exceed that amount when an additional amount is permitted to allow interest to be capitalized to the first of the following month. All borrowers must agree in writing to provide funds from their own resources to pay any cost for completing construction after the maximum debt limit (MDL) is reached.

(b) *Limitations on use of loan funds.* Loans will not be made for:

(1) The purchase of a partially completed project except as provided in § 1944.212(q) of this subpart or for the purchase of an existing housing project unless the provisions of § 1944.212(b) or § 1944.212(p), as applicable, can be met.

(2) Housing or related facilities which are elaborate in design or materials.

(3) Nursing or medical facilities other than a small emergency care infirmary when justified by the size of the project. An infirmary will not be justified if facilities for emergency care expected to be needed by the occupants are readily accessible elsewhere.

(4) Specialized equipment for training and therapy.

(5) Commercial facilities except essential service-type facilities for tenants when such facilities are not conveniently available.

(6) Housing to be used primarily for serving temporary residents and transient or hotel purposes. No rental term will be for less than 30 days.

(7) Nursing homes, special care facilities or institutional-type homes. This does not preclude making loans for housing which is designed for occupancy by elderly or handicapped persons who are capable of caring for themselves but will not live on a totally independent basis because of a need for some supervision and central services. Loan funds will not be used to finance these support services.

(8) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.

(9) Any facility not essential to the needs of the tenants.

(10) Refinancing debts of the applicant except:

(i) As authorized in § 1944.213(c) and § 1944.235(c)(1) of this subpart; or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien exists and a subordination or release cannot be obtained and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes will be limited to the amount necessary to obtain the release but will not exceed the "as is" value of the land as determined in accordance with Instruction 1922–B (available in any FmHA office).

(11) Housing which the applicant plans to lease to another operator except for leases to public housing authorities.

(12) Payment of any fee, charge or commission to any broker, negotiator or other person for the referral of a prospective applicant or solicitation of a loan.

(13) Payment of any fee, salary, commission, profit or compensation to an applicant or to any officer, director, trustee, stockholder, member or agent of an applicant except as provided in §§ 1944.212(d) and 1944.212(d)(2) of this subpart.

(14) Land which the applicant or a member of an applicant organization owns or land which is owned by any other organization in which any member of the applicant organization has an interest, except as authorized in § 1944.212(d)(2).

(15) Compensation to an applicant for value of land contributed in excess of the initial 5 percent contribution.

(16) The financing or construction of nonessential facilities such as fireplaces, saunas, whirlpools, gyms, swimming pools, carports, garages, basements, and covered parking.

(c) *Obligations incurred before loan closing.* When an applicant files an application for loan, the County Supervisor or District Dirctor, as appropriate, will advise the applicant not to start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in § 1944.235(c)(1) of this subpart will then apply. During the period of application review and processing, applicants will not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude the applicant from developing preliminary plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. However, the development of detailed plans and specifications will be discouraged when the costs involved inhibit the realistic consideration of alternative actions. If, nevertheless, the applicant incurs debts for work, materials, land purchase or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist.

(1) The debts were incurred:

(i) After the applicant filed a written preapplication for a loan with FmHA;

(ii) After the submission of a preliminary proposal to the Department of Housing and Urban Development (HUD) in the case of a project involving the Section 8 housing assistance payments program with a loan made in compliance with this subpart;

(iii) Prior to the date of application as part of a pre-development loan specifically intended as temporary financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or

(iv) Prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay the debts from its own resources or to obtain credit from other sources and failure to authorize the use of loan funds to pay the debts would impair the applicant's financial position.

(3) The debts were incurred for eligible cost items and would have met FmHA requirements if reviewed by FmHA before incurred.

(4) Contracts, materials, construction and any land purchased meet FmHA standards and requirements.

(5) Payment of the debts will remove any liens which have attached and any basis for liens that may attach to the property on account of such debts.

(d) *Limitations on cost increases.* After loan approval of a project involving new construction or major rehabilitation:

(1) No increase in per unit development cost will be approved unless one or more of the following conditions exists:

(i) Unforeseen factors beyond the owner's control;

(ii) Design changes required by FmHA or State or local government having jurisdiction over the development of the project; or

(iii) Changes in financing approved by FmHA.

(2) The conditions in § 1944.213(d)(1) must exist before any cost increase can be approved, whether the circumstance causing the cost increase occurs before, during or after the construction period.

(3) Any cost increase which cannot be approved for funding by FmHA must be satisfied by the owner without any resulting increase in rental rates. Whenever there is doubt as to the resulting effect of a cost increase upon per unit development cost, the cost increase requests may be conditionally approved provided:

(i) The owner furnishes an assurance agreement agreeing to provide any funds necessary in excess of the owner's initial contribution and the loan amount to complete the project; and

(ii) The owner furnishes surety that guarantees payment under the assurance agreement in the form of a surety bond, unconditional and irrevocable letter of credit or cash which may be accepted for deposit into an interest or noninterest bearing supervised bank account.

(4) Under no circumstances will a cost increase request be approved without concurrent agreement between FmHA and the applicant/borrower as to how the cost increase will be funded.

§ 1944.214 Rates and terms.

(a) *Interest.* Upon request of the borrower, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office.)

(b) *Amortization period.* Each loan will be scheduled for payment within a period that is necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 50 years from the date of the note.

§ 1944.215 Special conditions.

(a) *Type of housing.* All housing must meet the following requirements:

(1) Be economically constructed and not of elaborate design or materials. All new construction will be in conformance with Subpart A of Part 1924 of this chapter. The gross square foot living area of new rental units and related facilities to be constructed with RRH loan funds will be within the guidelines listed below. Living area does not include outdoor storage space when unfinished an an interior air conditioner. The State Director may make an exception to these unit sizes when rehabilitating units if the appropriate National, State and/or local building code requirements for rehabilitation are met.

Type of unit	Maximum living area
0-Bedroom Unit	300-400 sq. ft.
1-Bedroom Unit	500-650 sq. ft.
2-Bedroom Unit	650-800 sq. ft.
3-Bedroom Unit	800-950 sq. ft.
4-Bedroom Unit	950-1100 sq. ft.

(i) An additional 100 to 120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of 4.

(ii) In townhouse units where living area is on two floor levels of the rental unit, the maximum gross square footage of living area may be exceeded by up to 70 square feet, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with Subpart A of Part 1924 of this chapter. Minimum room sizes may be determined by the minimum areas and least dimensions listed in the standards or on a required furnishing basis.

(iv) When community rooms or buildings are provided as part of the related facilities, their gross square foot area should be within the guidelines set forth in the FmHA Manual of Acceptable Practices (MAP) 4930.1, in effect on September 1, 1982.

(v) Additional area to accommodate energy conserving and solar heating elements such as vestibules, heat sinks, solar greenhouses, solar heat storage devices and the like may be allowed in excess of the stated maximum size guidelines. However, such devices, if included, must be justified on a cost effective basis.

(2) Will consist of multi-unit type housing with two or more person units

and any appropriate related facilities. However, in some group-type living arrangement cases or, as indicated in § 1944.212(t) of this subpart, single household dwellings may be provided if the elderly or handicapped persons' needs cannot be met in multi-unit structures. Such group-type single household dwellings, if financed, must meet the following requirements:

(i) Consist of single household dwellings that can be economically converted to a rental or homeownership unit for a family if the need for the housing by elderly or handicapped persons ceases.

(ii) The applicant must show that adequate support services needed by the tenants will be available on a continuous long range basis. As a general rule, the support services must be provided by a State or local public agency. However, a nonprofit organization with a successful history and an ongoing program may be considered capable of providing these support services.

(iii) The elderly or handicapped person(s) to be housed must be capable of caring for themselves except for some supervision and support services.

(3) Be residential in character and be designed to meet the needs of eligible occupants, including the handicapped. Generally, RRH units should not be in structures more than two stories high above grade. However, in projects designed for occupancy by elderly and handicapped persons only, low-rise structures with elevators can be considered on an individual basis, with prior written authorization from the National Office, when the following conditions exists:

(i) There is a serious shortage of suitable building sites, the number of units needed cannot be built due to lack of space on the site and other building sites are not available.

(ii) Land costs are such that one- or two-story construction would result in a unit cost and rental rises in excess of what eligible occupants can afford.

(iii) The number of stories proposed for the structure is compatible with other rental structures in the community. If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures. In addition, the applicant's market survey report, submitted in accordance with Exhibit A–6 of this subpart, must identify market acceptability for the number and type of low-rise rental units proposed.

(iv) The cost of the units should compare favorably with one- and two-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA State architect or engineer has reviewed the plans, specifications and cost data to assure that further cost savings cannot be achieved without sacrificing the quality and serviceability of the housing.

(v) Elevator(s) will be provided in accordance with Subpart A of Part 1924 of this chapter in projects designed for occupancy by elderly or handicapped persons. If elevators are included, the subsoil conditions of the site must be adequate for the installation of hydraulic elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Consideration must be given to safety, convenience and comfort of the prospective tenants.

(5) Based on the demand shown by a market analysis, the project may include efficiency or one, two, three or more bedroom units.

(6) Contain bathroom and kitchen facilities in each unit. In the case of group living arrangements, each single detached dwelling is considered a unit. Elderly housing projects with supportive services with central dining facilities may have limited kitchen facilities but must contain, as a minimum, a cooktop, refrigerator and a small oven in each unit. The kitchen facilities in a single household dwelling for a group living arrangement may be designed to meet the special needs of the tenants. Units with three or less bedrooms should not have more than one bath.

(7) All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly.

(8) Be designed to provide for the greatest energy conservation and promote the concept of modest housing, yet provide a highly desirable and attractive environment for the tenants.

(9) At least 5 percent of the units in the project or one unit, whichever is greater, must be accessible to or adaptable for physically handicapped persons. The requirement may be modified if an applicant shows, through a market survey done by a local or State government agency or by independent organizations serving handicapped people, that a different percentage of accessible or adaptable units is appropriate.

(10) Elaborate designs which have excessive change in wall direction and roof pitches will be avoided.

(11) Designs which encourage standard building material dimensions and reduce waste will be used as much as possible.

(12) The size of management, maintenance and community rooms should not exceed the limitations described in the FmHA Manual of Acceptable Practices (available in any FmHA office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation and areas for sorting and folding clothes.

(13) Components of the house, such as kitchen cabinets, bathroom fixtures, light fixtures, etc., must not exceed "fair-quality" as described in the Marshall and Swift Residential Cost handbook or some other similar cost guide.

(14) Building materials and design: No FmHA office will require the use of any building designs and/or building materials which exceed the applicable development standards, or the fair quality as described in the Marshall and Swift Residential Cost handbook or other similar cost guide.

(15) State Directors may permit small privacy fences, patios, or porches only when the unit density is high or when needed to block an undesirable view or to help ensure safety of the prospective tenants.

(16) Sliding glass doors can be included only if they meet the following conditions:

(i) Have thermal break sash and frame;

(ii) Have double glazing;

(iii) Are placed on a south wall;

(iv) Are installed in projects located in areas having fewer than 4500 Winter Degree Days.

(b) *Determination of per unit rental rates for group living arrangements.* To determine the amount of rental payment to be collected per unit for congregate housing involving a group living arrangement (and only for this particular determination), the total annual cost to operate the facility (line 38 of Form FmHA 1930–7, "Statement of Budget and Cash Flow") will be divided by the total square footage to be occupied by the tenant. If the project also includes coventional rental apartment units (1, 2, 3, etc. bedroom units), the square footage of those *units* (not bedrooms) will be added to the square footage of the other units (bedrooms) contained in the housing involving group arrangements, and the total square footage of all the units will be divided into line 38 of Form FmHA 1930–7. The number arrived at by dividing the total square footage into line 38 of Form FmHA 1930–7 will be then multiplied by the square foot area of each *unit* to determine the rental rate of the particular *unit*. In the case of elderly housing with supportive services involving a group living arrangement, each bedroom will be counted as if it

were one rental unit. However, the bedroom occupied by the resident assistant will be excluded from this number and will not be counted in making the determination of rental payment to be charged to all the other bedrooms occupied by the tenant(s). Once this charge per unit has been calculated, the rental payment by the tenant(s) will be determined in the usual manner.

(c) *Deferred principal payments.* (1) In the case of multiple advances only, payments for principal may be deferred for the period of construction. Accrual of interest may not be deferred. When construction is substantially complete and the project is ready for full operation or interest plus principal reaches the "Maximum Debt Limit (MDL) at Amortization Effective Date (AED)," the accrued interest on advances will be capitalized establishing a new loan amount. The MDL at AED will be established according to § 1944.213(a) of this subpart. The borrower's monthly payment of principal and interest will be established according to the FMI for Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(2) At loan closing the Finance Office will be notified of the projected AED and the MDL at AED on Form FmHA 1944–57, "Multiple Family Housing Acknowledgement of Obligated Funds/Check Request." When the final advance on the loan is issued or the MDL at AED is reached, the Finance Office will:

(i) Accrue construction interest through the last day of the month and capitalize the interest as of the first day of the following month. When there is a remaining obligation balance, it will be canceled by the Finance Office.

(ii) Notify the district office of the new loan amount and the borrower's monthly loan payments.

(iii) Prepare and forward to the district office Form FmHA 1944–7, "Interest Credit and Rental Assistance Agreement," if interest credit was indicated on Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis." Interest credit will not be implemented until the district office notifies the Finance Office of the effective date.

(3) The district office will contact the applicant and complete Forms FmHA 1944–52, "Multiple Family Housing Promissory Note" and FmHA 1944–7 according to the FMIs.

(d) *Refinancing RRH loans.* Each borrower must agree to refinance the unpaid balance of the RRH loan at the request of FmHA when it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA considers reasonable, and still rent the units to eligible occupants at rental rates within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(5) of this subpart and Subpart F of Part 1951 of this chapter.

(e) *Loan resolution or loan agreement.* The loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read and fully understood by the applicant. This is particularly important for applicants operating on a limited profit basis. If any provisions are not appropriate to a particular case proposed substitute language will be approved by FmHA and OGC. Subpart C of Part 1930 provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving FmHA power to impose requirements regarding the housing and related operations of the applicant. All sections and requirements determined applicable by OGC will form part of any other loan resolution or agreement that may be submitted by the applicant. These are:

(1) Form FmHA 1944–33, "Loan Agreement for an RRH Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis."

(2) Form FmHA 1944–34, "Loan Agreement for an RRH Loan to a Partnership Operating on a Profit Basis or RRH Loan to a Limited Partnership Operating on a Profit Basis or RRH Loan to a Partnership Operating on a Limited Profit Basis or RRH Loan to a Limited Partnership Operating on a Limited Profit Basis."

(3) Form FmHA 1944–35, "Loan Resolution for an RRH Loan to a Broadly Based Nonprofit Corporation or RRH Loan to a Profit Type Corporation or RRH Loan to a Profit Type Corporation Operating on a Limited Profit Basis."

(f) *Multiple advances.* Loan funds will be disbursed in accordance with § 1944.235 of this subpart.

(g) *Interest credits and rental assistance.* (1) Borrowers may receive interest credits if they meet the requirements outlined in Exhibit B of Subpart C to Part 1930 of this chapter.

(2) Rental assistance may be provided to eligible tenants in eligible projects in accordance with Exhibit E to Subpart C of Part 1930 of this chapter, subject to the availability of funds.

(3) At least 95 percent of RA units available for newly constructed projects must be used to assist very low-income tenants. The remaining 5 percent can be used for low-income tenants.

(h) *Nondiscrimination in use and occupancy.* The borrower will not discriminate or permit discrimination by any agent, lessee or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital status, handicap or national origin, and will comply with Subpart E of Part 1901 of this chapter.

(i) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible occupants as defined in § 1944.205(g) of this subpart. Eligible occupants must meet the requirements of Exhibit B of Subpart C of Part 1930 of this chapter.

(1) Although the purpose of the program is to provide adequate housing for the eligible permanent residents of a community, a student resident of the community who is otherwise eligible may be considered an eligible tenant if all of the following conditions are met:

(i) The prospective tenant is of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(ii) The prospective tenant has established a household separate and distinct from his/her parents or legal guardians.

(iii) The prospective tenant provides evidence that he/she is no longer claimed as a dependent by his/her parents or legal guardians pursuant to Internal Revenue Service regulations.

(iv) The prospective tenant signs a statement indicating whether or not his/her parents, legal guardians or others provide any financial assistance considered as part of his/her current annual income. This statement must be verified in writing by the borrower.

(2) A group living arrangement may limit occupancy to eligible developmentally disabled individuals. This limitation will be outlined in the applicant/borrower's management plan. The following will apply to group living homes:

(i) In many cases, tenants of group homes will be paying more than 30 percent of their adjusted income towards shelter costs. Group homes are unique, serve a special need or purpose and tenants residing in them normally have fewer expenses than typical RRH tenants. Most receive social security and/or other benefits provided by the State. Many also receive small income from jobs or training centers. Therefore, group home tenants can usually afford to pay more than 30 percent of their income towards shelter costs. Tenants

should have enough income to pay for shelter costs, personal needs and other needs not covered by the State or organization. This policy of acknowledging prospective tenants who will most likely be paying more than 30 percent of their income towards shelter costs in determining project feasibility and size is only in reference to group homes and is not applicable to the regular RRH and elderly housing with supportive services programs.

(ii) Occupants of group homes must be required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or other organization.

(iii) The prospective tenants should be or should previously have been from the eligible market area.

(3) In elderly housing projects with supportive services, including those involving group living arrangements, a further critical dimension is added by the selection and placement of tenants. This involves determining the ability of a tenant with a functional impairment to sustain relative independence, given the supportive service(s) provided. While this determination can be made by the project management, it is recommended that it be made by a professionally qualified tenant selection committee and the decision presented to the project management for acceptance or rejection. This determination can be made in a highly technical fashion using scientifically developed scales of competance in the activities of daily living, or it can be made by social or medical sources. The functional impairments of tenants should be verified by one of the following methods:

(i) Certification by a physician, or State or local agency responsible for supportive services to the tenant as to the tenant's ability to remain independent with assistance from service(s).

(ii) By the use of any objective guide, such as the guide explained in Exhibit B–10 of Subpart C of Part 1930, and described in Exhibit B–10A of Subpart C of Part 1930, "Type of Living Environment Needed in Relation to Nature and Degree of Disability." This guide can be used by management to assess a person's capacity for personal care and independent or semi-independent living.

(4) If a family type rental unit receiving HUD Section 8 assistance is to be occupied by a one-person household, the State Director must request the prior authorization of the respective HUD Field Office Director.

(j) *Tenant certification.* Initial certification and recertifications will be executed on Form FmHA 1944–8, "Tenant Certification," as follows:

(1) Initial certification will be executed for each household on the same day or before it initially occupies the housing. Borrowers will promptly provide the District Director with an executed copy of these forms.

(2) Recertification will be completed by having a new Form FmHA 1944–8 executed at least annually by each tenant except in senior citizen projects in which all the units are assisted with Section 8 housing assistance payments. In these cases, recertification will be done at least every 2 years. The certification forms will be obtained by the borrower and a copy provided to the District Director to verify continued tenant eligibility and the amount of interest credit or rental assistance to be given to the borrower.

(3) The incomes reported by all tenants must be verified by the borrower. The verification may be obtained on verification forms prepared by the borrower or other sources. However, any forms must include the following:

(i) Income of person during the previous 12 months.

(ii) Current rate of pay (weekly, biweekly, monthly or hourly).

(iii) Expected income of person for the next 12 months.

(iv) Income should be divided into basic salary, bonuses and overtime.

(v) In the case of elderly or other persons whose income is not from wages or salary, verification should be made by actually examining the income checks, check stubs or other reliable data the tenant possesses.

(4) Form FmHA 1944–8 is not required from tenants who have executed Form HUD 52659, "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District director annually.

(k) *Supervision of borrowers.* Supervision will be provided borrowers under Subpart C of Part 1930 and Subpart B of Part 1965 of this chapter, to the extent necessary to achieve the objective of the loan and to protect the interests of the Government.

(l) *Limited profit determinations.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required 5 percent in § 1944.213(a)(2) of this subpart and may include the following:

(1) Any cash contribution which, when added to the FmHA loan amount, is not in excess of the security value of the project.

(2) The value of the building site or essential related facilities contributed by the applicant which, when added to the FmHA loan amount, is not in excess of the security value of the project. An appraisal will be done by an FmHA employee authorized to make appraisals in accordance with applicable FmHA regulations. Value will be determined on an "as is" basis less any amount owed on the property. The value of the building site or essential related facilities contributed by the applicant in excess of the 5 percent contribution may be counted as part of the initial contribution.

(m) *RRH loans made in connection with HUD Section 8 housing assistance payments program.* RRH loans involving the HUD Section 8 housing assistance payments program under the memorandum of understanding located in Subpart II of Part 2000 of this chapter (available in any FmHA office) will be handled in accordance with Exhibits F and F–1 through F–6 of this subpart. If an applicant/borrower has obtained Section 8 units from HUD or a State housing finance agency which cannot be processed in accordance with Exhibit F, they may be processed in accordance with HUD's regulations under a dual track processing system if all other requirements of this subpart are met. When a dual track processing system is followed, the provisions of paragraph II of Exhibit F to this subpart allowing for an interest rate reduction (interest credit) may be followed. Section 8 housing assistance payments for existing housing will be handled in accordance with Exhibit E of this subpart.

(n) *Intergovernmental review.* FmHA will consider comments received in accordance with 7 CFR Part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities," when making decisions on loan applications. See FmHA Instruction 1940–J, available in any FmHA office.

(o) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects will comply with Subpart G of Part 1940 of this chapter. Projects involving Section 8 will also comply with Exhibit F of this subpart.

(p) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973

and Executive Order 11988, are applicable to FmHA authorities permitting financing of rental housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will apply.

(q) *Location of housing.* (1) The location of the housing project should expand the supply of decent, safe and sanitary housing for low- and moderate-income, elderly and handicapped persons in a non-discriminatory way outside areas of concentration of economically disadvantaged or minority residents. The location should promote a greater choice of housing opportunities and avoid undue concentration of eligible tenants in areas containing a high proportion of low-income persons, and should further fair housing.

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status or physical or mental handicap (mentally handicapped must possess the capacity to enter into a legal contract except as indicated in § 1944.203 (g)(1)(iii) of this subpart), thereby opening up nonsegregated housing opportunities for minorities and helping overcome the effects of any past discrimination. To the extent possible, the location of RRH projects should provide housing opportunities for minorities outside areas of minority concentration and should avoid contributing to areas of minority concentration. An area of minority concentration is any part of a community in which the majority of the residents are minorities and which is adjacent to or within the confines of a greater area, such as a place, town, village or city.

(3) Except as otherwise permitted by paragraph (q)(6) of this section, housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical, and pharmaceutical) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and the housing project.

(4) In order to provide housing at the lowest cost possible, preference will be given to loan requests in which specific tracts of land will be donated by States, units of local government or others. The land must be suitable for the proposed housing and meet all FmHA site criteria. In addition, affording such preference must be cost effective.

(5) More than one site within the same community may be considered in the same preapplication if an adequate site is not available for the total number of units planned. Each site must meet all FmHA site criteria. When more than one site is involved, an appraisal must be made on each site in accordance with §§ 1922.51 and 1922.53(a) of Subpart B to Part 1922 of this chapter (FmHA Instruction 1922–B available in any FmHA office). Where legally permissible, one mortgage should be taken on the total project and a separate note issued for each site. When the project consists of 502 houses located on different sites, the sites must be located within the same community.

(6) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures (in accordance with § 1944.212(b) of this subpart) located in the downtown business areas of rural communities that have established a comprehensive strategy for meeting their community development and housing needs. That strategy must include the redevelopment, rehabilitation, restoration or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical and pharmaceutical) must be readily available in close and convenient proximity to the site and must be adequate to support the needs of the tenants and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs. The plan will include the need for eliminating and preventing economic decay, slums or blight; the need of benefiting the lower-income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which decribes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) *Neighborhood revitalization.* The strategy for alleviating physical deterioration, maintaining viable neighborhoods and stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) *Housing.* The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current HUD approved housing assistance plan would be helpful as part of this component strategy.

(C) *Economic development.* The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (q)(6)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's RRH proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be presented to FmHA verifying the intended commitment of public and private resources which will be available for completing any other integrally related redevelopment/revitalization activities being undertaken in the downtown business area along with the applicant's proposed RRH project.

(v) If the structure to be built or rehabilitated is more than two stories, the housing must be designated and designed for occupancy only by elderly and handicapped persons.

(vi) Prior review and concurrence must be received from the National Office before the State Director or District Director authorizes the applicant to develop a complete application. All of the information required in § 1944.215(q)(5) must be

provided by the applicant before National Office review.

(7) The property for which a loan is made must be located in a rural area as defined in § 1944.10 of Subpart A of Part 1944 of this chapter. However, if the area where the property is located has changed from rural to nonrural in accordance with the most current official census figures, preapplications received before the date the area was determined nonrural will be processed as expeditiously as possible and loans closed if the applicants are otherwise eligible.

(8) State Directors should encourage the use of sites that require a minimum amount of site development.

(9) State Directors will encourage projects with a minimum of 14–18 units per acre. Local zoning requirements may preclude this in some areas.

(r) *Clean Air Act and Water Pollution Contol Act Requirements.* (1) As a condition of FmHA's making a loan of over $100,000 and unless otherwise exempted, an applicant for a loan will:

(i) Comply with all requirements of section 114 of the Clean Air Act (42 U.S.C., 1857 C–9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C., 1318) including those relating to inspection, monitoring, entry, reports and information, and all regulations and guidelines issued thereunder after the award of the construction contract. (Such regulations and guidelines can be found at 40 CFR 15.4 and 40 FR 17126, April 26, 1975.)

(ii) As a condition for the award of contract, notify FmHA of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be used for the contract is under consideration to be listed on the EPA List of Violating Facilities. (Prompt notification is required prior to contract award.)

(iii) Certify that any facility to be used in the performance of any nonexempt subcontract is not listed on the EPA list of Violating Facilties pursuant to 40 CFR 15.20 as of the date of contract award.

(iv) Include these criteria and requirements in every non-exempt subcontract and take such action as the Government may direct as a means of enforcing the provisions.

(2) As a further condition of FmHA making a loan of over $100,000 but not otherwise exempted, the applicant will secure the services of a contractor who agrees to comply with the provisions in paragraph (r)(1) of this section.

(3) The term "facility" as used in the section means any building, plant, installation, structure, mine, vessel or other floating craft; or location or site of operations owned, leased or supervised by a grantee, cooperator, contractor or subcontractor to be used in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation or structure, the entire location will be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that independent facilities are co-located in one geographical area.

(s) *Approval of contruction contracts.* A construction contract between the borrower and constractor for development of an RRH project will contain a provision that it is not in full force and effect until it has been approved by the State Director of his/her delegate in writing. This approval relates to form, content and proper execution of the document and a statement that FmHA is not a party to the contract and will not incur any liability thereunder. Before loan closing or before the start of construction, whichever occurs first, the State Director or his/her delegate will approve the contract form, content and execution by including the following paragraph at the end of the contract:

"The Farmers Home Administration, as a potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby approves the form, content, and execution of this contract.

Date: _____

Farmers Home Administration

By: _____

Title: _____

(t) *Historic preservation requirements.* The District Director must take the necessary action to assure that the applicant will comply with the provisions of Subpart F of Part 1901 of this chapter. This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291), and Executive Order 11593 dated May 13, 1971.

(u) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Public bodies and agencies which have the power of eminent domain and/or condemnation must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons from a site on which an RRH project will be located. FmHA loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons. Until instructions are published by the National Office, the Department regulations found at Part 21 of this chapter should be followed and the National Office should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. The following should be considered:

(1) Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact will be selected.

(2) For RRH and RCH loans, the designated FmHA appraiser or other designated appraiser will be used for determining the appraised value of the site.

§§ 1944.216–1944.220 [Reserved]

§ 1944.221 Security.

(a) *Mortgage.* Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage, except as indicated in paragraphs (a)(1) and (a)(3) of this section, will be taken on the property purchased or improved with the loan. A mortgage should be taken on only that part of the land which is necessary to provide adequate security for the loan as determined by the appraisal, except when excess land is purchased as authorized in § 1944.212(d)(3) of this subpart.

(1) A second mortgage will be taken on a site developed with prior RRH loan(s) when a subsequent loan is made to complete or finish our units on the site or when a second initial loan is made to develop units on a contiguous site.

(2) Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership. Personal liability will be required of all members of other partnerships. For limited partnerships, the State Director will obtain the advice of the Regional Attorney as to any modifications needed in the promissory note and mortgage.

(3) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

(b) *Financing Statement.* To secure the FmHA loan, each borrower will execute Form FmHA 440–25, "Financing Statement," and a security agreement at loan closing pledging all revenue from the housing project. This may be HUD Section 8 housing assistance payments,

FmHA RA payments and/or tenant rent payments.

(c) If a bond is used in lieu of a promissory note to evidence a loan, the proposed bond must be sent to the National Office for review prior to loan closing. OGC must also review proposed bond.

§ 1944.222 Technical, legal and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised by the multiple housing appraiser or a designated appraiser authorized to make real estate appraisals. If the security involves two or less rental units, the property will be appaised under Subpart C of Part 1922 of this chapter. For security involving more than two rental units, the appraisal will be made under Subpart B of Part 1922 of this chapter (available in any FmHA office). Form FmHA 426–1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Title clearance and legal services.* When the applicant is an organization or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provision of Subpart A of Part 1944 and Part 1807 of this chapter (FmHA Instruction 427.1) regarding title clearance and legal services will apply.

(c) *Architectural and engineering services.* (1) Housing and related facilities will be planned and developed in accordance with Subpart A of Part 1924 and Subpart D of Part 1804 of this chapter (FmHA Instructions 1924–A and 424.5). The housing will be designed to meet the needs of the types of occupants who will likely occupy it.

(2) A written contract for architectural services will be required as outlined in Subpart A of Part 1924 of this chapter.

(d) *Construction and development policies.* (1) Construction and development will be performed in accordance with Subpart A of Part 1924 and Subpart D of Part 1804 of this chapter, except that § 1924.6(b)(3)(i) of Subpart A of Part 1924 will not apply to projects constructed by the owner-builder method. These projects will be governed by the following:

(i) The development cost may include a typical builder's fee. The typical builder's fee may be determined by local investigation and from HUD data for the area.

(ii) The development cost cannot exceed that which is tyical for similar type projects in the area.

(iii) The development cost for each case will be determined by the approving official or the State rural housing specialist with the advice of the State architect.

(iv) The plans and specifications must be specific and complete so there is a clear understanding as to how the facility will be constructed and what materials will be used.

(2) In all cases of RRH loans exceeding $50,000, interim financing for the construction period will be obtained when it is available at reasonable rates and terms so that multiple advances of FmHA loan funds are not necessary.

(i) The applicant will provide preliminary evidence concerning the availability of interim financing with the application or prior to loan approval.

(ii) FmHA loan funds will be obligated before the applicant proceeds with the final arrangements for interim financing.

(e) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction and operation of housing financed with an RRH loan will conform with applicable laws, ordinances, codes and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy), and must meet all applicable laws and statutes pertaining to the operation of a facility in which some of the occupants may require some supervision and central services.

(f) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract when loan funds will be used for these services. All contracts will be subject to review and approval by FmHA and should be submitted to FmHA before execution by the applicant. Contracts will provide for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(g) *How to apply for a rural rental housing loan.* Exhibit A may be used as a guide for applicants applying for loans to finance projects of substantial size. Extra copies may be obtained from the Finance Office for applicants after preliminary discussions indicate that a loan may be developed. Exhibits A–1 through A–5 of this subpart may be adapted for use by States so that adequate supplies are available to applicants. Exhibit A–7 is a sample professional market study to be used by professional market analysts in preparing market studies for FmHA financed projects.

(h) *Technical services by consultant organizations.* Technical services by consultant organizations are governed by § 1944.212(1) of this subpart.

(i) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant must obtain an option on the parcel to be purchased. Form FmHA 440–34, "Option to Purchase Real Property," or other option form with provisions acceptable to FmHA and the applicant may be used. When an option form other than Form FmHA 440–34 is used, a provision should be included indicating that the option is contingent upon FmHA making a loan to the buyer. After the loan is approved, the District Director will have Form FmHA 440–35, "Acceptance of Option," or other appropriate form of acceptance completed, signed and mailed to the seller.

(j) *Use of an accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of Subpart A to Part 1902 and Subpart C to Part 1930. Collateral for deposit of funds will be pledged in accordance with § 1902.7 of Subpart A of Part 1902. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds cannot be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for legally eligible loan purposes.

(k) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 (FmHA Instruction 426.1).

(2) Suitable workman's compensation insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged or required, when appropriate, to obtain liability insurance.

(4) Flood insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with Subpart B of Part 1806 (FmHA Instruction 426.2).

(l) *Bonding.* (1) The provisions of Subpart A of Part 1924 of this chapter

pertaining to surety bonds are applicable to RRH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds is the interim lender's. If the *interim lender* decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the officials, employees and management agents entrusted with the receipt, custody and disbursement of its funds and the custody of any other negotiable or readily salable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will have on hand at any one time exclusive of loan funds deposited in a supervised bank account. The United States will be named co-obligee in the bond if not prohibited by State law. Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(m) *Previous participation certification.* All known principals and affiliates are required to submit a properly completed Form HUD–2530/FmHA 1944–37, "Previous Participation Certification." Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The form will be completed and processed in accordance with instructions attached to the form.

§§ 1944.223–1944.230 [Reserved]

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that loan funds are used, to the extent possible, to provide housing for eligible occupants in need of adequate housing. Preapplication information is used to determine the applicant's eligibility, project feasibility and priority for available funds, thereby eliminating proposals which have little or no chance for funding in the near future. Information necessary in a preapplication consists of Form AD–621, "Preapplication for Federal Assistance," and all additional information and material outlined in Exhibit A–6. Preapplications should be filed in the FmHA district office, but may also be filed in the county office.

(a) *Action of the county office.* County offices may handle initial inquiries and provide basic information about the program. They are to provide the preapplication form (Form Ad–621), Exhibit A–6 to this subpart and Form FmHA 1940–20, "Request for Environmental Information." The County Supervisor may assist applicants in completing Form AD–621 and the information required in Exhibit A–6. Preapplications filed in the county office will be immediately forwarded to the FmHA district office. The county office will inform the application that further processing will be handled by the district office and will advise the applicant not to prepare or develop an applicant until notified by FmHA to proceed. An information folder will be established and maintained by the county office once a preapplication is received.

(b) *Actions by the district office.* (1) Upon receipt of the Form AD–621 and all other required information and materials, the District Director will thoroughly review the package for completeness, accuracy, eligibility, and conformance with program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. The District Director may assist the applicant in completing the preapplication requirements. In cases where the District Director determines the applicant not eligible he/she will inform the applicant by issuing an AD–622 and informing the applicant of its appeal rights in accordance with Subpart B to Part 1900 of this chapter. The District Director will send the County Supervisor all of the appropriate information necessary to establish the county office information file. The District Director may request the County Supervisor's written comments and recommendations on the proposed site and local housing market demand.

(2) District Directors will rank all complete eligible preapplications in accordance with § 1944.231(b)(6) of this subpart. Pre-applications with exceptionally low priority ranking which are not likely to be funded within the next 12 months will be returned to the applicant with an indication of eligibility. District Directors must make a conscientious analysis of which loans they will be able to fund and document their analyis of those which will not be funded and why.

(3) The District Director will fully review the remaining ranked preapplications to determine feasibility. In cases where the District Director determines the application not feasible, he/she will inform the applicant by issuing an AD–622 and inform the applicant of its appeal rights in accordance with Subpart B to Part 1900 of this chapter.

(4) As evidence of market feasibility, an applicant that proposes a project which is expected to use FmHA rental assistance units will only be required to demonstrate that a market exists for persons and families eligible for rental assistance for the number of untis for which rental assistance will be provided.

(5) To evidence market feasiblity for projects which are expected to use rental assistance from a State or political subdivision thereof that is similar to FmHA's RA, applicants will be required to demonstrate that:

(i) A market exists for persons and families eligible for the assistance.

(ii) The assistance will be provided for at least 5 years.

(iii) For the term of the loan remaining after rental assistance is no longer available, an adequate rental market exists for the project without the assistance.

(iv) During the term of the rental assistance contract, the State or political subdivision will make available the amounts required at least annually.

(6) All preapplications determined eligible and feasible by the District Director will be immediately evaluated in accordance with the priority processing system established in this subpart. Preference in selecting and processing loan requests within the annual allocations will be based on the priority points received.

(i) *Projects in areas or communities having a high percentage of substandard housing.* For this purpose FmHA will use the county data provided by the National Office unless better and more specific statewide data approved by the National Office is available for a particular State. If the State mean of substandard housing exceeds 15 percent, use Chart A. If the State mean is 15 percent or less, use Chart B. Forty points to be distributed in the following manner:

A—over 34 percent	B—over 18 percent	40 points
31–34	17–18	35
27–30	15–16	30
23–26	13–14	25
19–22	11–12	20
15–18	9–10	15
11–14	7–8	10
7–10	5–6	5
0–6	0–4	0

(ii) *Projects in areas or communities having the lowest median rural household income.* This data will be provided by the National Office. Thirty points to be distributed in the following manner:

Less than 75% of State household income	30 points
75–79	25
80–84	20
85–89	15

90–94	10
95–100	0

(iii) *Projects which will serve the needs of rural communities located a number of miles from the FmHA eligibility line around urban areas considered ineligible for FmHA housing loans as determined by § 1944.10 of Subpart A of Part 1944 of this chapter.* Twenty points to be distributed based on map mileage from project site to urban area line over normally traveled roads in the following manner:

40 or more miles	20 points
30–39	15
20–29	10
10–19	5
0–9	0

(iv) *Projects located in communities or market areas which do not have subsidized rental housing in operation or authorized.* Ten points to be distributed in the following manner:

No subsidized rental housing project	10 points
No subsidized rental housing project of the same type (elderly or family) as proposed	5
Existing or authorized rental project of the same type as proposed	0

(v) *Projects assured of having some form of deep rental subsidy, such as FmHA's rental assistance, HUD's Section 8 or State or local housing financed subsidy approved by the National Office.* Twenty points will be distributed in the following manner:

51–100 percent of units	20 points
21–50 percent of units	15
10–20 percent of units	10
0–9 percent of units	0

(iv) *Projects designed and planned for elderly persons.*

Ten points will be distributed in the following manner:

Elderly projects	10 points
Other type projects	0

(vii) *Projects in which specific tracts of land will be donated.* Ten points will be distributed in the following manner:

Projects with donated land	10 points
Other type projects	0

(viii) In situations where priorities among competing loan requestings are essentially equal, preference will be given to preapplications from public bodies and nonprofit corporations.

(ix) In other cases where requests are essentially equal, preference will be given to preapplications based on pre-application date.

(7) After determining the priority ranking of the preapplication, the District Director should record the points earned on Form FmHA 1905–11, "Application and Processing Card-Association," in column 1 immediately following the applicant's name.

(8) After completing the review and rating in accordance with the priority processing system established in this subpart, the District Director will proceed as follows:

(i) In States that allocate funds to districts as prescribed by the National Office:

(A) The District Director will allocate and maintain preapplications totaling a percentage of the district's annual fund allocation. This percentage will be prescribed periodically by the National Office. Applicants having eligible preapplications that do not rank high enough and future eligible preapplications will be notified using Form AD–622 of their eligibility but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time. These preapplications will be ranked numerically based on their rating. As applications are approved, withdrawn or rejected and/or annual allocations increased which permit further authorizations, the applicant having the preapplication with the next highest numerical ranking will be contacted. If the factors supporting the ranking still exist, authorization to develop an application will be given.

(B) Applicants with preapplications within the District Director's approving authority that rank within the percentage authorized by the National Office of the district's annual funding allocation will be notified using Form AD–622 of their eligibility and feasibility and advised to develop an application. At this point, the District Director should provide the applicant with a copy of the Multiple Housing Management Handbook, Exhibit B of Subpart C of Part 1930 of this chapter. If OGC review is needed, it will be obtained by routing the file through the State Office.

(C) Preapplications in excess of the District Director's approval authority that rank within the percentage prescribed by the National Office of the district's annual funding allocation will be submitted to the State Office for review. The applicant will be notified in writing of this action.

(ii) In States that do not allocate funds to districts:

(A) The District Director will assemble the preapplication in a case file and forward the following to the State Director:

(*1*) Form AD–621.

(*2*) All information and material listed in Exhibit A–6.

(*3*) Original and one copy of Form FmHA 1940–21, "Environmental Assessment for Class I Action," or Exhibit H, depending on whether the assessment is a Class I or Class II action in accordance with Subpart G of Part 1940 of this chapter.

(*4*) Eligibility determination and recommendations.

(*5*) Comments and recommendations concerning the proposed project site resulting from an onsite visit to determine its overall desirability and conformance with the site location requirements indicated in § 1944.215(q) of this subpart.

(*6*) An updated copy of Form FmHA 1905–11.

(B) If the preapplication is in excess of the District Director's approving authority, no AD–622 will be issued by the District Director until notified by the State Director.

(c) Actions by the State Office. (1) Unless the applicant is an individual or an organization adopting without change the articles and bylaws prescribed by Exhibits C and D of this subpart or by State supplements or has received clearance from OGC for the same type of financing, the documentation necessary to make an eligibility determination and any questions or comments of the State Director will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State law and this subpart.

(2) Preapplications that exceed the State Director's approving authority and rank within the percentage authorized by the National Office of the State's annual funding allocation will be sent to the National Office for evaluation, authorization and guidance. When preapplications are submitted to the National Office, the following information must be included in the submission:

(i) The complete and properly assembled preapplication case file.

(ii) The schematic or preliminary drawings and specifications, together with the architectural comments and recommendations, of the State Office architect.

(iii) The information required by § 1944.213(a) of this subpart.

(iv) The District Director's comments and recommendations.

(v) The State Director's comments and recommendations.

(3) The State Director will evaluate the preapplication and the District Director's eligibility and feasibility determination and recommendations. The evaluation will include a review of the proposed development by the State Office architect who will advise the State Director on the acceptability of the proposed development.

(i) In States that allocate funds to districts as prescribed by the National Office, the State Director will notify the District Director of the review results. The State Director will return the preapplication and the executed original Form FmHA 1940–21 or Exhibit H of Subpart G of Part 1940 of this chapter, as appropriate, to the district office with authorization for the District Director to prepare and issue Form AD–622.

(ii) In States that do not allocate funds to districts, the State Director should proceed as follows:

(A) After reviewing the priority rating of the preapplication, the State Director should rank and record the points earned on Form FmHA 1905–11. This form will be maintained in the State Office.

(B) The State Director will allocate and maintain up to the percentage authorized by the National Office of the State's annual funding allocation to the highest ranking preapplications on hand. Applicants having the remaining eligible preapplications and future eligible preapplications will be notified by the district office, using Form AD–622, of their eligibility but advised that processing priorities and current funding levels will not permit further processing of their preapplications at this time. These preapplications will be ranked numerically based on their rating. As applications are approved, withdrawn or rejected and/or annual allocations increased which permit further authorizations, the applicant having the preapplication with the next highest numerical ranking will be contacted. If the factors supporting the ranking still exist, authorization to develop an application will be given.

(C) The State Director will notify the District Director of the review results. The State Director will return the preapplication and the executed original Form FmHA 1940–21 or Exhibit H of Subpart G of Part 1940 of this chapter, as appropriate, to the district office with authorization for the District Director to prepare and issue Form AD–622.

(d) *Summary.* The District Director will prepare Form AD–622, stating the results of the review. The original will be signed and delivered to the applicant, with a copy to the applicant's case file, a copy to the County Supervisor and a copy to the State Director.

(1) Applicants with preapplications which are not favorably considered will be notified in writing of the reasons why the request was not favorably considered and will be informed in accordance with Subpart B of Part 1900 of this chapter that they may request a further review of this decision.

(2) Applicants with preapplications which are eligible and feasible, but are unable to be selected for further processing within the percentage authorized by the National Office of the State Office or district office allocation of funds, will be notified that their preapplications were determined eligible but lacked sufficient priority to authorize further processing at the present time. Applicants should be advised that their preapplication will be retained and considered for future funding based on its rating. If funding is not authorized within one year from the date of the AD–622, applicants will be notified in writing that their preapplication will no longer be considered unless it is resubmitted or updated. In addition, until loan funds are available, applicants will be advised against incurring obligations for legal, architectural and engineering work, perfecting interests in land rights and inviting construction bids or making other commitments which cannot be fulfilled without loan funds.

(3) When an applicant is notified to proceed with an application, the District Director should establish specific deadlines for developing the proposal to avoid unreasonable delays by applicants not prepared to proceed. In addition, the following paragraphs should be contained on or attached to Form AD–622:

(i) "The review action taken by FmHA is based on representations made in your preapplication presented to FmHA. Any changes in approximate project costs, size or scope of the project, rental rates to the tenants or subsidy costs to the Government, scope of services, sources of funds, or any other significant changes in the project or applicant must be reported to and approved by FmHA in writing."

(ii) "Any changes not approved by FmHA will be cause for discontinuing processing of the application." All applicants requesting changes will be required to give full justification for each change and, if FmHA approval is not given, written reasons should be provided along with a 30-day negotiation period to resolve the differences.

(iii) "This action is not to be considered as loan approval or as a representation of the availability of funds."

(iv) "The loan docket may be completed on the basis of a loan not to exceed the amount shown on Form AD–622."

(v) "If a complete application has not been developed in approvable condition by the date specified on Form AD–622, FmHA reserves the right to discontinue processing the application."

§1944.232 Rental Assistance from Sources Other than FmHA

(a) *Rental assistance agreements with other providers of RA in conjunction with FmHA Plan II.* (1) RA from sources other than FmHA may be used in new or existing RRH projects. FmHA will consider entering into a memorandum of understanding with other providers of RA, such as HUD Section 8, State or local public entities, profit or nonprofit organizations, individuals or other providers acceptable to FmHA. The memorandum of understanding should be executed between FmHA and the provider with dollar amounts per unit for specified periods agreed upon prior to the State Director issuing Form AD–622 for new projects when the number of rental assisted units is based, all or in part, on the needs and availability of RA. As a minimum, the memorandum of understanding must contain provisions to include the following:

(i) A contract for rental assistance will be the instrument of agreement involving the tenant, owner and provider of assistance. FmHA will not be a party to the contract nor have any responsibilities under the contract.

(ii) The payments should be paid directly to the tenants or the owner, who must advise the tenants of the amount and source of the assistance through a supplement to the lease.

(iii) FmHA will provide reasonably required information including the tenant eligibility certification needed to execute the provisions of the contract for rental assistance and the memorandum of understanding.

(iv) Sufficient funds must be set aside in a way that assures availability of RA for the life of the contract.

(2) The documents referred to in paragraph (a)(1)(i) of this section must be submitted by the State Director to the National Office for concurrence prior to execution with the source of assistance. If the memorandum of understanding encompasses multiple projects and/or multiple borrowers, you may request blanket authorization for all projects covered by the memorandum of understanding instead of submitting each preapplication to the National Office.

(b) *Other sources of RA.* (1) Other sources of RA may be available from HUD Section 8, State or local public entities, profit or nonprofit organizations, individuals or other sources acceptable to FmHA. In order to ensure the Government's long-term security interest in projects which use

this type of RA, the following formula should be used to determine the project size:

(i) The determination of the maximum size of the project will be based on the number of units supported by the market study on Plan II interest credit plus the product of the maximum number of units available for deep subsidy multiplied by a constant equal to .05, which equates deep subsidy being provided to that of a 20-year contract and multiplied by the number of years of the deep subsidy. In other words:

(A) *Number* of rental units feasible under FmHA Plan II

(B) *Plus the Product of* number of units available for deep subsidy contracts

(C) *Multiplied by* 5% (.05)

(D) *Multiplied by* number of years for term of deep subsidy contract

(E) *Which Equals* maximum number of rental units in RRH project based on market feasibility under FmHA Plan II plus added units due to availability of deep subsidy rental assistance.

(ii) Formula: $A + (B \times C \times D) = E$.

(iii) Example:

(A) An RRH family project is proposed. The market study supports 50 units on Plan II and a request is made for 40 percent RA to be provided for a period of 5 years: (50 X .40 = 20 units for 5 years). The maximum project site will be *55* units.

(B) 50 + [20 RA units X .05 X 5-year RA contracts] = 50 + [1 X 5] = 55 Total No. of rental units (maximum).

(2) In projects in communities of less than 2,500 population where no or less than 24 rental units appear to be feasible under Plan II but other rental assistance is assured for a period of not less than 5 years, the State Director must determine and provide written documentation in the docket that the following conditions exist:

(i) The market study indicates a sufficient need exists to support the proposed project for very low- and low-income individuals and families.

(ii) The income and financial condition of the potential tenants preclude them from affording basic rent in a Plan II project without FmHA RA or other sources of RA.

(iii) If other acceptable sources of RA other than FmHA's are available and can be assured for at least 5 years, the market study must show that an adequate rental market will exist for the project without RA for the remaining term of the loan.

(iv) The eligible rural community in which the RRH project is proposed to be located has experienced a stable or growing population for at least the past decade and no adverse change in population is anticipated in the foreseeable future.

(v) There are less than 24 rental assistance units existing or planned from Federal, State or local public entities that adequately provide needed housing in a community to serve very low- and low-income families at affordable rental rates. FmHA may provide the difference between the number of existing or planned units and the total of 24 units that could be authorized.

If all of these conditions exist, the State Director may authorize the RRH project and process the application. The maximum number of rental units will be determined in accordance with paragraph (b)(l)(i) of this section. Since continued feasibility using only interest credit Plan II after expiration of other sources of RA cannot be assured, you should approve only up to a maximum of 24 units for the community after discounting any other units that may have been built from other sources as indicated in paragraph (b) of this section.

§§ 1944.233–1944.234 [Reserved]

§ 1944.235 Actions subsequent to loan approval.

(a) *Precommitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be closed prior to the start of construction. During this processing, the following actions should be taken:

(1) Execution by the borrower of the appropriate loan agreement or loan resolution required in accordance with § 1944.215(e) of this subpart.

(2) Obtain closing instructions from OGC in accordance with the requirements of Part 1807 of this chapter (FmHA Instruction 427.1) and § 1944.246(b)(4) and § 1944.236(a) of this subpart.

(3) Unless initial operating and maintenance capital is included in the loan in accordance with § 1944.212(o) of this subpart, the applicant will furnish evidence of the deposit of initial operating and maintenance capital into the general fund account of the project.

(4) The borrower will provide evidence indicating the terms and final arrangements for interim financing.

(b) *Transfer of obligations.* The transfer of fund obligations may occur only when:

(1) *Organizational entity remains the same.* The entity remains legally the same but a substitution of the members occurs. All or part of the membership may change as long as eligibility is not affected. The project site location and market must remain the same.

(2) *Organizational entity changes.* The membership and their interests remain identical, the project site location and market are the same, but the legal entity changes.

(c) *Financing during the construction period.*—(1) *Interim financing.* When the amount of the RRH loan exceeds $50,000, the applicant should obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates. Such interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. Interim financing will be used subject to the following:

(i) FmHA will proceed as if FmHA funds had been advanced from the standpoint of approving construction contracts, inspection of construction and assuring compliance with applicable equal opportunity, nondiscrimination and, in cases involving Section 8, Davis-Bacon Act requirements.

(ii) The FmHA State Director or District Director will deliver a copy of Form FmHA 1944–57 to the proposed interim lender as evidence of the FmHA commitment to the applicant. The guide letter shown as Exhibit B of this subpart will be used by the State Director or District Director to inform a proposed interim lender that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions, the builder's performance is acceptable and all construction bills are paid.

(iii) Since FmHA's commitment to the applicant is contingent upon acceptable performance by the builder and payment of all construction bills, the interim lender should be advised of the additional risk involved if the builder is unable to provide, or the interim lender does not require a payment and performance bond. Although partial payments to the builder constructing the project by the contract method of construction must be made in accordance with the approved construction contract, the interim lender should not be permitted to make disbursements of more than 90 percent of the value of acceptable work in place.

(iv) Any cash for land purchase or development that is to be furnished by the applicant in fulfillment of the applicant's contribution requirement in § 1944.213(a)(2) of this subpart must be placed on deposit with the interim lender and disbursed prior to any disbursement of interim loan funds. Obligations incurred prior to loan closing and the start of construction will

be handled in accordance with § 1944.213(c).

(v) A supervised bank account need not be established for funds obtained through interim financing. However, in order to assure that funds are requested and used for authorized purposes, requests for partial payments will be submitted through the District Director on Form FmHA 424–18, "Partial Payment Estimate," or other professionally recognized form containing the certifications of the architect, applicant and FmHA representative. For recordkeeeping purposes, Form FmHA 402–2, "Statement of Deposits and Withdrawals," should be used to record the deposit of applicant funds for construction with the interim lender and payments of estimates where FmMA has approved the estimate.

(iv) When the project is substantially complete, the FmHA loan may be scheduled for closing. A project is substantially complete when it is possible, in accordance with any contract documents, applicable State or local codes or ordinances and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantital completion, the owner's architect must issue a dated and signed statement certifying to substantial completion. The owner's architect will also prepare and verify a punch list of any minor items of development that need to be corrected and completed.

(vii) The FmHA loan may be closed, permanent instruments issued to evidence the FmHA indebtedness and FmHA loan funds used to retire the interim indebtedness when the project is substantially complete and all bills have been paid. To evidence that there are no unpaid obligations outstanding in connection with the project, the applicant must submit to the District Director, at or prior to loan closing, signed statements from the contractor, architect, engineer and attorney indicating that obligations for material, labor or services have been paid in full in accordance with their contracts or other agreements, less any funds withheld for minor punch list items. Form FmHA 424–10, "Release by Claimants," or other similar form may be used for this purpose. If these statements cannot be obtained, the loan may be closed if all of the following can be met:

(A) Statements to the extent possible are obtained.

(B) The interests of FmHA can be adequately protected and its security position is not impaired.

(C) Adequate provisions are made for paying the unpaid accounts by withholding or escrowing sufficient funds to pay such claims or obtaining a release bond.

(2) *Multiple advances of RRH loan funds.* If interim financing is not available and the applicant supplies such evidence, multiple advances will be used subject to the following:

(i) In cases where relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for these purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing these loan funds in the supervised bank account and reduce the amount of required collateral.

(ii) Except as indicated in paragraph (c)(2)(i) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, there should be no more than 24 advances. These advances should generally be used within 2 years of loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering or architectural costs, interest and other expenses as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed for 30-day Period Commencing _____," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or his/her designee.

(iii) After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested through field office terminals and recorded on Form FmHA 1944–57 in accordance with the FMI and the MFH user procedure. As an example, for a loan of $100,000, the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land Acquisition	5,000
Architectural	4,000
Legal	1,000
Total	$40,000

An advance of $40,000 would then be available on July 1, the date of loan closing.

(iv) The second advance is also based on the borrower's estimate prepared on Form FmHA 440–11 which must be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken down as follows:

Construction	$20,000
Architectural	1,000
Total	$21,000

(v) Form FmHA 1944–57 specifying the amount of the second advance will be prepared and funds will be requested through field office terminals. The same procedure will be followed for each advance until the project is completed.

(vi) When the project is substantially complete in accordance with § 1944.235(c)(i)(vi), schedule final payment to the contractor for disbursement. Withhold funds over the amount needed to cover the costs for correcting or completing the minor items identified from the contractor's final payment in accordance with the requirements of Subpart A to Part 1924 until full performance.

(vii) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(d) *Requesting the check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraph (c)(1) or (c)(2) of this section. The District Director or his/her designee will then order the loan check through field office terminals so that it will be available on or just before the date set for loan closing.

(e) *Increase or decrease in the amount of the loan.* (1) If it is necessary to increase the amount of the loan within *the same fiscal year* but before loan closing, the loan approving official or District Director will request that all distributed docket forms be returned to the district office. The loan docket will be revised accordingly and reprocessed.

(2) If it is necessary to increase the amount of the loan in *the next fiscal year* but before loan closing, the District Director must process a subsequent loan for the amount of increase.

(3) If it is necessary to decrease the amount of the loan before loan closing, the District Director must notify the Finance Office of the decreased loan amount by memorandum. The District Director's memorandum must, at a minimum, contain the following:

(i) The applicant's name.

(ii) The applicant's case number.

(iii) The fund code.

(iv) The nature of the request.

(v) The amount of decrease.

(vi) The new amount of loan (after decrease).

(f) *Cancellation of loan.* Loans may be canceled after approval and before loan closing in accordance with instructions on the Form Manual Insert for Form FmHA 1944–53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation."

(1) If the loan check is received in the district office, the District Director will return the check to the Finance Office with an original and one copy of Form FmHA 1944–53, unless it was issued by the National Finance Center (NFC). If the check was issued by NFC, cancel under FmHA Instructions 2024–P (available in any FmHA office).

(2) Notify all interested parties of cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, notify the applicant that the decision may be appealed in accordance with Subpart B to Part 1900 of this chapter.

(g) *Handling the loan check.* The loan check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 (available in any FmHA office) and Subpart A of Part 1902 of this subpart.

(h) *Property insurance.* Buildings will be insured in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(i) *Prerent-up conference.* To promote proper planning for intitial rent-up and occupancy, the District Director will meet with the applicant and management firm, if any, soon after loan approval to discuss the affirmative fair housing marketing plan or any other similar agreement approved for the project.

(1) The District Director will review the applicant's marketing plan to determine that it is complete and all supplemental information is provided. If the plan needs to be modified before marketing activity begins, approval must be granted from the official authorized to approve the loan. The District Director will review the approved operating budget to determine if it is still adequate for the initial operating period. If it is not adequate, a rent change will be made according to paragraph VI C of Exhibit C of Subpart C to Part 1930 of this chapter.

(2) The District Director should be assured that the applicant will sincerely direct marketing activity in an effort to attract applications for housing from all groups in the market area. If it is anticipated that applications for housing may result in a concentration of occupancy by race, color, religion, sex or national origin, outreach efforts will be extended to persons who would not be expected to apply for the housing. The efforts will be conducted for a reasonable period of time prior to the normal period for receipt of applications and commencing not less than 90 days prior to project completion.

(3) Prior to initial occupancy of any tenant, the District Director and the applicant will reconvene to assess implemented marketing activity by thoroughly reviewing the marketing plan, anticipated occupancy results and the extent of achievement of plan objectives. If original marketing concepts prove to be less than effective and/or if there are changes in the housing market, the applicant may be required to modify the marketing plan for the project. If the District Director determines that the applicant is in noncompliance with the plan and a modification to the plan is not warranted, the matter will be referred to the FmHA Administrator, attention Equal Opportunity Staff Director, through the State FmHA compliance officer.

§ 1944.236 Loan closing.

(a) *Applicable regulations.* RRH loans will be closed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) and any State supplements. Loan dockets for organizations and, in special cases, dockets for individuals will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization or individual applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions if the attorney or title insurance company and its principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization if the cost is in accordance with § 1944.212(l) of this subpart.

(b) *Mortgage.* Unless OGC determines the form to be inappropriate, Form FmHA 427–1 (State), "Real Estate Mortgage for _____," will be used. For loans to organizations, Form FmHA 427–1 will be modified as prescribed by or with the advice of OGC with respect to the name, address and other identification of the borrower, the style of execution and the acknowledgment.

(1) The mortgage or other instrument will contain the following covenant:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations issued pursuant thereto for as long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for as long as the purchaser owns it, whichever is longer.

(2) When a loan resolution or loan agreement is used, include an additional paragraph in the mortgage to read as follows:

> This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Resolution (Loan Agreement) of (*Date*), which is hereby incorporated herein by reference.

(3) For a loan to an individual when a loan agreement is not used, additional paragraphs will be included in the mortgage to read as follows:

(i) "Occupancy of the housing and related facilities on the property will be limited to eligible occupants as defined in the regulations of the Farmers Home Administration unless the Government gives prior written approval to other occupancy."

(ii) "As required by the Government: Borrower will permit the Government to inspect and examine the operation of the housing and the books, records, and operations of Borrower; submit regular and special reports pertinent to the purpose of the loan or the Government's financial interest; subject rents and charges and other terms of rental agreements with occupants of the housing, and compensation to employees connected with its operation, to prior approval by the Government, or to adjustment at the direction of the Government when necessary in its judgment to carry out the purpose of the loan or protect its financial interests; and comply with any other requirements which in the discretion of the Government are reasonably appropriate to the purpose of the loan or protection of the Government's interest. Revenue from the housing shall be first used to pay operation and maintenance costs of

such housing and to make adequate provision to meet required payments as they become due on the FmHA rural rental housing loan."

(4) For a loan to a limited partnership, the following nonrecourse language should be inserted, subject to modification by the Office of General Counsel:

No partner, either general or limited, shall have any personal liability for the payment of all or any part of the indebtedness.

(5) For all RRH Section 515 loans approved on or after December 21, 1979, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this _____ (15) years for unsubsidized and 20 years for subsidized loans) year period beginning (the date the last loan on the project is closed). No person occupying the housing shall be required to vacate prior to the close of such _____ (15) years for unsubsidized and 20 years for subsidized loans) year period because of early repayment. The borrower understands that should an unsubsidized project be converted to subsidized within 15 years from the date the last loan on the project is closed, that the period will be increased by 5 years. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided. A tenant may seek enforcement of this provision as well as the Government.

(6) Any borrower whose loan was approved prior to December 21, 1979, and was closed on or after that date with the prospective restrictive prepayment language in the mortgage or loan resolution or agreement should be notified that it can have these instruments modified if desired. The only change would be deletion of the restrictive prepayment language. Any cost associated with the modification must be borne by the borrower. Any action in this area should be approved by OGC.

(c) *Promissory note.* (1) Form FmHA 1944–52 will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instruction for preparation in the FMI for the note will be followed.

(2) The amount to be shown on the note will be the same as shown on Form FmHA 1944–51 or the new adjusted amount of the loan after increase or decrease, as appropriate. The note will be dated the late of loan closing except as authorized in Part 1807 of this chapter (FmHA Instruction 427.1). If the first day of the month falls on Saturday, Sunday or a holiday, the note may be dated the first, loan closing will be the last working day prior to the first and the closing documents will be filed on the first working day following the first.

(3) Payments on RRH loans will be scheduled on the note in accordance with the FMI. As provided in § 1944.215(c) of this subpart, the principal installments may be deferred until construction is substantially complete and the project is ready for full operation.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter (FmHA Instruction 427.1).

(5) On or after May 1, 1985, all loans will be closed on a Predetermined Amortization Schedule System (PASS) as described in Subpart K of Part 1951 of this chapter. If the loan is a subsequent loan, all other loans on the project must be converted to PASS.

(6) All RRH loans to be secured by revenue bonds or other forms of security other than a real estate mortgage or deed of trust will be sent to the National Office prior to loan approval with all necessary information for review and further instructions.

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy, including the recording data showing the date and place of recordation and book and page number, will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(e) *Date of closing—establishment of account.* (1) An RRH loan is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan is closed, the account and case folder will be established at the district office following the requirements of FmHA Instructions 1905–A and 2033–A (available in any office).

§ 1944.237 Subsequent RRH loans.

(a) A subsequent RRH loan is a loan made to an applicant/borrower to complete, improve, repair and/or expand the project initially financed by FmHA.

(b) If the designation of an area changed from rural to nonrural after the initial FmHA loan was made, a subsequent loan can be made only to make necessary improvements and repairs to the property.

(c) In case where the loan is to complete the original housing under the initial FmHA loan:

(1) If the applicant/borrower provided an initial investment greater than the 5 percent required under the initial FmHA loan, the excess may be credited toward the required 5 percent initial investment of the subsequent loan; the applicant/borrower should only be required to put up additional funds for this purpose if needed. The same applies to initial O and M requirements.

(2) If the initial 5 percent investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA loan, the applicant/borrower must provide the additional 5 and 2 percent amounts to cover the subsequent loan.

(d) If the loan is to repair and/or improve an existing project which has been in operation for some time, then:

(1) The applicant/borrower should not be required to provide the initial 2 percent O amd M amount since its purpose is to cover project start-up costs.

(2) The applicant/borrower must provide the initial 5 percent investment unless it provided more than the required 5 percent when the initial loan was made. When the applicant/borrower has more than 5 percent invested in the initial loan, the excess may be credited toward the required 5 percent investment for the subsequent loan. The applicant/borrower should be required to contribute additional funds only if needed. The applicant/borrower will not be given consideration for any increased equity or value that the property may have since the date of the initial FmHA loan.

§ 1944.238 [Reserved]

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH.

Any occupant or applicant for occupancy or use of RRH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, marital status, handicap or national origin may file a complaint with the Secretary of Agriculture, (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington DC 20250. If a complaint is made to an FmHA county, district or State office, it should be directed to the Office of Equal Opportunity (USDA–OEO) by the FmHA

employee in charge of that office. If the complaint is sent to USDA–OEO by a county or district office, the State Director will be made award of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA district office. The complainant should provide the following information:

(1) The name and address (including telephone number) of the complainant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place or the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) If a complaint is received by an FmHA office, the County Supervisor, District Director or State Director will acknowledge receipt of the complaint and promptly send it to the USDA Office of Equal Opportunity, Washington, DC 20250.

(c) Accompanying the complaint should be a statement from the District Director or State Director as to whether the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the District Director or State Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any complaint until requested to do so by the National Office.

(d) The USDA Office of Equal Opportunity will determine whether discrimination occurred. Appropriate steps will be taken to ascertain the essential facts. The USDA Office of Equal Opportunity will handle complaints in accordance with Department regulations, which are found at 7 CFR 15.6.

(e) If it is found that the complaint is without substance, the parties concerned will be so notified.

(f) If it is found that borrower's discrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such findings and advise the violator to take the action necessary to correct the violation and to give appropriate assurance of future compliance.

(g) If the borrower fails to take such action and assure future compliance, the Administrator may take further appropriate action.

§ 1944.240 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such requirement would adversely affect the interest of the Government or the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact and identifies the particular requirement involved. The State Director must also show proper alternative courses of action and identify how the adverse impact will be eliminated.

§ 1944.241 OMB control number.

The collection of information requirements in this regulation has been approved by the Office of Management and Budget and assigned OMB control number _____.

§§ 1944.242—1944–250 [Reserved]

Exhibit A of Subpart E—How To Bring Rental Housing to Your Town

I Introduction
II Applying for a Loan
III Review of the Preapplication
IV Developing the Loan Docket
V Review of the Complete Docket
VI Construction
VII Open House
VIII Exhibits.

I. Introduction

A. Most areas in rural America need more adequate rental housing. The elderly with modest incomes often live in improvised flats or apartments that are cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Others, such as school teachers and the newly married, often cannot find suitable rental housing of any kind in the rural community where they work. Other households who prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small rural communities.

B. To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) finances rental housing in rural communities. Nonprofit organizations, other types of organizations and individuals may qualify for loans. Information about these loans is available at the local FmHA office.

C. This handbook has been written to assist interested persons and groups in completing an application and obtaining the information required for a loan docket. It also briefly explains requirements regarding the construction and operation of the rental housing.

D. The basic guidelines in this handbook apply to all applicants; however, some requirements will vary depending on the size of the project and whether the applicant is a nonprofit organization, other type of organization or an individual.

E. The objective of the Rural Rental Housing (RRH) loan program is to provide credit for rental housing that serves the needs of eligible rural permanent tenants at rental rates that elderly, handicapped persons, and others with very low, low and moderate incomes can afford.

F. Successful rental housing depends on the existence of three important conditions, namely:

1. There must be a need for the rental housing to be built.

2. The housing must fit the needs of prospective occupants from the standpoint of location, design and cost.

3. The applicant must provide good management.

G. An applicant for a loan must provide adequate information to FmHA to show that these basic conditions can be met.

II. Applying for a Loan

A. An individual, organization or group organizing to provide housing may apply for an RRH loan to finance rental housing. The application should be made to the local FmHA District Director or County Supervisor serving the area in which the housing is to be located.

B. The applicant should read the FmHA pamphlet on RRH loans before applying for a loan. The applicant also should discuss the proposed housing with the District Director or County Supervisor before completing a preapplication.

C. Applying for a loan begins with a "Preapplication for Federal Assistance" on Form AD–621. Attached or included with the preapplication form should be the supporting material or information listed in Exhibit A–6. This information will enable FmHA to determine:

1. Eligibility of the applicant;

2. Feasibility (economic and architectural) of the proposed housing; and

3. Whether the proposed housing can appropriately be financed by the FmHA.

D. This information usually can be furnished by the applicant without hiring extensive professional services. It should be factual and specific based on objective investigations and realistic estimates.

III. Review of the Preapplication

A. The preapplication may be sent to the FmHA District Director or County Supervisor. If the preapplication is sent to the county office, the County Supervisor will forward it to the District Director for processing.

B. FmHA will provide its review comments and recommendations in writing. The applicant should interpret them within the context of the proposal's appropriateness for FmHA funding.

C. The District Director must submit complete preapplications for proposals beyond his/her approval authority, along with his/her comments, to the State Office. The State Office rural housing staff and the State Architect will review the package.

D. Complete preapplications for proposals beyond the approval authority of the State Director, including the comments and recommendations of the District and State

Office staffs, must be submitted to the Administrator. Reviews will be made by the National Office Multiple Family Housing Processing Division and the Program Support Staff.

E. When the reviews are completed, the District Director will notify the applicant, using Form AD–622, "Notice of Review of Preapplication Action," of FmHA's decision.

If it appears a loan can be made, the District Director will explain to the applicant the additional steps that will be required. If favorable action cannot be taken on the preapplication, the District Director will explain the reasons and may be able to suggest changes to permit a loan to be made.

F. If the proposal exceeds the District Director's approval authority, he/she will submit the docket to the FmHA State Director for consideration. The State Director will send dockets for projects in excess of his/her loan approval authority to the FmHA National Office in Washington, DC for review.

G. The completeness and accuracy of information submitted with the preapplication is especially important when reviews are necessary by FmHA offices remote to the proposed sites and without direct knowledge of conditions and circumstances involved with the project. The description of the planned housing must be clear, complete and concise to ensure timely reviews by FmHA.

IV. Developing the Loan Docket

A. When an applicant is authorized to submit a formal application, the District Director will review with the applicant the items required in Exhibit A–8 with Form AD–625, "Application for Federal Assistance (Short Form)." The amount of information required will vary based on the complexity and size of the proposed housing project. The District Director will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as exhibits in this handbook. The applicant is responsible for providing the information required.

The District Director will assemble this information and complete the docket.

B. The following steps may be followed in developing a loan docket. The first two steps are applicable only to nonprofit organizations. The other steps apply to any applicant.

1. Getting Organized if Applicant is a Nonprofit Organization and Has Adopted Articles of Incorporation and Bylaws

a. Steering Committee

The group may choose a steering committee to act for them. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee should select an attorney who is interested in the proposed housing and will render the necessary services promptly for a reasonable fee.

b. Articles of Incorporation and Bylaws

FmHA has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee should arrange for the District Director to meet with the attorney. The District Director will give the attorney copies of the FmHA model articles of incorporation and bylaws and explain FmHA requirements.

c. Attorney's Fees

Reasonable attorney's fees may be included in the FmHA loan. A written agreement between the applicant and attorney is required. See Exhibit A–1 for a sample copy of an agreement.

d. Board of Directors

The steering committee usually selects the incorporators for the corporation. The board of directors of the corporation is responsible for conducting the corporation's business, including obtaining the loan and providing overall management after the housing is completed.

2. Obtaining Broadly Based Membership

a. A nonprofit corporation applying for a loan must have and maintain a broadly based local membership representing a variety of interests in the community, including leaders in the community. The members may be both individuals and organizations but each member is limited to one vote.

b. The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee and provide assurance that the housing will be a success and the purpose of the loan carried out.

c. In RRH loans made to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance and adequate community support of the housing project over the expected life of the loan are important.

d. A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

(1) Number of Members Required

The number of members required to meet the broadly based membership requirement will vary, depending on such factors as the applicant's experience and financial condition, the size of the housing project, the size of the community and the ratio of loan to the appraised value of the security. The board of directors, with the advice of FmHA, should decide the number of members needed to assure their organization of sufficient community support.

(2) Contributions by Members

Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupancy of the housing.

3. Initial Operating Capital

a. All applicants must have enough initial operating capital to get started. When justified, FmHA may include these funds in a loan made to a nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and desposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction and other initial expenses.

b. The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupancy and rental income will be available. Two percent of the total cost of the proposed project will usually cover the costs of getting the housing started if the applicant does not intend to provide furniture or movable equipment for the units. The actual budget, however, may indicate that more than 2 percent is needed.

4. Analysis of Market To Determine Demand for Rental Housing

a. Applicants should discuss with the District Director the type of market analysis that will be needed. This will vary with the community and the size of the project. Applicants who are interested in developing larger (20 units or more) projects will have to make a complete market survey showing the need and demand for rural rental housing in the area. The market survey will provide a detailed overview of demographic and housing characteristics within the community.

b. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, the economic justification for the size of the project and the type of units provided should be based primarily upon the need and demand from eligible prospective occupants who are permanent residents of the community. Demand from the more temporary residents of a town, such as college students and military, should be discounted in determining project size. The information needed in a rental market survey includes:

(1) Number of single-family, multi-family and mobile homes currently in the total housing stock.

(2) Characteristics of available rental housing, such as location, size of units, type of building, age of structure, vacancy rate and rental levels.

(3) Characteristics of the area residents, such as single or couples, size and composition of household, number of elderly persons, number of nonelderly persons and number of handicapped.

(4) Income and financial condition of the people in the area.

c. In order to verify a market projects of less than 20 units, the applicant may be requested to conduct a rental market survey to identify the number of tenants the applicant can expect for the kind of housing planned. The rental market survey will involve the identification of individuals who

are both eligible to occupy the proposed housing and actually ready and financially able to occupy the proposed rental housing.

d. To assure full occupancy as soon as the housing is completed, about 50 percent more eligible prospective occupants than the number of units to be built should be identified in the market survey before the loan docket is submitted. Prospective occupants who are temporary residents of the community should not be included in the market survey. People interested in becoming occupants can be identified by:

(1) Personal solicitation by the applicant.

(2) A public meeting. The District Director can arrange to have someone from FmHA assist the applicant in conducting the meeting.

(3) Newspapers, TV and radio. Coupons that can be clipped from a newspaper and sent to the applicant to indicate interest have been used by some applicant. The applicant should contact each interested person to find out if he/she is eligible, willing and able to more into the housing when it is completed. A list of prospective occupants should be maintained in the order in which they indicated their interest. The list could possibly serve as a preliminary wating list from which the first occupants of the housing may be selected.

e. Exhibits A–2 and A–3 are sample forms which may be modified as necessary by the applicant and used to assist in the assembly of the information for the market analysis and the market survey.

5. List of Prospective Occupants

To assure that the proposed housing will be fully occupied shortly after completion of construction, the applicant should begin developing a waiting list of prospective eligible occupants early in the development of a loan docket. In order to promote proper planning for initial rent-up and occupancy, the District Director will convene with the applicant after loan approval, preferably at the preconstruction and/or during the pre-rent-up conference, to discuss the Affirmative Fair Housing Marketing Plan or any other similar agreement approved for the project.

6. Planning To Fit the Market

a. Planning the housing to fit the existing market in the community involves more than obtaining a blueprint of the building. It requires a careful evaluaton of conditions in the community and careful planning to assure that the result will be good rental housing designed for indepenent living at a cost elderly persons, handicapped persons, and other people with low to moderate incomes can afford. Well planning housing is:

(1) Convenient, attractive, safe and comfortable.

(2) Easily maintained.

(3) Located where its occupants can have easy access to the goods and services they require for daily living.

(4) Planned to meet all codes, regulations, and acceptable construction practices.

(5) Designed to fit the market for the future as well as the present.

(6) Priced to rent for no more than the prospective occupants can afford.

(7) Energy efficient and complies with FmHA's thermal performance standards.

b. Do not build more units than needed in the area. Keep the rents down to the level prospective tenants are able and willing to pay. Start with a modest number: if experience demonstrates a need for more units, additional loans to create more rental units can be considered.

c. The District Director and State Office architect can provide information that will help the applicant in planning the housing.

7. Selecting an Architect

a. The services of an architect are required for all rental housing projects unless they involve no more than four units. The cost of a registered architect/engineer may be included in the loan.

b. Before anything more than schematic drawings are prepared, the applicant and its architect, the FmHA architect/engineer and the District Director should arrange a meeting. This meeting will acquaint the applicant's architect with the purposes of the housing and FmHA's requirements. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

(1) Objectives of the rental housing program.

(2) Services the architect will be expected to perform.

(3) Agreement between architect and applicant.

(4) Stages at which FmHA must review plans and specifications.

(5) Design requirements that will produce good housing at a reasonable cost.

8. Selecting a site

a. The location of the housing is an important part of planning to fit the market. Tenants will require easy access to required services. A desirable residental setting within a rural community is essential.

b. Site cost is also important. The total cost of the site, including the cost of improvements and the price of the land, must be considered. Both may be included in the loan.

c. Before buying a site, the applicant should consult the architect to determine the suitability of the site for the proposed housing. The structure to be placed on the site must meet the needs of those who will be occupying it. The applicant must address the potential environmental impacts of the location and important constraints, i.e., the presence of floodplains, wetlands, prime or unique farmlands or other sensitive environmental features.

d. The applicant should also consult local authorities regarding building restrictions, zoning, public utilities, taxes and any proposed public work in the area. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving an FmHA loan without consulting with the FmHA District Director and prior to the Agency's completion of the environmental impact review.

e. Loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA appraisal.

9. Drawings, specifications and cost estimates

a. The size, complexity and cost of rental housing projects can vary from a duplex unit located on a residental building lot to a complex of buildings located on a site containing several acres.

The applicant must provide drawings and specifications in enough detail to enable FmHA to determine if the proposed housing will be the kind of rental housing FmHA is authorized to finance. The District Director or other FmHA representative will explain to the applicant and its architect the kind of drawings, specifications, and cost estimates required for the loan docket. The cost estimate will contain a detailed breakdown showing items such as land, building construction by trades, equipment, utility connections, site improvements, architectural services, interest during construction, pro-rated share of any off site improvements, closing costs and legal services. Items not being financed with loan funds should be shown separately.

b. The drawings should include a plot plan showing the relationship of the proposed structures, the property lines, streets, utility lines, alleys and adjacent structures and their uses. It should also show proposed off-street parking for the occupants and their visitors. Other facilities such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

10. Financial statement

A current financial statement will be required when the loan docket is submitted for approval. Individuals applying for an insured rental housing loan may obtain forms from the District Director to provide their financial statement. The financial statement should show all assets and liabilities in sufficient detail to permit a thorough evaluation of the applicant's financial position. The status of each debt and the repayment terms also should be shown.

11. Budgets

a. The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

b. This budget should be based on a typical annual operation several years after the loan is made. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA loan is repaid in full. The budget serves several purposes including:

(1) Helps determine rental rates.

(2) Indicates financial soundness.

(3) Serves as a guide for paying expenses.

c. Form FmHA 1930–7, "Statement of Budget and Cash Flow," and its accompanying Exhibit A–5 is a sample budget form and utility allowance form.

12. Loan resolution or loan agreement

When the applicant is a corporation or an

individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained from and discussed with the District Director before the loan docket is developed. Among other things, this document outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

13. Management plan

A detailed management plan will be developed which will outline the basic policies and procedures to be followed and the duties of the officers and employees. The applicant must manage the project in accordance with the requirements of Subpart C to Part 1930 (FmHA Instruction 1930–C).

14. Manager and caretaker

a. The success of the housing will depend to a large extent on how well it is managed. A carefully written plan should be developed by the applicant outlining the proposed management of the housing and giving such information, if known, as who will be the manager, the manager's experience, any management training planned and other facts about the manager's qualifications.

b. The manager should be readily available to the tenants. The manager might be one of the occupants or a member of the board of directors of a nonprofit corporation. A caretaker may be needed for larger projects to:

(1) Take care of minor repairs;

(2) Mow the lawns and maintain the property; and

(3) Remove garbage and trash.

c. The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that the job is being done right and the enterprise is being managed successfully.

15. Occupancy policies

a. Applicants should review carefully and the occupancy requirements with the District Director. Particular attention should be given to the following requirements:

(1) The housing must be open to all eligible occupants regardless of race, color, religion, sex, National origin, age, handicapped or marital status.

(2) The incomes of tenants must be within the maximum income limits approved by FmHA, except for elderly or handicapped occupants of housing operated on a for profit basis.

b. Additional guidance concerning occupancy in elderly housing projects with supportive services can be found in Exhibits B–10 and B–10A to Subpart C of Part 1930 (FmHA Instruction 1930–C).

16. Rules and regulations

The rules and regulations for tenants should be developed by the applicant and a copy included in the loan docket.

17. Lease

The applicant should develop an application form for occupancy and a lease agreement form in accordance with the requirements of Subpart C of Part 1930 (FmHA Instruction 1930–C). Copies of these forms should be included in the loan docket.

V. Review of the Complete Docket

A. When the applicant has developed the information needed to complete the loan docket, it should furnish and discuss the information with the District Director. Form AD–625, the information and materials listed in Exhibit A–8 plus FmHA forms provided by the District Director become the loan docket. If the proposal exceeds the District Director's approval authority, he/she will submit the docket to the FmHA State Office for consideration.

B. The docket will be reviewed and returned to the District Director. A letter from the State Director will indicate any special requirements that need to be met before loan approval or loan closing. Complete final drawings, specifications and trade-item cost estimates will be obtained before the loan can be approved. In some cases, competitive bidding will be required to determine actual construction cost. In the case of multiple advances of FmHA loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. At this time the applicant becomes a borrower. The loan funds are disbursed from the bank account as needed. Checks on the account must be signed by the borrower and countersigned by the FmHA District Director.

C. If interim financing is available during the construction period at reasonable rates and terms, FmHA can make a conditional commitment to the interim lender that will loan the funds to finance the construction of the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA loan will be closed to pay off the interim construction indebtedness. Draws on interim loan funds will be made only as needed and will require the joint approval of the applicant and the FmHA District Director.

VI. Construction

The start of construction is the first physical sign that the housing will become a reality. The construction period is a most critical period of time.

A. Starting construction

Construction should not be started until the FmHA loan is closed or the FmHA commitment has been made to the interim lender, as applicable.

B. Competitive bidding

1. Competitive bidding is recommended and may be required by FmHA in some cases. If required, the State Director's letter sent after the loan is authorized will instruct the District Director to have the applicant or its architect complete the necessary bid documents.

2. The applicant and the architect should invite competent contractors to bid on the housing. If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction, the District Director, State Office Architect and the applicant and its architect will inspect the work. Payment will be made from the FmHA loan funds, or interim loan funds, according to provisions in the contract.

C. Construction without competitive bidding

When competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract approved by FmHA will be executed by the applicant and the contractor. If full architectural services are obtained by the applicant, supervision and inspection of the work will be performed by the architect's staff. The applicant and FmHA will inspect the construction to protect their respective interests in the project. Payments will be made to the contractor in accordance with the terms of the contract.

VII. Open House

The applicant may wish to create interest in the housing and build up the list of prospective occupants by having a dedication ceremony. This will attract attention and remind the local residents of what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

VIII. Exhibits

The following guides may be used when applicable and, if necessary, adapted to meet needs of application consideration.

Exhibit

A–1 Legal Services Agreement
A–2 Survey of Existing Rental Housing
A–3 Rental Housing Survey
A–4 Rental Housing Survey Summary
A–5 Housing Allowances for Utilities and Other Public Services
A–6 Information to be Submitted with Preapplication for Rural Rental Housing (RRH) Loan
A–7 Outline of Professional Market Study
A–8 Information to be Submitted with Application for Federal Assistance (Short Form)

* * * * *

Exhibit A–2

SURVEY OF EXISTING RENTAL HOUSING

NAME	NO. OF UNITS	BR MIX	TYPE	YEAR BUILT	RENT	VACANCIES	LOCATION	AMENITIES: DRAPES, CARPET, CENTRAL COOLING, DISHWASHER, GARBAGE DISPOSAL, TV CABLE

Exhibit A–3 of subpart E—Rental Housing Survey

A rental housing project is being planned for this community. The Project would provide comfortable living at monthly rental rates of about $_____. Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over [ ] 50–61 [ ] 35–49 [ ] Under 35 [ ]

2. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements? yes. [ ] no [ ]

3. Number of person(s) in your household: _____.

4. Approximate annual income from all sources including any social security, retirement pension, payments made on behalf of minor children, public assistance, etc.: $_____.

5. Do you own ( ) or rent ( ) present residence?

6. Do you live in house ( ) apartment ( ) room ( ) mobile home ( ) on a farm ( ) in town ( )?

7. Is your present housing modern ( ) not modern, but adequate ( ) inadequate ( ). If inadequate, in what respect? _____.

8. What amount of monthly rent do you pay with utilities included? $_____.

9. Would you be willing to move in if an apartment were available _____, 19 _____? yes ( ) no ( )

10. Name _____ Address (Including city/town) _____ Telephone Number _____ Location of employment _____.

11. Would you want to maintain own yard ( ) flower garden ( )?

12. Number of meals you would like prepared for you per day _____.

13. What other services would you like to have available to you?

	Yes	No
a. Housekeeping services		
b. Personal care services		
c. Social and recreational activities services		
d. Linen and laundry services		
e. Health and medical related services		
f. Beauty and barber services		
g. Transportation or access services		
h. Other (specify)———		

14. Type of building preferred?

1–story ———

2–story ———

More than 2–stories ———

15. List any hobbies or organizational membership you have.

* * * * *

Exhibit A–6 of Subpart E—Information To Be Submitted With Preapplication for Rural Rental Housing (RRH) Loan

The following information is to be submitted with Form AD–621, "Preapplication for Federal Assistance":

I Eligibility

A. Financial Statements—Each applicant must submit current, signed and dated financial statements. The financial statements must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site or a combination of both as an equity contribution.

(i) For a corporation (other than a nonprofit corporation) or a trust, financial statements will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent.

(ii) For a partnership, financial statements will be required from each general partner who holds an interest in the organization.

(iii) For limited partners in a limited partnership who will have 10 percent or more ownership, a certificate of net worth will be required.

(iv) For applicants that are not legally organized at the time of filing the preapplication, financial statements will be required from all of the proposed parties in proportion to the proposed ownership interest of each party. However, the applicant must be legally organized prior to loan approval and must submit financial statements.

(v) For cases in which financial statements are required from an individual, the financial statements must also include the financial interest and signature of the spouse.

(vi) All financial statements or net worth certifications submitted must contain the following statement immediately preceding the signature line:

(A) In new projects in which the loan has not been closed:

"(I) or (we) certify the above statements contained herein are true and accurate statement of (my) or (our) financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan preapplication or application of which this statement is a part."

(B) For projects in which the loan has been closed and the applicant has been formed:

"(I) or (we) certify the above statements contained herein are a true and accurate statement of (my) or (our) financial condition as of the date stated herein. This statement is given for the purpose of enabling the United States of America to make a determination of continued eligibility of the borrower organization for a loan as requested in the application of which this statement is a part."

B. Evidence Concerning the Test for Other Credit—Applicants other than States or local public agencies must show that other credit is not available at rates and terms that will enable the rental units to be rented to eligible tenants at rates within their payment ability. The applicant should provide letters from local real estate lenders stating the amount of loan funds they are willing to extend, the rates and terms at which the loans would be available and, if credit is not available, the reasons why other lenders are not willing to extend credit.

C. Statement of applicant's experience in operating rental housing and related business, including a statement on the proposed method of operation and management.

D. For an Organization Applicant—A copy of, or an accurate citation to, the specific provisions of State law under which the applicant is, or is to be organized; a certified copy of the applicant's actual, or a copy of the applicant's proposed charter, articles of incorporation, bylaws, partnership agreement, certification of limited partnership or other basic authorizing documents; the names and addresses of the applicant's members, directors and officers; and, if a member of a subsidiary of another organization, its name, address and principal business, if available.

E. A written, dated and signed statement from the applicant stating the following:

"(I) or (we) understand and agree that the Farmers Home Administration (FmHA) will consider an identity of interest to exist between the loan applicant as the party of the first part and general contractors, architects, engineers, attorneys, interim lenders, subcontractors, material suppliers, or equipment lessors as parties of the second part under any of the following conditions: (1) when there is any financial interest of the party of the first part in the party of the second part; (2) when one or more of the officers, directors, stockholders or partners of the party of the first part is also an officer, director, stockholder or partner of the party of the second part; (3) when any officer, director, stockholder or partner of the party of the first part has any financial interest whatsoever in the party of the second part; (4) when the party of the second part advances any funds to the party of the first part other than an interim lender advancing funds to enable the applicant to pay for construction and other authorized and legally eligible expenses during the construction period; (5) when the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services, engineering services or interim financing other than those of a survey, general superintendent or engineer employed by a general contractor in connection with obligations under the construction contract; (6) when the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them; and (7) when there exists or comes into being any side deals, agreements, contracts, or undertakings entered into thereby altering, amending or canceling any of the required closing documents or approval conditions as approved by FmHA. (I) or (we) certify that there is not now, nor will there be an identity of interest between or among the applicant, contractor, architect, engineer, attorney, interim lender, subcontractors, engineer, attorney, interim lender, subcontractors, material suppliers, equipment lessors or any of their members, directors, officers, stockholders, partners or beneficiaries without prior written identification to FmHA and written consent to such identity of interest by FmHA. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part."

F. The social security or tax identification number will be required in all cases. The loan will be denied for refusal to furnish the required social security or tax identification number.

(i) In the case of an individual, the social security number of the applicant must be provided. The spouse's social security number must also be provided when they have joint responsibility for the loan.

(ii) In the case of a partnership, the tax identification number of the partnership must be provided if available and also the social security numbers of all the general partners and their spouses.

(iii) In the case of a limited partnership, the tax identification number of the limited partnership is required. The social security number of all the general partners and their spouses should be secured if possible.

(iv) In the case of a company, corporation or nonprofit organization, the tax identification number of the organization is required. The social security number of the officers should be secured if possible.

(v) If an organization does not have a tax identification number, the social security number of one of the officers must be used.

G. All known principals and affiliates are required to submit a properly completed Form HUD 2530/FmHA 1944-37, "Previous Participation Certification." Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The form will be completed and processed according to the instrutions attached to the form.

II Need and demand

A. Economic justification and project size should be based on the housing need and demand from eligible prospective occupants who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, demand from the more temporary residents of a community (such as college students in a college town or military personnel stationed at a military installation within the trade area) should be discounted in determining project size. A market survey report will include:

(i) For projects of 20 units or more, a detailed survey based upon data obtained from census reports, state or county data centers, individual employers, industrial directories or chambers of commerce. The survey should include:

(A) A complete description of the proposed site, including at least the location with respect to city boundary lines and residential developments and the location of services and their distances from the site.

(B) Major employment data to portray the names of major employers within the community and/or market area, the product or service of each employer, the number of employees at each employer, the salary range at each employer, the location of each employer within the community and/or market area, and the year the employer was established at the location. If certain income data cannot be obtained from individual employers, salary information for the community can be provided by the state employment commission.

(C) Population by year, number, total increase/decrease, percentage, annual increase/decrease and percentage.

(D) Population characteristics by age.

(E) The household data by number, year and number of persons per household.

(F) A breakdown of households by owners and renters.

(G) Households by income group.

(H) Building permits issued by year by single unit dwelling and multiple unit dwelling. In nonreporting jurisdictions, this information may have to be substituted with number of requests for electric service connections, number of water/sewer hookups, etc., obtained from local suppliers.

(I) Housing stock as defined by total number of units, one-unit buildings, two or more unit buildings, mobile homes and number lacking some or all plumbing facilities.

(J) A survey of existing rental housing by name, number of units, bedroom mix, family or elderly type, year built, rent, vacancies, location and amenities.

(K) A projection of housing demand based on household growth, units constructed since last census, number of owned and rented units, number of replacements and the number of persons in the eligible income range.

B. Exhibit A-7 is an outline to be used in preparing professional market studies which provides more specifics as to study content. The qualifications of the person preparing the market study should include some housing or demographic experience.

C. The market analyst must also affirm that he/she will receive no fees which are contingent upon approval of the project by FmHA, before or after the fact, and that he/she will have no interest in the housing project. A study prepared by an analyst with an identify of interest with the developer will need to fully disclose the nature of the identity.

D. A table of contents, the analyst's statement of qualifications, and a certification of accuracy of study should be placed at the beginning of the study. The context of the study must be in clear, understandable language—not written to confuse or to camouflage. All mathematical calculations must be expressed in actual numbers and may also be accompanied by percentages. Each table and/or section should identify the source of the data. A brief statement of the methodology used in the study should be included in the foreward and in other sections where necessary for clarity.

(i) For projects of less than 20 units, the need for the housing will be established by obtaining signed expressions of interest from 50 percent more eligible prospective tenants than the number of proposed units. Exhibits A-2, A-3, and A-4 or similar forms may be used for this analysis. Statements evidencing a continued need for the units must be included in the analysis of market. These statements should be based on historical population growth taken from U.S. Census reports or a current housing evaluation by the county. The preparation of the housing analysis will not be performed by the applicant organization. The applicant must employ, through an arms length arrangement, someone to survey the local residents. Details of the transaction will be submitted to FmHA.

(ii) In the case of a proposal involving elderly housing with supportive services with central dining area or housing involving a group living arrangement, a narrative statement from local, State and/or Federal Government agencies supporting the current and long-range need for the facilities in the community and its trade area.

(iii) The applicant will provide a written, signed certification that the information provided in the market analysis is truthful and accurate.

E. If this type of analysis does not adequately support the need for housing in a questionable market area, FmHA will request that a full market survey report be prepared.

F. A schedule of proposed rental rates and, in the case of a congregate housing proposal, a separate schedule listing the proposed cost of any nonshelter services to be provided.

G. If an association of professional market analysts exists, those analysts preparing Section 515 studies would be expected to become members.

III Site

A. Size of tract and a plot map identifying its boundaries.

B. A map showing the location and other supporting information on its neighborhood and existing facilities, such as distance to shopping areas, neighborhood churches, schools, available transportation, drainage, sanitation facilities, water supply and access to essential services such as doctors, dentists, pharmacies and hospitals. The map should also show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site should also be indicated.

C. The identification of potential environmental impacts of the site and important constraints, i.e., the presence of floodplains, wetlands, prime or unique farmlands or other sensitive environmental features.

D. The applicant should provide evidence of having control of the proposed site either by ownership or by executing an option to buy.

IV General description of the housing planned

A brief narrative description of the housing planned should include the following items:

A. The type of project and structures proposed, such as garden apartments for elderly and handicapped persons; townhouses for low and moderate-income persons; or congregate housing for senior citizens and handicapped persons.

B. The size of each type of rental unit measured in square feet of living area. Square feet of living area will be measured from outside dimension to outside dimension. In cases where apartments share a common wall, the dimension will be taken from the center line of the common wall. In the case of the common wall between an apartment and a public corridor or hall, the dimension will

be taken from the face of the wall on the corridor side.

C. The size and type of other facilities to be included in the project, such as laundry rooms, storage spaces, etc.

D. The total number of units and the number of each type of living unit proposed.

E. The type of construction proposed and the method of construction, i.e., owner/builder, negotiated bid or public bid.

F. The estimated total development cost, the cost per unit and the estimated loan amount.

G. Type of utilities such as water, sewer, gas and electricity and whether each is public, community or individually owned.

H. The comments and recommendations of any professional consultants regarding on- or off-site conditions that could affect the proposed project should be submitted, if available. Any comments addressing an adverse condition should include recommended corrective actions. Any special regulation waivers or variances that may be necessary should also be identified.

I. Schematic design drawings should be included with the narrative description and include, as a minimum:

(i) Site plan, including signficant ground contour lines.

(ii) Floor plans of each living unit type and other type spaces.

(iii) Building exterior elevations.

(iv) Typical building exterior wall section.

V. The applicant must submit a signed written statement agreeing to pay cost overruns from its own resources.

VI Form FmHA 1940–20, "Request for Environmental Information"

VII Intergovernmental consultation

Comments must be submitted in accordance with 7 CFR Part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA office.

Exhibit A–7 of Subpart E—Outline of Professional Market Study

I Market area—General

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all established communities). Any deviation from this definition will need to be coordinated with the District Office. The market area must be realistic. The criteria for selection should be described by the analyst. A map showing the market area will be required. The following is an example of a market area description:

A. Based on an analysis of population and housing development patterns, major employers and commuting patterns, the effective market area for the subject proposal is defined to include all of (Name), 35 percent of (Name) and 25 percent of (Name) census divisions. This area is shown on Map 2 following Table 4 (page 11) in Section II of this report. In 1970, this geographic market area contained an estimated 6,350 persons (6.1 percent of the county total of 103,829 persons). During the 1970's decade, the overall market area experienced growth of 1,253 persons (representing 13.5 percent of total gains in the county). In 1980, the (Name) market area population of 7,603 represented 6.7 percent of the county population of 113,086 (see Table 4 and Map 2 in Section II for details).

B. The effective market area for the subject proposal includes the town of (Name) and a portion of the unincorporated areas to the east and south. The (Name) River forms a natural barrier restricting development to the west. Housing development and population growth have occurred along major transportation corridors, particularly Interstate 81 and U.S. 11 between (Name) and (Name). Secondary growth has occurred along State Roads 63 and 68 to the northwest and southeast of (Name). The Interstate Industrial Park, with 16 employers providing 999 jobs, is centrally located within the market area.

II Site

This section will contain a full description of the site, its position in the community and location with respect to residential support services.

A. The proposed site is located in the eastern section of (Town) on (Major Thoroughfare). The area surrounding the site is predominantly comprised of modest single family dwellings.

B. The site is approximately .3 mile east of the heart of town which contains a grocery store, drugstore, restaurants, banking facilities, the post office and town hall. Other shopping is available .2 mile south at (Town) Plaza.

C. The medical clinic, which provides services of an osteopath, X-ray technician, a physician's assistant and a nurse, is approximately .8 mile north of this site. This clinic is open daily and also provides 24-hour emergency service. The nearest hospitals are (Large City) and (City).

D. All public services are available at the site.

III Demographic characteristics

A. Economic profile

1. *Labor force and employment trends* presents trends between 1970 and 1980, provides current year estimates and projected changes at the county level.

CIVILIAN LABOR FORCE AND EMPLOYMENT TRENDS AND FORECASTS, COUNTY, 1970–1987

	1970	1980	1984 [1]	1987
Civilian Labor Force: [2]				
Unemployment				
Rate of Unemployment				
Employment				

Change in Total Employment	Number		Percent	
	Total	Annual	Total	Annual
1970–1980				
1980–1984				
1984–1987				

[1] Preliminary—based on monthly data through _____
[2] Data based on place of residence.
Source:

2. *Employment data.* In order to determine how employment affects the market arae, it will be necessary to show the number of employed persons between 1970 and the current year, the increase and/or decrease and the percentage of unemployed at the county level. The employment figures can be obtained from the State Employment Commission.

Example:

Year	County		
	Number	Change	Unemployment, percent
1970			
1971			
1972			
1973			
1974			

Year	County		
	Number	Change	Unemployment, percent
1975			
1976			
1977			
1978			
1979			
1980			
1981			
1982			
1983			
1984			

Source:

3. Major employers. This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each

employer, number of employees at each employer, salary range of each employer, location of employer, and year each employer was established are types of data FmHA will need to evaluate. It is also helpful to know if the larger employers intend to increase or decrease number of employees in the immediate future or if there had been any significant recent changes in number of employees.

4. It should not be difficult to obtain some of the above data from the employers themselves. However, some employers may be reluctant to divulge certain information regarind their businesses, such as the salary range of their employees. In those cases, the anlyst will have to obtain average, by jog type, from the State Employment Commission using job classifications from the Standard Industrial Classification Manual. The data should be shown as follows:

Example:

Employer	Product/ service	Salary				Year estab- lished
		Em- ployees	Weekly	Yearly	Location	
Washington Aircraft	Crop dusting.	5	$200	$10,000	Town	1957

Source:

B. *Market characteristics.*

1. *Population.* The analyst will need to show population changes between 1970 and 1980, the current year estimate and projected change. The annual changes will need to be shown also. We also want percentages along with the figures, as follows:

	Year [1]	Num- ber	Total change	Per- cent	Annual change	Per- cent
Town	1970					
	1980					
	1984 (current estimate)					
Projected	1987					
County	1970					
	1980					
	1984 (current estimate)					
Projected	1987					

[1] April 1 of each year.

2. Age Characteristics:

Age	Town [1]			County		
	1970	1980	1970–1980 change	1970	1980	1970–1980 change
Under 18						
18–29						
30–61						
62+						

[1] Available for places of 2,500 or more only.

3. *Households.* A breakdown by town and county for last 2 census years, a current year estimate and a projection to the year the housing would be built (24 months) will have to be illustrated so that household formations can be tracked. This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.

	Year [1]	Popu- lation	In Group Quar- ters	House- holds	Per- sons per house- hold
Town:	1970				
	1980				
	1984				
Projected:	1987 (Projected to year housing is built).				
Town:	1970				
	1980				
	1984				
Projected:	1987 (Projected to year housing is built).				

[1] April 1 of each year.

4. *Households by Tenure.* This section is one of the more important aspects of the market analysis. This information will enable us to more closely pinpoint the number of households which would comprise the target groups of our evaluation.

	Year	Total households	Owner	Percent	Renter	Percent
Town:	1970					
	1980					
Estimate:	1984					
Projected:	1987 (Projected to year housing is built—24 months).					
Country:	1970					
	1980					
Estimate:	1984					
Projected:	1987 (Projected to year housing is built—24 months).					

5. *Households by Income Group.* This section is also vital to the evaluation of the market because of the low income ranges which exist in the rual areas and the lack of deep subsidy. For this reason, close attention must be paid to the number of persons who incomes will allow them to pay the rent plus utilities and still remain wihtin the 30 percent criterion. In some cases, persons with incomes in the upper range of the eligible income group have displayed a lack of interest since they would be required to pay the full market rent. Also, persons with lower incomes will move into projects even though they will pay more than 30 percent of their incomes. Irrespective of these considerations, the study will need to show the entire scale of incomes from lowest to highest. The number of renters who fall within the feasibility range can then be estimated. Income data should be shown for total and renter households, updated to the current year.

(a) Rent for a 1-bedroom apartment is $250 with a $30 utility allowance (which can include electric or gas heat, air conditioning, lighting, cooking, water heating and trash collection, water, sewer). The amount of income needed to pay the total bill and stay within 30 percent of income would be: Example: $280 divided by .30 × 12 = $11,088 income. Household Income Profile, _____ County, 1984 [1]

[1] Income information may also be obtained from Sales and Marketing Management Magazine and used in conjunction with the HUD data.

Household income group	All households		Renter Households	
	Number	Percent	Number	Percent
Less than $10,000				
$10,000–$14,999				
$15,000–$19,999				
$20,000–$24,999				
$25,000–				
Total				
Median				

Source:

(b) HUD has furnished its information on owner-renter by income group by number of person in the household. This type of information will further enhance evaluation of the affordability issue by allowing the examination of the number of renters in the affordability range. For the present time, the analyst should make a request for this data through the District Office. Income information may also be obtained from Sales and Marketing Management Magazine and used in conjunction with the HUD data.

(c) *Housing supply characteristics*

1. *Building permits issued.* The Housing Units Authorized by Building Permits and Public Contracts (C–40 Construction Report), furnished by the Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and anually.

Example:

	Town			Country		
Year	Single Family	Muilti-Family	Total	Single Family	Muilti-Family	Total
1970						
1971						
1972						
1973						
Through Current year						

(2) *Housing stock.* The study must include the number of units within the county and town (where available), both single family type and multi-family, along with the number of substandard units and the quantity of mobile homes, based on the most recent census data.
Example:

Inventory Change Profile	Town	County
1970 Stock		
1980 Stock		
Change, Number:		
Total		
Annual		
Percent		
Plumbing Facilities[1]:		
Complete—Exclusive use		
Lacking complete facilities		
Number of units[1]:		
1		
2–9		
10 or more		
Mobile home		

[1] Data available for incorporated places of 2,500 or more only.

(3) *Existing rental housing.* The analyst will have to determine where the proposed project will fit into the present housing stock. The rent levels, number of bedrooms, type of project, age, vacancy rate, location and amenities available will have to be compared. This will enable FmHA to judge how many of the existing units (a) would be competitive with the proposed project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

(4) Additional narrative which describes the rental stock and provides tenant characteristics may be included. The survey should include both subsidized and nonsubsidized rentals and have photographs as backup. The survey should include the description in paragraph III of this exhibit.

IV. Housing Demand Forecasts

(A) The analyst needs to give a projection of the housing needs for a specified forecast period. The information may be presented in chart form in other formats with other types of information but should include the following as a minimum:

Sources of demand	Town		County	
	Owner	Renter	Owner	Renter
New households				
Plus replacements				
Plus vacancy (of 5%)				
Total demand				

(B) The demand forecast should be adjusted for rental units already provided (if any) within the market area. The residual demand represents the market from which the proposed project will attract tenants.

Exhibit A–8 of Subpart E—Information To Be Submitted With Application for Federal Assistance (Short Form)

The following information is to be submitted with Form AD–625, "Application for Federal Assistance (Short Form)":

(1) Drawings and specification, including any special design features for senior citizens or handicapped persons.

(2) A detailed cost breakdown of the project of such items as land and rights-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

(3) Information on the method of construction, the proposed contractor if a construction contract is to be negotiated, and the architectural, engineering and legal services to be provided.

(4) Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances or regulations.

(5) If more than 12 months have transpired since the applicant submitted the market survey report, the State Director may require a new one if he/she determines that the situation merits one.

(6) For all projects containing over four units the applicant will submit an Affirmative Fair Marketing Housing Plan for approval by FmHA in accordance with § 1901.203 of Subpart E to Part 1901. The Affirmative Fair Marketing Housing Plan must be prepared in a complete, meaningful, responsive and detailed manner.

(7) If more than 12 months have transpired since the applicant submitted the dated financial statement, the State Director may require a new one if he/she determines that the situation merits one or if the applicant's financial situation has sufficiently changed (see paragraph 1 A of Exhibit A–6 of this subpart).

(8) Detailed operating budgets showing a schedule or proposed rental rates for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments and permit accumulation of required reserves. Form FmHA 1930–7, "Statement of Budget and Cash Flow," and Exhibit A–5 of this Subpart (or similar forms) may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

(a) The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent and contingency expenses. Projects developed using HUD's Section 8 housing assistance payments program for new construction may use a lower rate; however, in no case should the allowance be less than 5 percent. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent and contingency needed for the project.

(b) The budget should provide for accumulating a reserve at the rate of 1 percent per annum of the value of the loan amount until a reserve equal to 10 percent of the loan is reached. Budgets should not include an additonal item for depreciation since the reserve amount is to provide funds for this purpose.

(c) All applicable taxes, including Federal and State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. In case of a nonprofit organization whose articles of incorporation and bylaws conform to Exhibits E and F of this subpart, evidence of exemption from Federal income tax need not be obtained before the loan is closed if the applicant applies for a determination of exemption and agrees in writing to make any changes in its organizational documents that may be required by the Internal Revenue Service (IRS). Information as to Federal income tax exemption may be obtained from the district office of the IRS. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 504(c)(4) of the Internal Revenue Code.

(9) A description and justification of any related facilities (including but not limited to workshop, community buildings, recreation center, central cooking and dining facilities or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

(10) A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to the qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent, a copy of the proposed management agreement should be submitted. It must contain the clause indicating that it is not in full force and effect unless and until approved by FmHA.

(11) A management plan which sets forth clear and concise statements of policy

concerning management and operation of the project in accordance with the requirements of paragraph V of Exhibit B of Subpart C to Part 1930 of this chapter. An acceptable management plan should be responsive in depth to each of the following applicable areas:

(a) The relationship between owner and management agent (if applicable).

(b) Personnel policy and staffing arrangements.

(c) Publicizing and achieving early occupancy and affirmative marketing.

(d) Tenant certification and verification of income.

(e) Tenant admission policies and leasing policies.

(f) Rent collection.

(g) Rent changes.

(h) Maintenance.

(i) Records maintenance and reports.

(j) Energy conservation measures.

(k) Management-tenant relations.

(l) Termination of leases and evictions.

(m) Management agreement (if applicable).

(n) Management compensation.

(12) In addition, a copy of the proposed application for admission, waiting lists, lease or rental agreement, and rules and regulations governing administration and occupancy should be attached to the management plan. The management plan must be submitted in writing and the applicant must certify that it is in compliance with the requirements of Subpart C to Part 1930 of this chapter.

(13) A schedule of any separate charges for the use of any related facilities and, in the case of elderly housing with supportive services, a schedule of any separate charges for nonshelter services (such as meals, personal care and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

(14) When land is being purchased or a building site will be part of a tract owned by the applicant, or in any other case when necessary to clearly identify the property, a satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in loan docket. If necessary, a new survey will be obtained.

Exhibits B, B–1, H–1, I, J, K and L [Removed]

Exhibits D—H [Redesignated as B—F]

Exhibits H–2—H–7 [Redesignated as F–1—F–6]

3. Exhibits B, B–1, H–1, I, J, K and L are removed and Exhibits D through H are redesignated as B through F respectively and Exhibits H–2 through H–7 are redesignated as F–1 through F–6.

Dated: February 26, 1987.

Eric P. Thor,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87–4955 Filed 3–11–87 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 36 and 91

[Docket No. 25109; Notice 86–16]

Civil Supersonic Aircraft Noise Type Certification Standards and Operating Rules; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM); reopen of comment period.

SUMMARY: This notice announces the reopening of the comment period for Advance Notice of Proposed Rulemaking No. 86–16 that invited comments on the economic reasonableness and technological feasibility of prescribing more definitive type certification and operating rules for future civil supersonic aircraft SST. The Aerospace Industries Association of America requested this reopening to afford all interested persons an opportunity to present their views on the questions presented in the advance notice.

DATE: Comments must be received on or before July 1, 1987.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 25109, 800 Independence Ave. SW., Washington DC 20591 or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Ave. SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, weekdays except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Albersheim, Noise Policy and Regulatory Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC (202) 267–3560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Advance Notice of Proposed Rulemaking (ANPRM) No. 86–16 was issued on October 30, 1986 (51 FR 39663; October 30, 1986) under the FAA's policy of soliciting public participation in rulemaking proceedings. Interested persons are invited to participate in these preliminary rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comment submitted in response to this notice must submit with those comments a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25109." The postcard will be date stamped and returned to commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. If it is determined to be in the public interest to proceed with further rulemaking after considering the available data and comments received in response to the advance notice, a Notice of Proposed Rulemaking will be issued.

Availability of ANPRM

Any person may obtain a copy of the Notice and the ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this Notice and the ANPRM. Persons interested in being placed on the mailing list for future ANPRMs and NPRMs should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On October 30, 1986 the FAA published Advance Notice of Proposed Rulemaking No. 86–16 (51 FR 39663), which provided for a 120-day comment period closing on February 27, 1987. In that notice, the FAA announced it is considering amending Parts 36 and 91 of the Federal Aviation Regulations (FAR) for type certification of civil supersonic aircraft and to establish a corresponding operating rule for such airplanes. Although only one type of civil SST, the Anglo-French Concorde, is currently operating, it is entirely possible that several other types may be developed within the next few years. Several

nations, in fact, have preliminary design studies underway to determine more exact mission requirements and technological feasibilities. The wide range of propulsion systems and civil missions under consideration make it difficult at this time to adequately assess either the environmental or economic consequences of any proposed regulatory alternative. However, it is important that both airplane designers and airport planners begin to consider the possible noise impacts of these new aircraft. The FAA is seeking information on the type of engines or other propulsion systems that may be used, on the availability of noise reduction technology for those engines, and the noise/performance/cost tradeoffs in applying that technology.

As stated above, it is proposed to amend Parts 36 and 91 to add provisions specifically appropriate to new types of SSTs and their derivatives. The FAA believes that the basic three-point measurement system (i.e., takeoff, approach, and sideline) currently used in Part 36 for subsonic turbojets can be extended to supersonic aircraft. However, some or all supersonic aircraft may be sufficiently different from subsonic aircraft to justify a comprehensive review of the appropriateness of details of Part 36. Therefore, the FAA is giving particular attention to:

(1) The changes, if any, to the aircraft noise measurement conditions of Appendix A of Part 36 that would be appropriate for supersonic aircraft with respect to general test conditions, noise measurement procedures, and aircraft conditions.

(2) The extent to which the class of supersonic aircraft should be divided into subclasses for the purpose of establishing noise ceilings and measurement concepts.

(3) Factors, peculiar to supersonic aircraft, that should be considered by the Administrator to assure that supersonic aircraft noise regulations are consistent with the highest degree of safety in air commerce or air transportation.

Other issues which need to be addressed are:

(1) The extent to which the current (Stage 3) noise standards now applicable to subsonic turbojet-powered aircraft could be applied to future generation SSTs.

(2) The appropriateness of using operational rules to ensure that foreign built and certificated aircraft serving U.S. airports are subject to the same limitations and controls as those aircraft types certificated in the U.S.

(3) Methods to ensure that use of the regulatory authority under section 611 is made, with respect to civil supersonic aircraft, without undue Federal impact on the orderly growth of the national airspace system capacity and without Federal interference with the rights of States or local public agencies, as the proprietors of airports, to establish requirements as to the permissible level of noise which can be created by aircraft using their airports.

(4) The development of economic incentives for reducing the noise levels of civil supersonic aircraft.

The ANPRM has generated intense interest from individuals and organizations in the aviation industry. One organization has specifically requested the FAA to extend the comment period to July 31, 1987 to allow industry more time to fully evaluate the implications involved in noise certification of supersonic aircraft. The FAA realizes it takes time to analyze the issues and to answer the posed questions so that all potential problem areas are identified and brought to the Agency's attention. In the issuance of the ANPRM, the FAA provided for a 120 day comment period. For this reason, the FAA does not wish to unduly rush this important process, but neither does the FAA believe the comment period should be reopened indefinitely. Accordingly, the FAA proposes to reopen the comment period.

Conclusion

This document reopens the comment period of the ANPRM to afford the public and industry additional time to review and respond to the advance notice. It is premature at this time for the FAA to attempt to generate definitive costs and benefits of amending Parts 36 and 91. A full regulatory evaluation and Regulatory Flexibility Act determination will be prepared in conjunction with any notice of proposed rulemaking that may be issued on this subject.

Reopen of Comment Period

In consideration of the above, the FAA concludes that the comment period should be reopened. Accordingly, the comment period for Notice No. 86-16 is reopened to July 1, 1987.

Issued in Washington, DC, on March 6, 1987.

Norman H. Plummer,

Director of Environment and Energy.

[FR Doc. 87-5214 Filed 3-11-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-07-AD]

Airworthiness Directives; Pacific Scientific Company Technical Standard Order (TSO) C22f Lap Belt Assembly, Part Number 1107177 (All Dash Numbers)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Pacific Scientific Company Technical Standard Order (TSO) C22f lap belt assemblies, which would require replacement of certain lap belt retractor shafts. This proposal is prompted by a report that some retractor shafts were installed which were not manufactured of the correct material. This condition, if not corrected, could lead to structural failure of the lap belt assembly during an emergency landing.

DATE: Comments must be received no later than May 3, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), attention: Airworthiness Rules Docket No. 87-NM-07-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Pacific Scientific Company, 1346 S. State College Boulevard, Anaheim, California 92803. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Western Aircraft Certification Office, ANM-173W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297-1388.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All

communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-07-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has received a report that 1,100 lap belt retractor shafts used in Pacific Scientific lap belt assemblies were incorrectly manufactured from 7075-0 or 7075 H-11 or 7075 H-15 material, instead of the required 7075-T6 material. The part number 1106294-01 shafts manufactured of the incorrect material will not support loads required by TSO C22f. Testing has shown that these shafts shear at approximately 1430 to 1450 lbs., while TSO C22f requires a minimum load of 1500 lbs. This condition, if not corrected, could result in the structural failure of the lap belt assembly under crash loads, with the resultant lack of restraint of the occupant.

Pacific Scientific Company has issued a Safety Advisory Letter (not dated) on their Mark V Reel Lap Belt Assembly, part number 1107177, which describes how the shafts manufactured of the incorrect material can be identified.

Since this condition is likely to exist on any Pacific Scientific Company lap belt assembly using the incorrect material shafts, and airworthiness directive (AD) is proposed which would require replacement of the incorrectly manufactured shafts.

It is estimated that 4,800 shafts on lap belt assemblies of the affected type are installed in airplanes of U.S. registry and would be affected by this AD; approximately 880 of these shafts are made of the incorrect material and must be replaced. It would require one-quarter manhour to inspect each of the 4,800 shafts, and an additional one-half manhour to remove and replace each of the unacceptable shafts, for a total of 1,640 manhours to accomplish the required action. The average cost would be $40 per manhour. The lap belts with the unacceptable shafts can be returned to Pacific Scientific Company at no charge for replacement of the shafts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $65,600.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Pacific Scientific Company: Applies to TSO C22f lap belt assemblies, part number 1107177 (all dash numbers), manufactured between September 1, 1984, and January 1, 1986.

Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To eliminate lap belt assemblies with belt retractor shafts which do not provide adequate strength, accomplish the following:

A. Inspect all Pacific Scientific TSO C22f lap belt assemblies part number 1107177 (all dash numbers), in accordance with Pacific Scientific Company Safety Advisory Letter (on the Mark V Reel Lap Belt Assembly, which deals with this problem), to determine if they have part number 1106294-01 retractor shafts made of the correct material. This is determined by visual examination of the end of the shaft: If the color is gold anodize, the shaft is acceptable. If the color is a dull battleship grey anodize, the shaft must be replaced.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

The FAA has requested **Federal Register** approval to incorporate by reference the manufacturer's service documents identified and described in this proposed directive.

All persons affected by this proposal who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Pacific Scientific Company, 1346 S. State College Boulevard, Anaheim, California 92803. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on March 5, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-5217 Filed 3-11-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule and request for comment.

SUMMARY: The Parole Commission proposes to make a number of interpretive clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.38. These changes and additions are intended to make the guidelines more comprehensive. Additionally, the Commission proposes to revise its practice of conducting dispositional revocation hearings in state institutions pursuant to 28 CFR 2.47, making the decision as to whether to conduct such hearings at state or local facilities as within the discretion of the appropriate Regional Commissioner.

DATE: Public comment must be received by April 13, 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: The proposed revisions to 28 CFR 2.20 and 2.36 fall into three categories: (a) A revision to an offense example in the Offense Behavior Severity Index of § 2.20 adding language related to the transportation of unlawful aliens; (b) a revision to an offense example in the Offense Behavior Severity Index of § 2.20 clarifying its applicability for certain criminal contempt offenses; and (c) a revision to the rescission guidelines in § 2.36 incorporating, as part of the rules, interpretative material previously included in the Commission's internal Rules and Procedures Manual.

(a) First, Offense Example 402 in Chapter 4 of the Offense Behavior Severity Index of 28 CFR 2.20 grades the severity for the transportation of unlawful aliens as Category Three. There are situations, however, when the aliens being transported are detained by their transporters until certain fees or monies are provided. While there are other examples and provisions within the Offense Behavior Severity Index that cover kidnapping and demands for ransom, the Commission views the detention of unlawful aliens under these circumstances as a somewhat different offense. It proposes, therefore, to sanction such detention and demand for payment as Category Five and to revise the offense example accordingly.

(b) Next, Offense Example 618 in Chapter 6, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 grades the severity for contempt of court offenses. As an exception, subsection (b) states that where "a criminal sentence of more than one year is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense," the conduct should be graded as if it were an accessory after the fact. Standing alone, this exception appears logical in the sense that it recognizes the fact that the Commission does not have jurisdiction over criminal sentences of less than one year. However, a problem may arise when an offender is sentenced to more than one year after being convicted on two separate counts and one of the counts is a criminal contempt term to be served consecutively and that term is less than one year. To address such a situation and to appropriately sanction all criminal contempt sentences for refusal to testify under 18 U.S.C. 401, the Commission proposes to delete the "of more than one year" language from Subsection (b).

(c) Finally, 28 CFR 2.36 contains the Commission's guidelines for sanctioning criminal conduct committed in a prison facility. To make this guideline more comprehensive, the Commission proposes to incorporate, as part of the rules, interpretative material previously included as a procedure in the Commisson's Rules and Procedures Manual that provided the grading of offenses (like submitting false tax returns to the IRS from a prison facility) that are not limited to the confines of the prison facility. As proposed, such offenses will be graded as new criminal behavior in the community.

The proposed revision to 28 CFR 2.47 (Warrant Placed As A Detainer and Dispositional Review) is being offered as a resource saving initiative. Under current practice, when a parolee has been convicted of a new offense and is serving a new sentence in an institution, a parole violation warrant may be placed against him as a detainer. If the prisoner is serving a state or local sentence, the Regional Commissioner must after a dispositional record review, order that a revocation hearing be scheduled (a) upon return to a federal institution or (b) upon completion of the period in confinement required by the minimum of the applicable guideline range as tentatively assessed, but not less than twenty-four months, whichever alternative comes first.

Conducting dispositional revocation hearings in state institutions consumes a disproportionate amount of staff time. While the total number of such hearings is small, considerable support and examiner time is expended in preparing for and conducting these hearings, particularly in traveling to the many facilities in the states and cities within each region. And, because the total number of hearings is small and the locations are widely scattered, the dockets at these State or local facilities rarely contain more than one or two cases. Moreover, the overall workload of the Commission continues to increase, placing competing demands on the Commission's resources.

To address this situation, the Commission proposes to revise current practice as it relates to parolees serving new sentences in state and local facilities. The revision would provide the Regional Commissioner with the discretion to order a revocation hearing at the State or local facility. In the alternative, the Regional Commissioner could let the detainer stand and order further review at an appropriate time or withdraw the detainer and either order reinstatement of the parolee to supervision upon release from custody or close the case if the expiration date has passed.

The procedures in § 2.47 as regards parolees serving a federal sentence are not being revised.

These proposed 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 proposed to be 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).

§ 2.207 [Amended]

2. It is proposed to revise Offense Example 402 in Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

402 *Transportation of Unlawful Alien(s)*

(a) If the transportation of unlawful alien(s) involves detention and demand for payment, grade as Category Five;

(b) Otherwise, grade as Category Three.

3. It is proposed to revise Offense Example 618 in Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 by revising subsection (b) to read as follows:

618 *Contempt of Court*

(a) * * *

(b) *Exception:* If a criminal sentence is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, grade such conduct as if accessory after the fact.

4. It is proposed to revise paragraph (a)(3) of the Rescission Guidelines in 28 CFR 2.36 to read as follows:

§ 2.36 Rescission guidelines.

(a) * * *

(3) *New criminal behavior in the community (e.g., while on pass, furlough, work release, or on escape).* In such cases, the guidelines applicable to reparole violators under § 2.21 shall be applied, using the new offense severity (from § 2.20) and recalculated salient factor score (such score shall be recalculated as if the prisoner had been on parole at the time of the new criminal behavior). The time required pursuant to these guidelines shall be added to the time required by the original presumptive or effective date.

Note: Offenses committed in a prison or in a Community Treatment Center that are not limited to the confines of the prison or Community Treatment Center (e.g., mail fraud of a victim outside the prison) are graded as new criminal behavior in the community.

5. It is proposed to revise 28 CFR 2.47 *Warrant Placed As A Detainer and Dispositional Review* to read as follows:

§ 2.47 Warrant placed as a detainer and dispositional review.

(a) When a parolee is serving a new sentence in a Federal, State or local institution, a parole violation warrant may be placed against him as a detainer.

(1) If the prisoner is serving a new sentence in a Federal, institution, a revocation hearing shall be scheduled within 120 days of notification of placement of the detainer, or as soon thereafter as practicable, provided the prisoner is eligible for and has applied for an initial hearing on the new sentence, or is serving a new sentence of one year or less. In any other case, the detainer shall be reviewed on the record pursuant to paragraph (a)(2) of this section.

(2) If the prisoner is serving a new sentence in a State or local institution, the violation warrant shall be reviewed by the Regional Commissioner not later than 180 days following notification to the Commission of such placement. The parolee shall receive notice of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of § 2.48(b) to assist him in completing this written application.

(b) If the prisoner is serving a new Federal sentence, the Regional Commissioner, following a dispositional record review, may:

(1) Pursuant to the general policy of the Commission, let the warrant stand as a detainer and order that the revocation hearing be scheduled to coincide with the initial hearing on the new Federal sentence or upon release from the new sentence, whichever comes first;

(2) Withdraw the warrant, and either order reinstatement of the parolee to supervision upon release from confinement or close the case if the expiration date has passed.

(c) If the prisoner is serving a new State or local sentence, the Regional Commissioner, following a dispositional record review may:

(1) Withdraw the detainer and order reinstatement of the parolee to supervision upon release from custody, or close the case if the expiration date has passed.

(2) Order a revocation hearing to be conducted by a hearing examiner or an official designated by the Regional Commissioner at the institution in which the parolee is confined.

(3) Let the detainer stand and order further review at an appropriate time. If the warrant is not withdrawn and no revocation hearing is conducted while the prisoner is in state or local custody, an institutional revocation hearing shall be conducted after the prisoner's return to Federal custody.

(d) Revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in § 2.52.

(e)(1) A parole violator whose parole is revoked shall be given credit for all time in Federal, State, or local confinement on a new offense for purposes of satisfaction of the reparole guidelines at §§ 2.20 and 2.21.

(2) However, it shall be the policy of the Commission that the revoked parolee's original sentence (which due to the new conviction, stopped running upon his last release from federal confinement on parole) again start to run only upon release from the confinement portion of the new sentence or the date of reparole granted pursuant of these rules, whichever comes first. This paragraph does not apply to cases where, by law, the running of the original sentence is not interrupted by a new conviction (e.g., YCA; NARA; Mexican or Canadian treaty cases).

(f) If a Regional Commissioner determines that additional information is required in order to make a decision pursuant to paragraph (a)(2) of this section, he may schedule a dispositional hearing at the state or local institution where the parolee is confined to obtain such information. Such hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. The parolee shall have notice of such hearing, be allowed to testify in his behalf, and have opportunity for counsel as provided in § 2.48(b).

Dated: February 25, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-5302 Filed 3-11-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Gas Royalty Valuation Regulations, Public Hearing

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of public hearing, change of dates.

SUMMARY: The Minerals Management Service (MMS) published proposed regulations governing valuation of gas for royalty calculation purposes in the **Federal Register** on February 13, 1987 (52 FR 4732). That **Federal Register** notice announced that hearings on the proposed rule would be held on April 7 and 8, 1987, in Denver, Colorado, and on April 21 and 22, 1987, in Houston, Texas. Because of other commitments, MMS has decided to change the dates of the hearing to be held in Houston, Texas, to April 28 and 29, 1987. The dates of the hearing to be held in Denver, Colorado, are not changed.

DATES: Denver, Colorado hearing: April 7 & 8, 8:30 am to 4:00 pm. each day. Houston, Texas hearing: April 28 and 29, 8:30 am to 4:00 pm each day.

ADDRESSES: The hearings will be held at the following locations:

1. Denver-Sheraton Denver Airport Hotel, 3535 Quebec Street, Denver, Colorado.

2. Houston-Houston Airport Hilton Inn, 500 North Belt East, Houston, Texas.

As stated in the prior Notice, the public is invited to participate in the hearings. Procedures for requests to make oral presentations and for conduct of the hearings are contained in the prior Notice.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231-3432, (FTS) 326-3432.

Dated: March 2, 1987.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87-5239 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD12 87-03]

Special Local Regulations: Budweiser Western States Championships

March 6, 1987.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Special local regulations are being considered for the Budweiser Western States Championships on the San Joaquin River, Stockton Channel. This event will be held from 1000 to 1800 local time on 27 and 28 June, 1987, and annually thereafter on the final weekend of June. Regulations are required to provide for safety of life on these navigable waters during the event by regulating vessel traffic in designated areas.

DATE: Comments must be received on or before April 27, 1987.

ADDRESSES: Comments should be mailed to Commander (bt), Twelfth Coast Guard District, Coast Guard Island, Alameda, CA, 94501-5100. The comments and other materials referenced in this notice will be available for inspection and copying at the Boating Technical Branch, Twelfth Coast Guard District, Coast Guard Island, Alameda, CA, Building 50-4. Normal office hours are 7:00 a.m. to 3:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Jay Ellis, c/o Commander (bt), Twelfth Coast Guard District, Coast Guard Island, Alameda, CA 94501-5100, (415) 437-3309 or (FTS) 536-3309.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD12-87-03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of commentrs received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The draftsmen of this notice are LT Jay Ellis, project officer, Chief Boating Technical Branch, Twelfth Coast Guard District and LCDR Peter Mitchell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The West Coast Outboard Association is sponsoring the annual Budweiser Western States Championships from 1000 to 1800 local time on 27 and 28 June, 1987, and annually thereafter on the last weekend of June. Notice of the specific dates of the festival will be provided in the Local Notice to Mariners. The event consists of 90 to 100 hydroplanes, tunnelhulls, and runabouts from 12 to 20 feet in length racing at high speeds on a closed oval course on the Stockton Deep Water Ship Channel. This activity poses a potential for injury and damage and can constitute a hazard to navigation. It is proposed that during the event the Stockton Deep Water Channel be closed to traffic from Stockton Channel Light 43 (Light List Number 7150) east (upstream) to Stockton Channel Light 48 (Light List Number 7165), a distance of approximately 1.25 statute miles, by special local regulations. The waters involved will be patrolled by vessels of the U.S. Coast Guard, as well as by local law enforcement authorities and the race committee. Coast Guard Officers and/or Petty Officers will enforce the regulations and cite persons and vessels in violation.

The effect of the regulations will be such that vessels desiring to transit the regulated area while it is closed may do so only with clearance from a patrolling law enforcement vessel. Transit through the area will be permitted at least four times each day for at least fifteen minutes, and at other times when there are no events in progress and it is deemed safe by the Patrol Commander, to allow traffic to move through the area.

Because of the annual nature of this event, the Coast Guard proposes to promulgate a permanent amendment to Part 100 to Title 33, United States Code of Federal Regulations and thereafter provide the public with full and adequate notice of the annual parade by publication in the Local Notice to Mariners.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is not necessary. It involves negligible cost and will not have significant effect on recreational vessels, commercial vessels or other marine interests. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation of Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1203 is added to read as follows:

§ 100.1203 San Joaquin River—Budweiser Western States Championships.

(a) *Effective Dates.* These regulations are effective from 1000 to 1800 local time on 27 and 28 June, 1987, and thereafter annually on the final weekend of June as published in the *Local Notice to Mariners.*

(b) *Regulated Area.* Budweiser Western States Championships Race Course Area: That portion of the Stockton Deep Water Channel from Stockton Channel Light 43 (Light List Number 7150) east (upstream) to Stockton Channel Light 48 (Light List Number 7165), a distance of approximately 1.25 statute miles.

(c) *Closure.* The regulated area will be closed to all vessel traffic during the Budweiser Western States Championships' trials, races, and heats from 1000 to 1800 on each day of the event. Transit through the regulated area will be permitted at approximately 1130, 1315, 1500, and 1645 local time on Saturday, and at approximately 1100, 1215, 1430, and 1545 on Sunday for a minimum of fifteen (15) minutes each time to allow for the safe transit of non-participant vessels through the area. The regulated area may be opened during published closure times when there are no events in progress and it is deemed safe by the Patrol Commander.

(d) *Regulations.* (1) All vessels not officially involved with the Budweiser

Western States Championshjips will remain outside of the regulated area during periods of closure unless permission to enter the area is received from a patrol vessel.

(2) No vessel shall anchor or drift in the regulated area.

(3) All vessels not officially involved with the Budweiser Western States Championships shall proceed in a safe and prudent manner directly through the regulated area when it is open to navigation.

(4) All vessels in the vicinity of the regulated area shall comply with the instructions of the U.S. Coast Guard and local enforcement patrol personnel.

Dated: February 27, 1987.

W.P. Leahy,

Captain, U.S. Coast Guard, Acting Commander, Twelfth Coast Guard District.

[FR Doc. 87-5307 Filed 3-11-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-87-03]

Special Local Regulations; Cystic Fibrosis Triathalon, Neuse River, New Bern, NC

March 6, 1987.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposed special regulation for the swimming portion of the Cystic Fibrosis Triathalon to be held on the Neuse River adjacent to the Route 17 Highway Bridge, between the western shore at the Holiday Inn, New Bern, North Carolina and eastern shore at Sandy Point on June 20, 1987. The intended effect will be to restrict general navigation in the regulated area. For the safety of spectators and participants. These regulations are needed to provide for the safety of life on the navigable waters during the event.

DATE: Comments must be received on or before April 27, 1987.

ADDRESSES: Comments should be hand-delivered or mailed to: Commander (bb), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705-5004. Comments and materials referenced in this notice are available for examination and duplication in Room 209, Federal Building, 431 Crawford Street, Portsmouth, Virginia. Office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD-05-87-03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipts of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Mr. Bill J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations

The North Carolina Chapter Cystic Fibrosis Foundation is sponsoring this event, which will consist of approximately one hundred and fifty triathalon swimmers swimming across the Neuse River from the western shore at the Holiday Inn to the eastern shore at Sandy Point. These regulations will become effective from 7:30 a.m. until 9:30 a.m. July 20, 1987. The regulated area will be closed to waterborne traffic while the swimmers are in the water. Since the swimmers will only be in the water from approximately 8:00 a.m. to 9:00 a.m. local time, commercial traffic should not be severely disrupted.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0503 is added to read as follows:

§ 100.35-0503. Neuse River, New Bern, North Carolina.

(a) *Definitions.*—(1) *Regulated Area.* The waters of the Neuse River between the Route 17 Highway Bridge and a line drawn between Neuse River Channel Light 33 approximately position (lat: 35°06'15" North, long: 70°02'05" West) and Duck Point approximately position (lat: 35°06'10" North, long: 77°01'10" West)

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Fort Macon.

(b) *Special Local Regulations.* (1) Except for registered participants of the Neuse River triathalon marine event and vessels that are moored to a pier, dock, or shore, no vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop his vessel immediately when directed to do so by any commissioned, warrant, or petty officer onboard a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant, or petty officer.

(c) *Effective dates.* These regulations are effective on June 20, 1987.

Dated: March 3, 1987.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 87-5308 Filed 3-11-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-33, RM-5599]

Radio Broadcasting Services; Mountain Lake Park, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain Lake Park Broadcasting Co., proposing the allocation of FM Channel 255A to Mountain Lake Park, Maryland, as that community's first FM broadcast service.

DATES: Comments must be filed on or before April 27, 1987, and reply comments on or before May 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Frederick A. Polner, Rothman, Gordon, Foreman and Groudine, P.A., 300 Grant Building, Pittsburgh, Pennsylvania 15219 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–33, adopted February 10, 1987, and released March 3, 1987. 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. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–5229 Filed 3–11–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–32, RM–5582]

Television Broadcasting: Aguada, PR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to assign UHF TV Channel 50 to Aguada, Puerto Rico, as the community's first local television service, at the request of Evelyn Dueno. Channel 50 can be assigned to Aguada in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 miles west to avoid a short-spacing to the Channel 64 assignment at Naranjito, PR. However, should the outstanding construction permit of Station WECN for Channel 64 at Naranjito become licensed, Channel 50 could be utilized at Aguada without any site restriction.

DATES: Comments must be filed on or before April 27, 1987, and reply comments on or before May 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Forbes W. Blair, Esq., David A. Reams, Esq., Blair, Joyce & Silva, 1825 K Street, NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–32, adopted February 10, 1987, and released March 3, 1987. 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. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–5226 Filed 3–11–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–42, RM–5646]

Radio Broadcasting Services; Rockport, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Aransas County Broadcasting proposing the substitution of Channel 275C2 for Channel 272A at Rockport, Texas and modification of its construction permit to specify the new channel. The proposal could provide a first wide area coverage station at Rockport.

DATES: Comments must be filed on or before April 24, 1987, and reply comments on or before May 11, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Morton L. Berfield, Esquire, Lewis I. Cohen, Esquire, Cohen & Berfield, P.C., 1129 20th Street, NW., Washington, DC 20554 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–42, adopted February 10, 1987, and released March 3, 1987. 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. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-5227 Filed 3-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-513, RM-5568]

Radio Broadcasting Services; Mirando City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Alderete Communications proposing the allotment of Channel 265A to Mirando City, Texas, as that community's first FM service. Concurrence of the Mexican government must be obtained.

DATES: Comments must be filed on or before March 27, 1987, and reply comments on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bruce Miller Earle, Alderete Communications, International Broadcasters Supply & Consultation, 1919 Victoria, Laredo, Texas 78040 (Petitioner); and Vir James P.C., 3137 W. Kentucky Avenue, Denver, Co. 80219 (Consultants to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-513, adopted December 24, 1986, and released January 26, 1987. 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. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-5222 Filed 3-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-26; FCC 87-67]

Fairness Doctrine; Television and Radio Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This *Notice of Inquiry* (*Notice*) initiates an inquiry to solicit public comment regarding fairness doctrine alternatives. This was done in response to a statutory directive that requires the Commission "to consider alternative means of administration and enforcement of the Fairness Doctrine and to report to the Congress by September 30, 1987." Specifically, commenters are invited to submit proposals that are within the parameters of the existing doctrine as well as any proposal they believe would further the underlying goal of the fairness doctrine. Commenters are advised to bear in mind the findings made and concerns expressed in the 1985 *Fairness Report*.

DATE: Interested parties may file comments on or before April 13, 1987, and reply comments on or before May 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara A. Kreisman, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry*, in MM Docket No. 87-26, adopted February 13, 1987.

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.

Summary of the Report and Order

1. This proceeding is initiated in an effort to fully comply with the statutory directive that requires the Commission "to consider alternative means of administration and enforcement of the Fairness Doctrine and to report to the Congress by September 30, 1987." Thus, the item solicits comments as to the foregoing looking toward the preparation of a comprehensive document which considers all fairness doctrine alternatives. The item sets forth, for illustrative purposes, proposals regarding the fairness doctrine that have been suggested in the past, but emphasizes that commenters are not limited to these proposals. Further, commenters are invited to submit proposals that are within the parameters of the existing doctrine as well as those which present significantly different alternatives to furthering the goals underlying the doctrine.

2. This a nonrestricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

3. Pursuant to applicable procedures set forth in §§1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 13, 1987 and reply comments on or before May 13, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Fairness doctrine, Television broadcasting, Radio broadcasting.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-5224 Filed 3-11-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-22, RM-5622]

Radio Broadcasting Services; Nacogdoches, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Texan Broadcasting Co., Inc., licensee of Station KTBC-FM, Channel 221A at Nacogdoches, Texas, proposing the substitution of Channel 263C2 for Channel 221A and the modification of its license to specify operation on the new frequency, as that community's second wide area coverage FM station. A site restriction of 27.9 kilometers (17.3 miles) south of the community is required.

DATES: comments must be filed on or before April 20, 1987, and reply comments on or before May 5, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bob Dunn, President, Texan Broadcasting Co., Inc., P.O. Box 848, Nacogdoches, Texas 75961 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-22, adopted January 30, 1987, and released February 27, 1987. 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. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87-5225 Filed 3-11-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 73 and 74

[MM Docket No. 87-11; FCC 87-55]

Call Sign Assignments for Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to modify or delete three rules relating to assignment of call signs to broadcast stations. These rule changes apply to television and radio broadcast stations. The proposals are to eliminate the geographical restriction with respect to the assignment of call signs beginning with the letters "K" and "W," to remove the rules that prohibit assignment of the same call signs to stations in different services where the stations are not commonly owned, and to streamline the present rules applicable to call signs of stations involved in change of ownership transactions. The latter proposed rule applies to low power TV and TV translator stations as well as to other television and radio broadcast stations.

The proposed changes are the result of the Commission's experience with call sign assignment rules and procedures since their modification in 1983. These changes are expected to further streamline call sign assignments and to eliminate unnecessary provisions.

DATES: Comments must be submitted on or before April 17, 1987, and rely comments on or before May 4, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon A. Briley, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 87-11, adopted January 28, 1987, and released February 25, 1987. 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. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

Summary of Notice of Proposed Rule Making

1. The current rules provide that identical basic call signs can be assigned only to commonly controlled stations in different broadcast services. The rule was adopted for the purposes of preventing public confusion and prohibiting one broadcaster from trading on the good will of another. The Commission believes that this rationale no longer serves any public interest purpose on the basis of findings in 1983 in the Commission's *Report and Order* modifying the call sign rules and in the staff's decision in *Arch Communications, Inc.* rejecting the rule's intended purposes. Thus, it believes that a general prohibition on use of the same call sign by stations in different services that are not commonly owned is unnecessary and proposes to delete it. The proposed rule, however, requires that call sign applicants obtain the written consent of licensees of any stations in other services in the market that may already be assigned the desired basic call sign.

2. The rules also provide that call signs are assigned on a first-come-first-served basis. Under current procedures, a licensee seeking a new call sign requests the sign and at the same time must relinquish its existing call sign. A relinquished call sign is not available until the effective date of the change, at which time it may be assigned to the first applicant requesting it. The rules, however, do not provide for call sign exchanges or transfers to other frequencies in a given market without the risk that a licensee may lose a long-established call sign. The Commission believes that these policies and rules impose unnecessary burdens on licensees involved in such transactions and serve no public interest purpose. The staff has permitted exceptions to the current rules in the case of call sign swaps between commonly-owned stations in the same city and where a

broadcaster transferred operations to a new frequency in the same market. The proposed rule change modifies the first-come-first-served policy for call sign assignments to permit such swaps or transfers in the same market on a routine basis.

3. At present the rules state that call signs beginning with the letter "K" will not be assigned to stations located east of the Mississippi River, nor will call signs beginning with the letter "W" be assigned to stations located west of that location. Some exceptions to the rule exist, and the Commission finds no public interest cause to retain the requirement. Thus, the proposed rule change is to eliminate this geographical restriction.

4. This is a non-restricted notice and comment rule making proceeding. *See* section 1.1231 of the Commission's rules, 47 CFR Part 1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rules, if promulgated, would not have a significant impact on small licensees, because the new rules are not burdensome. On the other hand, they should provide increased options for all licensees seeking new or modified call signs.

6. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burden upon the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 17, 1987, and reply comments on or before May 4, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

8. This Notice of Proposed Rule Making is issued pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

List of Subjects

47 CFR Part 73

Radio broadcasting.

47 CFR Part 74

Television broadcasting.

PART 73—[AMENDED]

Part 73 of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

Authority: 47 U.S.C. 154 and 303.

1. The authority citation for Part 73 continues to read as follows:

2. Section 73.3550 is proposed to be amended by removing paragraphs (d) and (e), redesignating paragraphs (f) through (m) as paragraphs (d) through (k), adding a sentence to the end of newly redesignated paragraph (f), and revising newly redesignated paragraph (g) to read as follows:

§ 73.3550 Requests for new or modified call sign assignments

* * * * *

The provisions of paragraph (f) of this section shall not apply to a licensee requesting a transfer to another frequency in the same market.

(g) Where a requested call sign, without the "–FM" or "–TV" suffix, would conform to the call sign of any other station(s) operating in a different broadcast service in the market, the applicant must obtain the written consent of the licensee(s) of such station(s).

* * * * *

PART 74—[AMENDED]

3. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 302, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

4. Section 74.783 is proposed to be amended by revising paragraph (d) to read as follows:

PART 74—[AMENDED]

§ 74.783 Station identification.

* * * * *

(d) Call signs for low power TV and TV translator stations will be made up of the initial letter K or W followed by the channel number assigned to the station and two additional letters. The two letter combinations following the channel number will be assigned in order and requests for the assignment of the particular combinations of letters will not be considered. The channel number designator for Channels 2 through 9 will be incorporated in the call sign as a 2-digit number, i.e., 02, 03, . . ., so as to avoid similarities with call signs assigned to amateur radio stations.

William J. Tricarico,

Secretary.

[FR Doc. 87-5221 Filed 3-11-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 16)]

Exemption of Rail Line Abandonments or Discontinuances; Offers of Financial Assistance

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rules.

SUMMARY: The Commission proposes to modify 49 CFR 1152.27 and 1152.50 to authorize offers of financial assistance to subsidize or acquire rail lines subject to an abandonment or discontinuance exemption authorized by the Commission. The proposed rules would generally incorporate the financial assistance procedures of 49 U.S.C. 10905 in the class exemption or individual petition for exemption process.

DATES: Comments are due by April 28, 1987. Replies are due by May 26, 1987.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 274 (Sub-No. 16) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The text of the proposed rule follows this notice.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275-7428.

The proposed rule modifications will not have a significant economic impact on a substantial number of small entities, but may have a positive effect on a few small carriers by enabling them to enter new markets more easily.

This action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads.

Decided: February 27, 1987.

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

Noreta R. McGee,

Secretary.

Appendix

Title 49, Part 1152 is proposed to be amended as follows:

(Use of the boldface arrows ▶and◀ indicates newly inserted material.)

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for 49 CFR Part 1152 would continue to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 16 U.S.C. 1247(d); 21 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903, *et seq.*

2. Section 1152.27 would be amended by revising paragraphs (a) through (g), paragraph (h)(7), paragraph (j), and paragraph (l) (1) and (2) to read as follows:

§ 1152.27 Financial assistance procedures.

(a) *Provision of information.* An applicant must provide promptly upon request to a party considering an offer of financial assistance, and concurrently to the Commission, the following:

(1)(i) *In an application proceeding,* an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

▶(ii) *In an exemption proceeding,* either an estimate of the annual subsidy or the minimum purchase price, depending upon the type of financial assistance indicated in the potential offeror's formal expression of intent submitted under paragraph (c)(2)(1) of this section;◀

(2) Its most recent reports on the physical condition of the involved line; and

(3) Traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line. ▶In an exemption proceeding, the data to be provided must at a minimum include the carrier's estimate of the net liquidation value of the line, with supporting data, and, if an offer of subsidy is contemplated, an estimate of the cost of rehabilitating the line to Federal Railroad Administration Class I Safety Standards (49 CFR Part 213).◀

(b) **Federal Register** *notice.*—(1) *Abandonment and discontinuance applications.* If the Commission finds that the present or future public convenience and necessity permit or require the proposed abandonment or discontinuance, the Commission will publish these findings in the **Federal Register** concurrently with the service of the decision. The **Federal Register** publication will serve as notice to persons intending to offer financial assistance to assure continued rail service under 49 U.S.C. 10905 and these regulations ▶as they relate to abandonment and discontinuance applications◀.

▶(2) *Exemption proceedings.* If the Commission exempts a proposed abandonment of a line of railroad from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the Commission will publish notice of this action in the **Federal Register.** The **Federal Register** publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service under 49 U.S.C. 10905 and these regulations as they relate to exempt abandonments and discontinuances.◀

(c) *Submission of financial assistance offer—(1) Abandonment and discontinuance applications.*—(i) *Service and filing.* An offeror must serve its offer of assistance on the carrier owning and operating the line and all parties to the abandonment or discontinuance proceeding. The offer must be filed concurrently with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the abandonment or discontinuance application. Once notice of the abandonment findings is published in the **Federal Register,** however, the Commission must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 10 days after the **Federal Register** publication described in paragraph (b) of this section. This filing and service is subject to the requirements of 49 CFR 1152.25(d) (1) through (4).

(C) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the application, the Commission will entertain petitions to toll the 10-day period for submitting offers of financial assistance under paragraph (c)(1) of this section. Petitions must be filed with the Commission within 5 days after publication in the **Federal Register** (described in paragraph (b) of this section). Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 10 days after the publication. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Commission will issue a decision on petitions within 15 days after publication.

(ii) *Contents of offer.* The offeror shall set forth its offer in detail. The offer must:

(A) Identify the line, or the portion of the line, in question;

(B) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations;

(C) Explain the disparity between the offeror's purchase price or subsidy if it is less than the carrier's estimate under paragraph (a)(1) of this section, and explain how the offer of subsidy or purchase is calculated.

▶(2) *Exemption proceedings.*—(i) *Expression of intent to file offer.* Persons with a potential interest in providing financial assistance must be later than 10 days after the **Federal Register** publication described in paragraph (b)(2) of this section submit to the carrier and the Commission a formal expression of their intent to file an offer of financial assistance, indicating the type of financial assistance they wish to provide (*i.e.*, subsidy or purchase). Submission of a formal expression of intent under this paragraph will automatically stay the effective date either of the decision granting an individual exemption or the notice of exemption under the class exemption for 10 days beyond the date stated in the **Federal Register** publication.◀

▶(ii) *Service and filing.* An offeror must serve its offer of assistance on the carriers owning and operating the line and any parties to the exemption proceeding. The offer must be filed concurrently with the Secretary, Interstate Commerce Commission, Washington, DC 10423.◀

▶(A) An offer may be filed and served at any time after the filing of the exemption petition or notice of exemption. Once the notice of exemption is published in the **Federal Register,** however, the Commission must be notified that an offer has previously been submitted.◀

▶(B) An offer, or notification of a previously filed offer, must be filed and served no later than 30 days after the **Federal Register** publication described in paragraph (b)(2) of this section. This filing and service is subject to the requirements of 49 CFR 1152.25(d)(1) through (4).◀

▶(C) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information

is not contained in the exemption petition or notice of exemption, the Commission will entertain petitions to toll the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section. Petitions must be filed with the Commission within 25 days after publication in the **Federal Register** [described in paragraph (b)(2) of this section]. Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 30 days after the publication: These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Commission will issue a decision on petition to toll the offer period within 35 days after publication.◆

◆(iii) *Contents of offer.* The offeror shall set forth its offer in detail. The offer must meet the requirements of paragraph (c)(1)(ii).◆

(d) *Access to documents.* Upon receipt by the carrier of a written comment under § 1152.25 ◆or paragraph (c)(2)(i) of this section◆ indicating an intent to offer financial assistance or upon receipt by the carrier of an offer of financial assistance, whichever occurs earlier, the carrier must make available to that party or offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit 1 (§ 1152.36)◆ or, if an exemption proceeding, those documents that would have been used (if available) in preparing Exhibit 1 had an abandonment or discontinuance application been filed.◆ These documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

(e) *Review of offers.*—(1) *Abandonment and discontinuance applications.* The Commission will review each offer submitted to determine if the offeror is a financially responsible person offering assistance which is likely to cover:

(i) The difference between the revenues attributable to the line and the avoidable cost of providing freight service on the line plus a reasonable return on the value of the line; or

(ii) The acquisition cost of all or any portion of the line. If these criteria are met, the Commission will issue a decision postponing the issuance of a certificate of abandonment or, if a certificate has been issued, postponing the effective date of the certificate. This decision will be issued within 15 days of the **Federal Register** publication described in paragraph (b) of this section (or five days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) of this section). Under the delegation of authority at § 1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8).

◆(2) *Exemption proceedings.* The Commission will review each offer submitted to determine if the offeror is a financially responsible person offering assistance which is likely to cover:

(i) The difference between the revenues attributable to the line and the avoidable costs of providing freight service on the line plus a reasonable return on the value of the line; or

(ii) The acquisition cost of all or any portion of the line. If these criteria are met, the Commission will postpone the effective date either of the decision granting an individual exemption or the notice of exemption under the class exemption and partially revoke the exemption or (in the case of a class exemption) the notice of exemption to the extent it applies to 49 U.S.C. 10905. The decision to postpone and partially revoke will be issued within 35 days of the **Federal Register** publication described in paragraph (b) of this section [or five days after the offer is filed if the time for filing has been tolled under paragraph (c)(2)(ii)(C) of this section]. Under the delegation of authority at § 1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8).◆

(f) *Agreement on financial assistance.* (1) If the carrier and a person offering financial assistance enter into a subsidy agreement designed to provide for continued rail service, the Commission will postpone the issuance of a certificate authorizing the abandonment or discontinuance. If a certificate, ◆decision granting an individual exemption, or notice of exemption◆ has been issued, the Commission will postpone the effective date of the certificate, ◆decision, or notice of exemption.◆ The postponement will be for as long as the subsidy agreement is in effect.

(2) If the carrier and a person offering to purchase a line enter into a purchase agreement which will result in continued rail service, the Commission will approve the transaction and dismiss the application for abandonment or discontinuance, ◆or the petition for exemption or notice of exemption.◆ Commission approval is not required under 49 U.S.C. 10901 or 11343 for the parties to consummate the transaction or for the purchaser to institute service and operate as a railroad subject to 49 U.S.C. 10501(a).

(g) *Failure to reach agreement on financial assistance.* (1) If the carrier and a financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Commission to establish the conditions and amount of compensation. This request must be filed with the Commission within 30 days after the offer is made and served concurrently on all parties to the proceeding.

(2) If no agreement is reached within 30 days after the offer of purchase or subsidy is made, and no request is made to the Commission to set the conditions and amount of compensation under paragraph (g)(1) of this section, the Commission will serve ◆either (i)◆ a certificate authorizing the abandonment or discontinuance within 10 days after the date the request to set conditions and amount of compensation was due (unless an appeal is being heard under § 1152.25(e)), ◆or (ii) a decision vacating the decision postponing the effective date of either the decision granting the exemption or the notice of exemption and partially revoking either the decision granting the exemption or (in the case of a class exemption) The notice of exemption, the certificate or decision to vacate◆ will be effective on its date of service. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 10 days after the date the request to set conditions and compensation was due (unless an appeal is being heard under § 1152.25(e)).

(h) * * *

(7) Within 10 days of the service date of the Commission's decision, the offeror must accept or reject the Commission's terms and conditions with a written notification to the Commission and all parties to the proceeding. If the offeror accepts the terms and conditions set by the Commission, the Commission's

decision is binding on both parties. If the offeror withdraws its offer or does not accept the terms and conditions set by the Commission with a timely written notification, the Commission will serve, within 20 days after the service date of the Commission decision setting the terms and conditions, ◆either◆

(i) A certificate authorizing the abandonment or discontinuance (unless other offers are being considered under paragraph (l) of this section and unless an appeal is being heard under § 1152.25(e)), ◆or◆

◆(ii) A decision vacating the decision postponing the effective date of either the decision granting the exemption or the notice of exemption and partially revoking the exemption or (in the case of a class exemption) the notice of exemption (unless other offers are being considered under paragraph (l) of this section).◆ The certificate ◆or decision to vacate◆ will be effective on its date of service. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 20 days after the service date of the Commission decision setting the terms and conditions (unless other offers are being considered under paragraph (l) of this section or an appeal is being heard under § 1152.25(e)).

* * * * *

(j) *Discontinuance of subsidy.* A subsidizer may discontinue a subsidy under this section by giving 60 days notice of the discontinuance to the applicant and all other parties to the proceeding. Unless another financially responsible party enters into a subsidy agreement as beneficial to the carrier as the discontinued subsidy agreement, the carrier may by filing a request with the Commission and serving the request on all parties to the abandonment ◆or exemption◆ proceeding ◆ obtain (1) a certificate authorizing abandonment or discontinuance of service or (2) a decision vacating the decision postponing the effective date of either the decision granting the exemption or the notice of exemption.◆ The Commission will issue a certificate ◆or decision to vacate◆ within 10 days after the filing and service of the request. This certificate ◆or decision to vacate◆ will be effective immediately. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 10 days after the filing and service of the request.

* * * * *

(l) *Multiple offers of financial assistance.* (1) If an applicant receives more than one offer to purchase or subsidize the line, the applicant must select the offeror with whom it wishes to transact business. ◆In abandonment and discontinuance application proceedings◆ within 25 days after the **Federal Register** publication described in paragraph (b)(1) of this section ◆ and in exemption proceedings within 45 days after the **Federal Register** publication described in paragraph (b)(2)◆ of this section, applicant must (i) file a written notification of its selection with the Commission, and (ii) serve a copy of the notification on all parties to the proceeding.

(2)(i) *Abandonment and discontinuance applications.* If the applicant has received multiple offers of financial assistance and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Commission to establish the conditions and amount of compensation within 40 days after the **Federal Register** publication described in paragraph (b)(1) of this section. The request must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 40 day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request the Commission to establish the conditions and amount of compensation. This request must be filed at the Commission within 50 days of the **Federal Register** publication described in paragraph (b)(1) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Commission will issue a certificate authorizing abandonment or discontinuance within 60 days of the **Federal Register** publication described in paragraph (b)(1) of this section [unless an appeal is being heard under § 1152.25(e)]. This certificate will be effective immediately. If no other request is filed and a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 60 days after the **Federal Register** publication described in paragraph (b)(1) of this section (unless an appeal is being heard under § 1152.25(e)).

◆(ii) *Exemption proceedings.* If the carrier seeking the exemption has received multiple offers of financial assistance and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Commission to establish the conditions and amount of compensation within 60 days after the **Federal Register** publication described in paragraph (b)(2) of this section. The request must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 60 day period and the Commission as not been requested to establish the conditions and amount of compensation, any other offeror may request the Commission to establish the conditions and amount of compensation. This request must be filed at the Commission within 70 days of the **Federal Register** publication described in paragraph (b)(2) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Commission will issue a decision vacating the decision postponing the effective date of either the decision granting exemption or (in the case of a class exemption) the notice of exemption within 80 days of the **Federal Register** publication described in paragraph (b)(2) of this section. The decision to vacate will be effective immediately.◆

* * * * *

3. Section 1152.50 would be amended by designating the existing text of paragraph (a) as paragraph (a)(1) and by adding a new paragraph (a)(2) and revising paragraph (d)(3) to read as follows:

§ 1152.50 Exempt abandonments and discontinuance of service and trackage rights.

(a)(1) * * *

◆(2) Whenever the Commission determines a proposed abandonment to be exempt from the requirements of 49 U.S.C. 10903–10905, whether under this section or on the basis of the merits of an individual petition, the provisions of § 1152.27 as they relate to exemption proceeding shall be applicable.◆

* * * * *

(d) * * *

(3) The Commission, through the Director of the Office of Proceedings, shall publish a notice in the **Federal Register** within 20 days after the filing of the notice of exemption. Petitions to stay the effective date of the exemption ◆and formal expressions of intent to submit offers of financial assistance to assure continued rail service on the line◆ must

be filed within 10 days after publication. The exemption will be effective 30 days after publication (unless stayed pending reconsideration ♦or pursuant to 49 CFR 1152.27(c)(2)(i) a formal expression of intent to file an offer of financial assistance has been submitted).♦ If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio* and the Commission shall summarily reject the exemption notice.

* * * * *

[FR Doc. 87-5281 Filed 3-11-87; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 48
Thursday, March 12, 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

Forest Service

Committee of State Foresters: Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Sacramento, California, on April 7, 1987. The meeting will be held in the Cedar B Room of the Sierra Inn Hotel, 2600 Auburn Blvd., beginning at 1 p.m.

The Committee is comprised of the seven members of the Executive Committee of the National Association of State Foresters. The purpose of the meeting is for the Committee to consult with the Secretary of Agriculture regarding the administration and application of various portions of the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95-313). The Assistant Secretary for Natural Resources and Environment, George Dunlop, will chair this meeting which if open to the public. Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary before or after the meeting.

FOR FURTHER INFORMATION CONTACT: Allan J. West, Executive Secretary, Committee of State Foresters, State and Private Forestry, Forest Service, USDA, P.O. Box 96090, Washington DC 20013-6090, (202) 447-6657.

Dated: March 5, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 87-5325 Filed 3-11-87; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency From Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Format for Requesting Relief Under U.S. Antidumping Duty Law
Form Number: Agency-ITA-357P and 19 CFR 353.36; OMB-0625-0105
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 66 respondents; 2,640 reporting hours
Needs and Uses: Under section 732 of the Tariff Act of 1930, the Department of Commerce is required to initiate an antidumping investigation when an interested party alleges the elements necessary for the imposition of an antidumping duty. The allegation must be accompanied by information supporting it. The data is used to determine whether an investigation is warranted by the Department.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Donald Arbuckle 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6628, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 6228, New Executive Office Building, Washington, DC 20503.

Dated: March 9, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-5343 Filed 3-11-87; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 1-87]

Proposed Foreign-Trade Zone; Caddo Parish, LA; Shreveport-Bossier City Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Caddo-Bossier Parishes Port Commission, a Louisiana public corporation, requesting authority to establish a general-purpose foreign-trade zone in Shreveport, Louisiana, within the Shreveport-Bossier City Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 20, 1987. The applicant is authorized to make this proposal under section 62, Title 51 of the Louisiana Revised Statutes of 1950, as amended.

The proposed foreign-trade zone will cover a 262-acre site on U.S. Highway 171 at Baird Road, owned by AT&T Information Systems, Inc. While presently within Caddo Parish, abutting the Shreveport city boundary, steps are underway to incorporate the site into the City of Shreveport. The site includes AT&T's 146-acre Shreveport Works and a 116-acre tract being developed for general-purpose zone activities. Three warehouse buildings are planned: One for storage of electronic components for AT&T, and two for public use. The zone will be operated by Interport Warehouse and Distribution Center, Inc.

The application contains evidence of the need for zone services in the Shreveport-Bossier area. A number of firms have expressed an interest in using zone procedures for handling products such as metal coverings for industrial insulations, pipe and fittings, commercial food equipment, building supplies, tension stringing equipment, electronic components for telephones and computers, tire materials, silicon steel coils, pharmaceuticals, glass, and toys. No manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the

application and report to the Board. The committee consists of: Dennis Puccinelli, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel R. Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal St., New Orleans, LA 70130; and Colonel Pat M. Stevens, IV, District Engineer, U.S. Army Engineer District Vicksburg, P.O. Box 60, Vicksburg, MS 39180.

As part of its investigation, the examiners committee will hold a public hearing on April 9, 1987, beginning at 9:00 a.m., in the City Council Chamber, Shreveport City Hall, Shreveport, LA.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by April 3. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through May 11, 1987.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Customs Service, Port Director's Office, 6125 Interstate Dr., Bay 11, Shreveport, LA 71109

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm 1529, 14th and Pennsylvania NW., Washington, DC 20230

Dated: March 5, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–5349 Filed 3–11–87; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 343]

Approval for Expansion of Foreign-Trade Zone No. 65, Panama City, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Panama city Port Authority, Grantee of Foreign-Trade Zone No. 65, has applied to the Board for authority to expand its general-purpose zone to include the entire port terminal area and two industrial park sites in Bay County, Florida, within the Panama City Customs port of entry;

Whereas, the application was accepted for filing on December 10, 1985, and notice inviting public comment was given in the **Federal Register** (Docket No. 44–85, 50 FR 52980, 12/27/85);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Panama City area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed December 10, 1985. The grant does not incude authority for manufacturing operations, and does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 3rd day of March 1987.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John Da Ponte,

Executive Secretary.

[FR Doc. 87–5350 Filed 3–11–87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–423–601]

Amendment to Final Determination of Sales at Less than Fair Value; Mirrors in Stock Sheet and Lehr End Sizes From Belgium

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Because of clerical errors, we are amending our final determination in this investigation and directing the U.S. Customs Service to adjust the cash deposit or bonding rates as follows:

Manufacturer/producer/exporter	From (percent)	To (percent)
Glaverbel, S.A	18.82	0.97
All Others	18.82	0.97

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, (202) 377–1769, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On February 2, 1987, we published a final determination of sales at less than fair value on mirrors in stock sheet and lehr end sizes from Belgium (52 FR 3156).

Subsequent to the publication of the final determination, we discovered certain clerical errors in our calculations. We have corrected these errors and are consequently amending our final determination by changing the weighted-average margins. This correction results in changes in our analysis which are summarized below.

Foreign Market Value

After correcting certain clerical errors in our calculations, we found a sufficient amount of sales to Italy at prices above the cost of production to form the basis for our comparisons. Therefore; we based foreign market value on price to price comparisons.

We based foreign market value on delivered prices. We made deductions, where appropriate, for discounts, insurance and inland freight between Belgium and Italy. We made an adjustment for differences in circumstances of sale for credit terms and warranty expenses, in accordance with § 353.15 of the Commerce Regulations (19 CFR 353.15). We deducted Italian packing costs and added U.S. packing costs.

Respondent's Comment

Respondent argues that the 0.82 percent margin found at the time of the preliminary determination should be considered *de minimis* in the context of this investigation and that our determination should be negative.

DOC Position

We disagree. This amended determination resulted in a 0.97 percent margin, which is sufficient to warrant an affirmative determination.

Accordingly, the cash deposit or bonding rates listed in the "Suspension of Liquidation" section of the final

determination are amended to read as follows:

Manufacturer/producer/exporter	From	To
Glaverbel, S.A	18.82	0.97
All Others	18.82	0.97

Dated: March 5, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-5347 Filed 3-11-87; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. OEE-1-87]

Order Renewing Temporary Denial of Export Privileges; Valley Machine and Tool et al.

In the matter of: Valley Machine and Tool, 858 Civic Center Drive, Santa Clara, CA 95050 and Anthony Speno, 650 Spring Street, Santa Cruz, CA 95060, Respondents.

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 through 399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. sections 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), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Valley Machine and Tool, of Santa Clara, California, and its owner, Anthony Speno, of Santa Cruz, California (hereinafter collectively referred to as respondents). The initial order was issued on January 5, 1987 (52 R.R. 850, January 9, 1987).

Section 388.19(d)(2) of the Regulations provides that respondents may oppose renewal of the temporary denial order by filing with the Deputy Assistant Secretary written submissions, supported by appropriate evidence, not later than seven days before the expiration of the order. No such opposition was received by the Deputy Assistant Secretary.

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have obtained U.S.-original disc manufacturing equipment and other U.S.-origin equipment to fulfill contracts under which respondents are to supply the U.S.-origin equipment to Bulgaria. The U.S.-origin disc manufacturing equipment requires a validated export license before it can be exported from the United States to any destination but Canada. Further, the Department states there is a presumption of denial of any application seeking authorization to export the U.S.-origin disc manufacturing equipment to Bulgaria.

The Department's investigation has given it reason to believe that respondents already have made several shipments of U.S.-origin equipment, including U.S.-origin disc manufacturing equipment, from the United States to Bulgaria without obtaining from the Department the export licenses which respondents knew or had reason to know were required by the Regulations, in violation of the Act and Regulations. The Department also states that it has reason to believe that the contracts call for respondents to ship additional U.S.-origin equipment to Bulgaria. Further, the Department states that respondents currently have in their possession and control U.S.-origin equipment which the Department has reason to believe is intended for export to Bulgaria.

The Department states that its investigation gives it reason to believe that the violations under investigation were significant, deliberate, covert and likely to occur again. Further support for the Department's belief that a violation may be imminent is provided by the fact that respondents currently have in their possession U.S.-origin goods which the Department has reason to believe are intended for export to Bulgaria. The Department submits that a temporary denial order naming respondents is necessary in order to give notice to companies in the United States and abroad to cease dealing with respondents in commodities and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Based upon the showing made by the Department and given the lack of opposition shown on the part of the respondents, I find that the Department has established a reasonable basis for the belief that renewal of the order temporarily denying all United States export privileges to respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations, including the need to prevent the unauthorized disposition of U.S.-origin equipment already in respondents' possession and control.

Accordingly, it is hereby

Ordered

I. All outstanding individual 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. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Valley Machine and Tool and Anthony Speno, 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 respondents are 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 March 6, 1987 and shall remain in effect for 60 days.

VII. 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 respondents' written submission must also be served on the Office of the Deputy Chief Counsel for Export Administration, Room H-3329, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230.

A copy of this order shall be served upon respondents and this order shall be published in the **Federal Register.**

Dated: March 6, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87-5297 Filed 3-11-87; 9:45 am]

BILLING CODE 3510-25-M

[Docket No. C-549-401]

Final Affirmative Countervailing Duty Determination; Certain Textile Mill Products From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Thailand of certain textile mill products. The estimated net bounty or grant is 3.82 percent *ad valorem*. The Department and the producers and exporters of certain textile mill products in Thailand entered into a suspension agreement on March 4, 1985 (50 FR 9832, March 12, 1985). Pursuant to section 704(f)(3)(B) of the Tariff Act of 1930, as amended (the Act), the agreement will remain in effect and we will not issue a countervailing duty order as long as the conditions of the agreement are met.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 377-2438 or (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Thailand of certain textile mill products. For purposes of this investigation, the following programs are found to confer a bounty or grant:

- Export Packing Credits
- Rediscounts of Industrial Bills
- Electricity Discounts for Exporters
- Tax Certificates for Exports

We estimate the net bounty or grant to be 3.82 percent *ad valorem*.

Case History

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industries producing certain textile and textile products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Thailand of textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations and, on August 9, 1984, we initiated such investigations (49 FR 32647, August 15, 1984). This investigation is one of those initiated by the Department under the title "Certain Textiles and Textile Products from Thailand." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of our investigations to "Certain Textile Mill Products and Apparel from Thailand."

We stated that we expected to issue preliminary determinations by October 15, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984 (49 FR 40198, October 15, 1984).

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and (b) of the Act apply to the investigations. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Thailand in Washington, DC, on August 27, 1984. Based on the responses to the preliminary questionnaire, we identified the three textile mill products producers and exporters who accounted for at least 60 percent of the value of certain textile mill products exported to the United States. In addition, we requested a esponse from the trading company that exported to the United States the

subject merchandise manufactured by the selected producers.s On October 25, 1984, we presented the detailed government and company questionnaires to he government of Thailand in Washington, DC. The responses to our detailed questionnaires were received on November 27, November 30, December 3 and December 7, 1984.

Certain respondents in the "Certain Textile Mill Products and Apparel" Investigations raised the issue as to whether petitioners have standing to file these cases. Petitioners also made comments regarding our methodology in selecting companies to receive detailed questionnaires, and our investigation of only companies that account for 60 percent of exports of the subject merchandise to the United States. We have addressed these issues in our final determinations on "Certain Textile Mill Products and Apparel from Malaysia," (50 FR 9852, March 12, 1985). See that notice for our positions on the issues.

On December 17, 1984, we issued our preliminary determinations in these investigations (49 FR 49661 December 21, 1984). We preliminarily determined that benefits constituting bounties or grants within the meaning of the Act were being provided to manufacturers, producers, or exporters in Thailand of certain textile mill products and certain apparel.

As announced in the notice of preliminary determinations, we gave interested parties an opportunity to submit oral and written views. We held a public hearing on February 12, 1985. Both petitioners and respondents submitted comments on these proceedings.

On February 1, 1985, we initialed a proposed suspension agreement with respect to certain textile mill products. On March 4, 1985, the Thai producers and exporters (including trading companies) which account for at least 85 percent of exports of certain textile mill products to the United States, and the Department of Commerce signed a suspension agreement, as provided for under section 704 of the Act (50 FR 9832, March 12, 1985). With respect to the investigation of certain apparel, we issued a "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" on March 12, 1985 (50 FR 9818, March 12, 1985).

On March 18, 1985 the petitioners requested that the textile mill products investigation be continued under section 704(g) of the Act. Therefore, we are required to issue a final determination in this investigation.

Scope of the Investigation

The products covered by this investigation are certain textile mill products, which are described in the Appendix attached to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant 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" which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

For purposes of this determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1983.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and comments submitted by interested parties, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of certain textile mill products under the following programs:

A. Export Packing Credits

Export packing credits are short-term loans used for either pre-shipment or post-shipment financing. These loans, which are provided through commercial banks, can be rediscounted at the Bank of Thailand through its export refinancing facility. Under the "Regulations Governing the Rediscount of Promissory Notes Arising from Exports" (B.E. 2514), the commercial banks, during the review period, charged the borrower a maximum of seven percent interest per annum for the export credit, and then the bank rediscounted these loans at five percent interest with the Bank of Thailand. These loans are provided in baht for up to 90 days.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant commercial interest rate for short-term financing. For purposes of this determination we are using the average interest rate charged by commercial banks during 1983. We verified this rate at the Bank of Thailand. Comparing this average interest rate to the rate charged on export packing credits, we find that the rate on export packing credits is preferential and, therefore, these loans confer bounties or grants on the products under investigation. Applying this average commercial bank interest rate as the benchmark, we calculate an estimated net bounty or grant of 1.18 percent *ad valorem* for certain textile mill products.

Under the terms of the suspension agreement, the government of Thailand established a commercial, non-preferential interest rate for refinancing existing packing credits and providing new export packing credits. Since our verification in this investigation, the Department has conducted countervailing duty investigations on certain circular welded carbon steel pipes and tubes from Thailand and on rice from Thailand [See "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand" (Pipes and Tubes), (50 FR 32751, August 14, 1985) and "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Rice from Thailand" (Rice), (50 FR 12356, April 10, 1986)]. In those investigations, the review period was calendar year 1984, and we verified benchmark information at the Bank of Thailand for 1984. Based on those verifications, the benchmark information was refined to include, in the weighted-average interest rate, the interest rates charged on short-term domestic loans, bills and overdrafts.

Baht-denominated trust receipts and baht-denominated foreign bills, on which foreign currency interest rates are charged, were excluded from the benchmark calculation. The benchmark used in *Pipe and Tubes* and *Rice* more accurately reflects what we consider a commercial, non-preferential interest rate for the export packing credit program.

It is our understanding that the government of Thailand, in compliance with the terms of the suspension agreement, established a commercial non-preferential interest rate for refinancing the existing export packing credits and for providing new export packing credits that included in the formula a margin to take into account any upward adjustments in our benchmark. If the commercial interest rate set by the government under the terms of the suspension agreement does not account for the change in the benchmark rate as specified in the *Pipes*

and Tubes and *Rice* notices, then this determination shall serve to notify the government of Thailand that the rate now charged on export packing credits for certain textile mill products must be changed in accordance with the terms of the suspension agreement.

B. Rediscount of Industrial Bills

The Bank of Thailand authorizes rediscounts for short-term promissory notes arising from industrial activity. The Bank of Thailand's "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings" permit commercial banks to rediscount short-term promissory notes for industrial purchases, provided that the manufacturer issuing the short-term promissory note is creditworthy and that the bank discounts the note at a rate not exceeding seven percent per annum (the seven percent rate was applicable during the review period). In turn, commercial banks may rediscount these indistrial promissory notes at five percent with the Bank of Thailand. These industrial promissory notes are also called industrial bills.

As specified in the regulations, the maximum amounts which may be rediscounted each year under these regulations are determined by the Bank of Thailand, and are based on the following criteria:

- For basic industries (*i.e.*, those essential to economic development) the maximum amount of rediscount shall not exceed 90 percent of the annual operating expenses which the Bank of Thailand deems necessary for each industry;
- For industries which use local agricultural raw materials equivalent to no less than 20 percent of the total value of raw materials used, the maximum amount of rediscount shall not exceed 80 percent of the annual operating costs which the Bank of Thailand deems necessary for each industry;
- For industries which export goods equivalent to no less than 20 percent of the total value of sales, the maximum amount of rediscount shall not exceed 80 percent of the annual operating costs which the Bank of Thailand deems necessary for each industry;
- For industries using local raw materials equivalent to no less than 50 percent of the total value of raw materials used, the maximum amount of rediscount shall not exceed 70 percent of the annual operating costs which the Bank of Thailand deems necessary for each industry; and
- For industries not classified above, but which are directly involved in the production process and which utilze local raw materials and local expenditures equivalent to no less than 50 percent of the total cost, or in which labor represents the main factor of production, the maximum amount of rediscount shall not exceed 60 percent of the annual operating costs which the Bank of Thailand deems necessary for each industry.

To determine whether these industrial bills are countervailable, we had to determine whether the categories in which the producers of textile mill products are represented are limited to a specific group of industries or are tied to export performance. To make this determination, we examined the criteria authorizing the maximum amount of rediscount in each category.

At verification, we found that the Bank of Thailand reviews a company's application and determines the category for which it is eligible. Then the Bank of Thailand sets the credit line available to that company. The credit line corresponds to the maximum level of rediscount specified in each category. As specified in the criteria, basic industries are authorized a maximum rediscount of 90 percent. We verified that basic industries must be designated by the government of Thailand, and that during 1983 only four basic industries were represented in the 90 percent category, including producers of textile mill products. Therefore, we determine that the basic industry category is limited to a specific group of industries.

The next two categories require the use of agricultural raw materials in production or a certain level of export sales. The maximum level of rediscount for both these categories is 80 percent. No producers of certain textile mill products are classified in either of these categories. The fourth category requires industries to use a certain percentage of local raw materials and provides up to 70 percent rediscount. The fifth and last category requires that industries use both local raw materials and local expenditures for value added and authorizes a 60 percent rediscount. No producers of certain textile mill products are currently receiving loans in these last two categories.

Since we have determined that the basic industry category is limited to a specific group of industries, we must now determine the amount of the countervailable benefit received. In order to calculate the benefit received by the producers of certain textile mill products represented in the basic industry category, we must determine whether the interest rate on industrial bills is preferential and whether the entire loan amount is countervailable. First, using the benchmark rate described in the section on "Export Packing Credits," the seven percent interest rate is preferential. Second, we determine that the industry-neutral eligibility criteria for the fifth category indicates that within this category there is no *de jure* limitation to a specific enterprise or industry or group of enterprises or industries. We verified that 10 diverse industries ranging from floor tiles to printing are represented in this category. Therefore, we determine that within the fifth category, there is no *de facto* limitation either. Moreover, combining the industries eligible in this fifth category with industries classified in the categories with higher eligibility, we find that most industries in Thailand are eligible to rediscount industrial bills accounting for at least 60 percent of their operating expenses.

Accordingly, we determine that the threshold percentage of rediscount that is not limited to a group of industries is 60 percent, which is the lowest level of rediscount that companies participating in this program can receive. Therefore, that portion of the loans received in the basic industry category that is above the 60 percent threshold is countervailable. We multiplied this portion by the difference between the benchmark and the discount rate to calculate an estimated net bounty or grant of 0.06 percent *ad valorem* for textile mill products.

C. Electricity Discounts for Exporters

The three electricity authorities in Thailand provide a discount of 20 percent on the electricity rates charged to producers of export products. The discount is calculated as a credit which is deducted from each company's electric bill. Because these discounts are available only to exporters, we determine that electricity discounts confer bounties or grants on exports of the products under investigation. To calculate the bounty or grant, we divided the total amount of electricity discounts received during the review period by total export sales. The estimated net bounty or grant is 2.23 percent *ad valorem* for certain textile mill products.

D. Tax Certificates for Exports

The government of Thailand issues tax certificates to exporters to rebate indirect taxes on inputs used in the production of exported products. In Thailand, indirect tax rebates are authorized under two programs.

In 1981, a program for rebating indirect taxes was implemented through the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (hereinafter the Tax and

Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of a 1975 input/output (I/O) study. The statistical base for the I/O study was updated in 1980. Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. They also calculate the import duties and indirect taxes on each input. The Ministry then calculates the ratio of indirect taxes to the ex-factory prices of the final product to determine the rebate rate for each type of product. This rate is then applied to the FOB value of the export to determine the amount of rebate that will be provided. Under the Tax and Duty Act the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities. The current rebate rates on 99 covered products are listed in the "Notification of the Ministry of Finance" No. Or. 1/2524.

The alternative program authorizing the rebate of indirect taxes is the "Announcement of the Ministry of Finance" No. Chor Phor 1/2514 (hereinafter the flat rate program). This rebate authorization was announced in 1971 and was revised in 1978 by No. Or. 126/2521. The Announcement specifies that indirect taxes on materials, equipment, machinery, fuel and other energy sources may be given consideration for compensation. Under the operation of the program, only indirect taxes and import duties on raw materials, fuel and spare parts are included in the rebate. The rebate under this program is calculated as a flat rate in baht per kilogram. The baht per kilogram rates were established in 1972 and revised in 1975. The amount of the rebate was based on studies of the incidence of indirect taxes and import duties on textile mill products. This flat rate rebate program was terminated on March 31, 1985.

Prior to March 31, 1985, exporters could choose the program under which they would claim rebates of indirect taxes. After March 31, 1985, exporters could only claim rebates under the Tax and Duty Act.

Traditionally, we have applied a three-prong test to determine whether the rebate of prior stage cumulative indirective taxes borne by inputs that are physically incorporated into the final product is a subsidy. Under this test, we examined whether: (1) The program involved operates for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

Where an indirect tax rebate system incorporates rebates on import duties, or where there is a fixed duty drawback system instead of an individual duty drawback system (Thailand operates an individual duty drawback system which is addressed in the section on "Duty Drawback or Exemption"), we have now determined that we must apply a linkage analysis similar to our test for rebate systems that are designed to rebate only indirect taxes.

Under this revised linkage analysis, we must first examine whether the fixed duty drawback system is intended to operate as a drawback system. Next, we analyze whether the government properly ascertained the level of the fixed drawback. This includes a review of the sample, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine if the drawback amount reflects the amount of duty (and indirect taxes, if there is a combined duty and indirect tax rebate system) paid.

When these conditions are met, the Department will consider that a rebate system that rebates both indirect taxes and import duties, or a fixed duty drawback system, does not confer a bounty or grant if the amount rebated for duties and indirect taxes on physically incorporated inputs equals (or is less than) the fixed amount set in the rebate schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we would find a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs. Based on these tests, we determine the following.

The Tax and Duty Act provides that the taxes and duties eligible for rebate include those on materials, equipment, spare parts, machinery, fuels and other energy used in production. Direct taxes such as income tax, payment of royalties to the government for mineral rights, and taxes which are otherwise refundable or exempt are excluded from the rebate. Under the flat rate rebate program, the same general eligibility criteria apply, and direct taxes such as income taxes are excluded. Thus, these two programs operate to rebate indirect taxes and import duties.

The eligibility criteria for each these two rebate programs, when considered in conjunction with the government's response and the information obtained during verification on the methodology and sampling used in calculating the rebate rates, lead us to conclude that the government employed an adequate methodology for establishing the rebate levels. Furthermore, we find that the government of Thailand has a system in place to revise periodically the rebate schedules.

We have reviewed the documentation submitted by the government in their response and at verification showing their detailed calculation of the rebate rates. Under the Tax and Duty Act, these calculations itemized the inputs and list ex-factory prices, import values, import taxes, and domestic indirect taxes. The inputs itemized in the government's calculations include both physically incorporated items as well as non-physically incorporated items.

Under the flat program, the government provided documentation supporting its calculations of the tax incidence borne by the product. The amount paid upon export of the product equals the amount of the calculated tax incidence. These flat rate rebates cover both physically incorporated and non-physically incorporated items.

Because under both rebate programs non-physically incorporated items are included in the rebate calculations at the final stage, we determine that there is an excessive remission of indirect taxes and import duties on exported goods. To calculate the amount of the overrebate, we took into account the following factors.

Under both programs, the government calculates a "full" rebate rate that includes import duties and indirect taxes, and a "normal" rebate rate which includes only indirect taxes. The normal rebate rate is claimed by firms when they participate in the individual customs duty drawback or exemption programs on imported raw materials (see section on "Duty Drawback or Exemption" under "Programs Determined Not to Confer Bounties or Grants"), or when firms do not use imported materials in the production

process. For purposes of this determination, we are calculating the overrebate based only on the full rate that includes import duties since we have no verified information on the proportion that normal rebates represent of total rebates received by our respondent companies.

We verified that companies can only claim a rebate for a particular export sale under one program, not both, and that all inputs identified in the flat rate rebate are included in the Tax and Duty Act rebate. Since companies can only claim a rebate on a particular export sale under either the Tax and Duty Act or the flat rate program, and since all the inputs included in the flat rate program are included in the Tax and Duty Act rebate, we are using the data in the Tax and Duty Act rebate program as the basis for our calculation of the overrebate. If any new information on the flat rate program is received or if this program was not terminated on March 31, 1985, we will examine this program again in our administrative review of the suspension agreement under section 751 of the Act.

To determine the estimated net bounty or grant from this excessive remission of indirect taxes, we recalulated, for each Thai customs category for textile mill products, the indirect tax incidence (including import duties) on physically incorporated inputs at FOB prices. We compared this allowable rebate to the authorized rebate received by the producers of textile mill products. We then weighted the overrebates in each textile mill products category by the percentage that category represented of total export sales of textile mill products to the United States. Using this methodology, we calculated an estimated net bounty or grant of 0.35 percent *ad valorem* for textile mill products.

II. Programs Determined not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in Thailand of certain textile mill products under the following programs:

A. Duty Drawback or Exemption

Petitioners alleged that producers or exporters of the products under investigation received countervailable benefits from the drawback of, or exemption from, import duties, business taxes and municipal taxes on imports used in export production.

Under the Thai Customs Act (B.E. 2482), materials that are imported and that are used in the production, mixing, assembling, or packaging of an exported product are eligible to receive either a duty exemption or a duty drawback. In addition, under provisions established in B.E. 2469, companies can import materials under bond and obtain a bank guarantee for the duties, which is deposited with the Customs Service. The bank guarantee for the duties is returned as a drawback when the company provides documentation showing that the imported material was used in the production, mixing, assembly, or packaging of the exported finished good.

During verification, we reviewed the operation of the duty drawback system. To be eligible for duty drawback a company must apply to the Customs Department. The company must submit, for Customs approval, the production formulas for each exported item. The formula must identify the imported raw material inputs, including packing materials, and must calculate the input used per unit of output. The Customs Department investigates the formula and may adjust the formula based on its findings. Once the formula is approved, the company can apply to receive drawback.

The Customs Department maintains a computerized system to keep track of each imported input that is eligible for drawback. When the products incorporating that imported input are exported, the Customs Department draws back the corresponding amount of duties and indirect taxes based on the amount of each imported input that was used in the production of the exported good. If, after six months, the imported input is not entirely used in exported goods, the company must pay the balance of duties due on that import.

The duty exemption system, which can be used by trading companies, operates in a similar manner. An exemption is not granted until Customs approves the production formula and exporters show that the import is physically incorporated in its exports. We verified that neither imports of machinery and equipment, nor imports of products used in the production process that are not physically incorporated, are eligible for exemption or drawback, and that the amount of drawback or exemption does not exceed the amount of duties originally paid or exempted. Therefore, we determine that the duty drawback and exemption systems do not confer a bounty or grant on the subject merchandise.

B. Short-Term Financing from the Industrial Finance Corporation of Thailand (IFCT)

During verification, we found that the IFCT provides very short-term (usually less than 14 days) loans to banks, financial institutions and limited companies. Limited companies can include trading companies. The trading company selected to respond to our questionnaire received short-term IFCT loans during the review period. When the IFCT borrows funds in the financial market or receives funds from international organizations which have not yet been committed to a project, the IFCT places these "idle" funds in the money market with banks, financial institutions and limited companies.

These loans are equivalent to inter-bank loans, and are charged interest rates that are equivalent to the "call-money" rates published by the bank of Thailand. We verified that the interest rates that the trading company was charged on these IFCT loans were comparable to published "call-money" rates.

Because the interest rate charged on these loans is comparable to the interest rates charged on inter-bank loans, which are the most comparable debt instrument, we determine that these loans do not confer a bounty or grant on the products under investigation.

III. Programs Determined not To Be Used

We determine that the manufacturers, producers or exporters in Thailand of certain textile mill products do not use the following programs which were listed in our notice of initiation:

A. Investment Promotion Act

The Investment Promotion Act (B.E. 2520) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment, the Investment Promotion Act authorizes the exemption of import duties and certain taxes. Under section 35 of the Investment Promotion Act, these benefits are provided to companies located in investment zones or industrial estates and, under section 36 of the Investment Promotion Act, certain benefits are provided to promote enterprises which export.

We verified that none of the producers responding to our questionnaire are located in an investment promotion zone or receive benefits under the Investment Promotion Act. The trading company responding to our questionnaire receives certain incentives under section 36 of the Investment Promotion Act. These incentives are discussed in the section of the notice on "Assistance to Trading Companies."

B. Export Processing Zones

In 1979, Export Processing Zones were authorized through the "Industrial Estates Authority of Thailand Act" (B.E. 2522). One export processing zone has been set up in Thailand. We verified that none of the companies responding to our questionnaire are located in this zone and, thus, they receive no benefits under this program.

C. Medium- and Long-Term Financing from the Industrial Finance Corporation of Thailand

Petitioners alleged that producers and exporters of the subject merchandise receive countervailable medium- and long-term loans from the IFCT. We verified that none of the producers or exporters selected to respond to our questionnaire had outstanding medium- and long-term loans from the IFCT during the review period.

D. Assistance to Trading Companies

Petitioners alleged that the Board of Investments provides the following benefits to qualified international trading companies:

- Exemption of import duties and business taxes on imported materials used to produce export goods;
- Financing support from the Bank of Thailand including the holding of foreign currency accounts;
- Tax holidays and accelerated depreciation; and
- Deduction from taxable income of 200 percent of foreign marketing expenses.

In 1978 the Board of Investment authorized certain incentives for eligible trading companies under section 36 of the Investment Promotion Act. These incentives included duty exemptions for both raw materials and essential materials used in export production, exemptions of certain business taxes, double deduction of foreign marketing expenses for income tax purposes and permission to maintain foreign currency accounts. Eligibility for this program was terminated on March 11, 1981, pursuant to the Announcement of the Board of Investment No. Gnor 1/1981. However, those trading companies that qualified for the program prior to the termination date continue to receive incentives.

During the review period, the trading company responding to our questionnaire received the following incentives: export packing credits and duty exemptions on imported raw materials. The trading company did not have permission to hold foreign currency accounts and did not claim the double deduction of foreign marketing expenses from income taxes. The company also did not receive a tax holiday or claim accelerated depreciation. With respect to the export packing credits provided to the trading company, these loans are determined to confer bounties or grants and are included in the calculation of the ad valorem rate specified in the section of the notice on "Export Packing Credits." With respect to import duty exemptions, we verified that this program functions in the same way as the duty drawback program which we have determined does not confer a bounty or grant (see the section of the notice on "Duty Drawback or Exemption").

IV. Program Not in Existence

We determine that the following program was not in existence during the review period:

Loans to Finance Imports Necessary for Export Industries

The response of the government of Thailand stated that this program does not exist and we found no evidence during verification that contradicts the government's response.

Petitioner's Comments

Comment 1. Petitioners contend that the appropriate benchmark for countervailable short-term loans is the 17 percent rate published by the Bank of Thailand (BOT) and not the average commercial bank interest rate provided by the BOT.

DOC Position. In the BOT's Quarterly Bulletins, the published rate is identified as a ceiling rate. Thus, it would not be considered the most appropriate national average benchmark or the most comparable, predominant short-term debt instrument, unless the government of Thailand could not provide verifiable statistics on average interest rates. Based on our verification, we consider that the government has satisfactorily demonstrated that average actual interest rates are lower than the published ceiling rate. Therefore, we are using as the benchmark the average commercial bank interest rate that we verified at the Bank of Thailand.

Comment 2. Petitioners argue that we should look at interest rates charged on loans from financial institutions other than banks to find the benchnmark. They contend that it is established Departmental practice to compare preferential short-term export financing to the cost of alternative financing generally available in the lending marketplace of the country.

DOC Position. Established Department practice is to use the most comparable, predominant method of financing as the source for short-term loan benchmarks. Thus, we usually look for a commercial interest rate charged by commercial banks. We are satisfied that the benchmark we have chosen represents a commercial interest rate and the one which the producers and exporters of textile mill products are likely to have paid absent access to preferential financing.

Comment 3. Petitioners argue that we have allocated the benefits incorrectly for the Export Packing Credit program. They contend that, unless respondents identified and we verified which export packing credits were tied to U.S. exports, we should consider that all export packing credits are tied to U.S. sales. Accordingly, the appropriate denominator for this subsidy calculation should be U.S. exports rather than all exports. They also argue that respondents did not adequately answer the request for the "purpose and use of these loans" in our questionnaire.

DOC Position. The intent of countervailing duty investigations is to determine the subsidy applicable to exports to the United States of the subject merchandise. To calcuate the *ad valorem* subsidy we take the total amount of the benefits under a particular program and divide it by the relevant sales value—export sales for export subsidies and total sales for domestic subsidies. While we prefer to separate benefits accruing on sales of the subject merchandise to the United States and divide this by exports to the United States, we often find that, in the short time mandated for a countervailing duty investigation, companies cannot separately identify in their records those benefits which are tied to a particular subset of sales, such as sales to the United States of the subject merchandise.

Under the Export Packing Credit program, the amount of the loan is based on the value of the export, and all exports are eligible for refinancing under this program. Therefore, we can assume that the companies took out export packing loans on all export sales and that the countervailing duty rate should be essentially the same, using either loans on exports to the United States of the subject merchandise or total loans on total exports.

Furthermore, we consider that respondents did provide sufficient information on the purpose and use of these loans. The purpose is to finance export sales and the companies used the loans in the production of goods for export.

Comment 4. Petitioners argue that the entire principal of the loans under the

Rediscount of Industrial Bills program is countervailable because loans at 7 percent under Category 5(e) are not generally available. They further argue that, in order for the total loan to be not countervailable, the government must establish both that (1) alternative financing at 7 percent would have actually been available for the same transactions and (2) alternative 7 percent financing is not in itself a countervailable bounty or grant.

DOC Position. We disagree with petitioners' first comment. See the secton of the notice on "Rediscount of Industrial Bills" for our determination on this program. With respect to petitioners' second comment, according to section 771(5)(B) of the Act, two tests must be applied to determine whether a domestic subsidy exists. First, we determine whether the program is limited to a specific enterprise or industry or group of enterprises or industries. If it is limited, then, for loan programs, we examine whether the loans are inconsistent with commercial considerations. We have found that within category 5(e) there is neither *de jure* nor *de facto* limitation to a specific group of industries and that, when we combine the industries in category 5(e) with industries classified in categories with higher eligibility, most industries can rediscount at least 60 percent of their operating expense. Since this first test has not been met, a domestic subsidy does not exist for that category. Thus, category 5(e) acts as the threshold in calculating the benefits for the countervailable loans in the basic industry and in the export category.

We do not have to determine whether alternative 7 percent financing is below the commercial interest rate because where we determine that there is no limitation within a domestic program to a specific enterprise or industry, or group thereof, then a subsidy does not exist.

Comment 5. Petitioners argue that the entire amount of the rebate received under the Tax Certificate Program should be countervailed because the I/O study is ten years old, the statistical base is five years old, the rebate is calculated on ex-factory rather than FOB prices, and the rebate program under the "Announcement of the Ministry of Finance" does not meet the Department's test for indirect tax rebate programs. They also argue that we should either find individual rates for each like product or we should use a trade-weighted average to calculate a rate for each class or kind of merchandise.

DOC Position. We believe that the I/O study for Thailand provides an adequate basis for calculating indirect tax incidence. The study is being updated and the revised I/O tables were scheduled for publication during 1985. I/O studies are an ongoing process that provide a reasonable statistical base on which to calculate indirect tax incidence and indirect tax rebates.

We agree with petitioners that both the calculation of indirect taxes and the calculation of the rebate rate should be based on FOB prices. Therefore, we have used best information available to recalculate the incidence of indirect taxes and import duties on the FOB price basis. We then compared this allowable rebate to the authorized tax rebate which is based on FOB prices. We also consider that our calculation of overrebate under the Tax and Duty Act incorporates any overrebate that may have been received under the flat rebate program authorized by "Announcement of the Ministry of Finance." Our reasons are set forth in the section of the notice "Tax Certificates for Exports." With respect to petitoners' last argument, we have used a trade-weighted average to calculate the overrebate because the rebate rates differ by product.

Comment 6. Petitioners argue that the Customs Duty Drawback and Duty Exemption Programs are countervailable and the *ad valorem* rate should be calculated using best information available.

DOC Position. As petitioners correctly point out, we preliminarily determined that we needed additional information on these programs in order to determine whether they are countervailable. However, we have determined that these programs are not countervailable, as stated in the section of the notice "Duty Drawback or Exemption". We verified that drawbacks and exemptions are authorized only for physically incorporated imported inputs and not for items such as machinery and equipment.

Respondents' Comments

Comment 1. Respondents argue that the Industrial Bill Rediscount Program is not countervailable because it is not limited to a group of enterprises or industries under section 771(5)(B) of the Act.

DOC Position. We disagree. For our determination with respect to this program, see the section of the notice on "Rediscount of Industrial Bills."

Comment 2. Respondents argue that all firms are eligible to receive financing for at least 60 percent of their operating expenses under the Industrial Bill Rediscount Program. Therefore, if the Department finds this program countervailable, we should only determine a benefit on the portion of the financing which is limited to a group of industries within the meaning of section 771(5)(B) of the Act.

DOC Position. We agree. It is our policy, when a portion of the benefits of a program are "generally available," we determine the countervailable benefit of that program to be the portion which is limited to a specific enterprise or industry or group of enterprises or industries. See, for example, our treatment of the FOGAIN program in Mexico in the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime from Mexico" (49 FR 35672, September 11, 1984).

Comment 3. Respondents argue that the Department, when determining whether there is an overrebate of indirect taxes, should use the cumulative incidence of prior-stage indirect taxes on items physically incorporated into the exported product and not limit our consideration to those taxes levied at the final stage of production.

DOC Position. We consider that our calculations should be based on the rebate system structured by the government of Thailand. The government's rebate system is based on an input/output study. Therefore, the prior stage indirect taxes on material inputs into each product have already been taken into account in the rebate calculations since indirect taxes are passed forward from prior stages to the final stage.

Comment 4. Respondents argue that, since foreign borrowing constitutes a significant portion of total borrowing in Thailand, it is appropriate for the Department to include foreign borrowing in the benchmark for Export Packing Credits.

DOC Position. We use as our benchmark for short-term loans the national average commercial interest rate or the most comparable, predominant short-term financing. As stated in the Subsidies Appendix, this benchmark must be applicable to loans denominated in the same currency as the loans under consideration. Thus, it would be inappropriate to include foreign currency loans in our calculations of the benchmark for a baht currency loan program.

Comment 5. Respondents argue that the Department should take into account the program-wide change in interest rates charged under the Export Packing

Credit program that went into effect in October 1984.

DOC Position. We attempt to take into account program-wide changes that occur prior to our preliminary determination when the changes can be verified. However, for certain types of programs this is not always possible. The effects of modifications in short-term loan programs are not easily quantified, nor do they occur immediately. While we may be able to assume that the change in the interest rate would result in proportionally the same rate of program usage and the same level of sales, it would be unlikely, under the deadlines imposed for countervailing duty investigations, that we could obtain verifiable information on benchmarks corresponding to the period after the interest rate change. In the instant investigation, respondents provided no information on the average commercial interest rate in Thailand corresponding to the period after the program-wide change.

Comment 6. Respondents argue that the Department should convert the export packing credit discount rate into an annual rate since the benchmark we used in the preliminary determination was an effective annual interest rate.

DOC Position. We disagree. We verified the average interst rate submitted by the Bank of Thailand, but they provided no evidence to demonstrate that this interest rate is effective rather than nominal. Therefore, it is not appropriate to convert the nominal seven percent discount rate on export packing credits into an effective rate.

If respondents also are arguing that we should convert the seven percent rate to an annualized rate, we disagree, because both the seven percent rate and the benchmark rate are annual rates.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including meetings with government officials and inspection of documents, as well as on-site inspection of the records and operation of the companies exporting the subject merchandise to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce Regulations (19 CFR 355.34(a)). A public hearing was held on February 12, 1985. Written views have been received and considered in reaching this final determination.

In the event the suspension agreement is violated or no longer meets the statutory requirements of section 704(i)(1) of the Act, the Department, in accordance with section 703(d) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries, or withdrawals form warehouse, for consumption of the subject merchandise and will issue a final countervailing duty order as required by section 704(i)(1)(C) of the Act.

This notice is published pursuant to sections 303 and 705(d) of the Act [19 U.S.C. 1303, 1671d(d)].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 3, 1987.

Appendix

List of TSUSA Codes Which Covered Thailand's Exports of Certain Textile Mill Products to the United States in 1983

CERTAIN TEXTILE MILL PRODUCTS

Yarns

300.6026	300.6028	303.2040	303.2042	308.5500	310.0209	310.1110
310.1135	310.4047	310.5030	310.5047	310.5049	310.9120	310.9140
320.1109						

Fabrics [1]

320.0012	320.0013	320.0019	320.0032	320.0033	320.0034	320.0043
320.0044	320.0045	320.0062	320.0063	320.0071	320.0077	320.1012
320.1013	320.1019	320.1021	320.1022	320.1024	320.1031	320.1032
320.1033	320.1034	320.1038	320.1042	320.1043	320.1044	320.1045
320.1049	320.1050	320.1051	320.1052	320.1054	320.1057	320.1062
320.1063	320.1065	320.1071	320.1072	320.1074	320.1077	320.1080
320.1085	320.1087	320.1089	320.1091	320.1093	320.1095	320.1098
320.2018	320.2021	320.2022	320.2024	320.2027	320.2031	320.2038
320.2042	320.2049	320.2050	320.2051	320.2052	320.2054	320.2057
320.2065	320.2072	320.2074	320.2080	320.2087	320.2093	320.2098
320.3016	320.3018	320.3023	320.3027	320.3069	320.3073	320.5003
320.5021	320.5022	320.5024	320.5038	320.5042	322.1021	322.1022
322.1024	322.1031	322.1038	322.1042	322.1049	322.1054	322.1057
322.1065	322.1072	322.1074	322.1080	322.1098	322.2003	322.2021
322.2022	322.2024	322.2038	322.2042	322.2049	322.2054	322.2057
322.2065	322.2072	322.2074	322.2080	322.2098	322.4016	322.4021
322.4022	322.4023	322.4024	322.4031	322.4038	322.4042	322.4049
322.4054	322.4057	322.4065	322.4069	322.4072	322.4073	322.4074
322.4080	322.4098	326.1019	326.1034	326.1045	326.1071	326.1077
326.2016	326.2018	326.2023	326.2027	326.2069	326.2073	326.3016
326.3018	326.3019	326.3021	326.3022	326.3023	326.3024	326.3027
326.3031	326.3034	326.3038	326.3042	326.3045	326.3049	326.3054
326.3057	326.3065	326.3069	326.3071	326.3072	326.3073	326.3074
326.3077	326.3080	326.3098	326.6016	326.6023	326.6069	326.6073
327.3016	327.3023	327.3069	327.3073	327.4003	327.4021	327.4022
327.4024	327.4038	327.4042	327.4049	327.4054	327.4057	327.4065
328.3016	328.3023	328.3069	328.3073	328.4003	328.4021	328.4022
328.4024	328.4038	328.4042	328.4049	328.4054	328.4057	328.4065
328.4072	328.4074	328.4080	328.4098	335.9500	336.6447	337.9010
337.9013	337.9035	338.5006	338.5035	338.5036	338.5039	338.5045
338.5046	338.5049	338.5069				

Special Construction Fabrics

347.2600	347.5000	353.5042	355.0200			

Textile Furnishings

360.1015	360.1515	360.1520	360.2000	360.4825	360.4855	360.7000
360.7800	361.4500	363.0120	363.0515	363.0520	363.0525	363.3020
363.5115	363.5130	363.6015	363.8000	364.1300	365.7825	365.7865
366.1520	366.1820	366.1840	366.1865	366.1880	366.2160	366.2420
366.2420	366.2480	366.2720	366.4600	366.4700	366.6500	366.7700
366.7930	367.4500	367.6040	367.6080			

Miscellaneous

385.6140	386.0430	386.1500	386.4000	386.5045	387.3700	
389.3000	389.5000	389.6255	389.6265			

[1] For the woven cotton fabrics under investigation, the U.S. Department of Commerce, in preparing the Appendices for these investigations, has used the U.S. Import Statistical Numbers which closely parallel the TSUSA numbers. For example, U.S. Import Statistical Number 323.0012, represents TSUSA numbers 323.0112 through 323.0912 and 328.4098 represents TSUSA numbers 328.4098 through 328.4998. The fourth and fifth digits of these TSUSA numbers are the yarn count numbers.

[FR Doc. 87-5348 Filed 3-11-87; 8:45 am]

BILLING CODE 3510-DS-M

Los Alamos National Laboratory, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

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 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No.: 84–259. Applicant: Los Alamos National Laboratory, Los Alamos, NM 87545. Instrument: Laser System. Manufacturer: Lumonics Inc., Canada. Date of Denial Without Prejudice to Resubmission: December 9, 1986.

Docket No.: 86–217. Applicant: University of New Mexico, Albuquerque, NM 87131. Instrument: Scanning Electron Microscope, Model S–530–2. Manufacturer: Hitachi Instruments, Japan. Date of Denial Without Prejudice to Resubmission: December 9, 1986.

Docket No.: 86–293. Applicant: Armed Forces Radiobiology Research Institute, Bethesda, MD 20814–5145. Instrument: Rapid Kinetics Accessory, Model SFA–11. Manufacturer: High-Tech Scientific Ltd., United Kingdom. Date of Denial Without Prejudice to Resubmission: December 8, 1986.

Docket No.: 86–295. Applicant: Texas A&M University, College Station, TX 77843–3578. Instrument: Rapid Kinetics Accessory, Model SFA–11. Manufacturer: High-Tech Scientific Ltd., United Kingdom. Date of Denial Without Prejudice to Resubmission: December 8, 1986.

Docket No.: 87–036. Applicant: Wright State University, Dayton, OH 45435. Instrument: CD Spectropolarimeter, Model J–500A. Manufacturer: Jasco, Japan. Date of Denial Without Prejudice to Resubmission: December 16, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–5345 Filed 3–11–87; 8:45 am]

BILLING CODE 3510–DS–M

University of Texas at Austin, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

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 No.: 87–018. Applicant: University of Texas at Austin, Austin, TX 78712. Instrument: Diagnostic Neutral Beam. Manufacturer: Culham Laboratories, United Kingdom. Intended Use: See notice at 51 FR 42890, November 26, 1986. Reasons for This Decision: The foreign article provides a beam energy of 50 kV, a beam current >6A and beam modulation at a frequency >1 kHz.

Docket No.: 87–021. Applicant: The University of Denver, Denver, CO 80208–0179. Instrument: NO_2 in Air Monitor, Model Luminax LMA–3. Manufacturer: Scintrex, Canada. Intended Use: See notice at 51 FR 42125, November 21, 1986. Reasons for This Decision: The foreign instrument is most sensitive in the 0–20 ppb range and is capable of a maximum sensitivity of 10 ppt.

Docket No.: 87–034. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: Laser Ionisation Mass Analyzer, Model LIMA–2A. Manufacturer: Cambridge Mass Spectometry, United Kingdom. Intended Use: See notice at 51 FR 42891, November 26, 1986. Reasons for This Decision: The foreign instrument is capable of analyzing samples both in reflection (bulk) and transmission under ultra-high vacuum (10^{-10}) torr region).

Docket No.: 87–056. Applicant: Argonne National Laboratory, Argonne, IL 60439–4837. Instrument: EMG–201 Excimer Laser and FL 3002 Dye Laser. Manufacturer: Lambda Physik, West Germany. Intended Use: See notice at 51 FR 45792, December 22, 1986. Reasons for This Decision: The foreign article provides high output energy (400 mJ at 308 nm) and high energy conversion efficiency (17% at 80 nm), a repetition rate of 80 Hz and an amplified spontaneous emission less than 4×10^{-3}.

Docket No.: 87–064. Applicant: National Bureau of Standards, Gaithersburg, MD 20899. Instrument: ICP Mass Spectrometer, Model VG Plasma Quad. Manufacturer: VG Instruments Inc., United Kindgom. Intended Use: See notice at 50 FR 1262, January 10, 1985. Reasons for This Decision: The foreign instrument provides simultaneous qualitative and semi-quantitative data for major, minor and trace constituents and abundance sensitivity of 1 in 10^5 up to 100 amu.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

We know of no other instrument or apparatus being manufactured 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. 87–5346 Filed 3–11–87; 8:45 am]

BILLING CODE 3510–DS–M

[Case No. OEE–2–86]

Order Vacating Denial of Export Privileges; Werner Scheele, et al.

In the Matter of: WERNER SCHEELE, doing business as COMPUTER HARDWARE VERTRIEBS GmbH and COMSERV COMPUTER LEASING GmbH both with addresses at Langenberger Strasse 449–451, 4300 Essen 14, Federal Republic of Germany, Respondents

On July 31, 1986, the Deputy Assistant Secretary for Export Enforcement (Deputy Assistant Secretary) issued an Order (51 FR 28400, August 7, 1986) denying all export privileges to Warner Scheele, doing business as Computer Hardware Vertriebs GmbH and Comserv Computer Leasing GmbH (hereinafter collectively referred to as respondents). The July 31, 1986 Order was issued pursuant to § 387.8 of the Export Administration Regulations (15 CFR Parts 368 through 399 (1986)), based on respondents' failure to answer a series of interrogatories relating to their activities involving U.S.-origin goods and technical data which were served on respondents by the Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department). Under its terms, the Order is effective for a period of five years from the date of the Order, or until respondents answer the interrogatories or present adequate reasons for their failure or refusal to respond.

The Department has advised the Deputy Assistant Secretary that respondents have answered the

interrogatories and that those answers have been accepted by the Department. Consequently, the Department has moved that the July 31, 1986 Order denying all export privileges to the respondents and the named related parties be vacated.

Accordingly, it is hereby

Ordered

That the July 31, 1986 Order issued against the respondents and the following named related parties

Bengt Andersson, individually with an address at Bodalsvagen 20 XII Lidingo, Sweden; and doing business as:
BEA Computer and Beacom International AB both with addresses at Vasagaten 15–17, S–111 20 Stockholm, Sweden; be and is hereby *Vacated.*

This order is effective immediately and shall be published in the **Federal Register.** A copy of this order shall be served upon the respondents and upon the named related parties.

Dated: March 4, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87–5245 Filed 3–11–87; 8:45 am]

BILLING CODE 3510-DS-M

[C–122–603]

Countervailing Duty Order; Fresh Cut Standard Carnations From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that certain fresh cut flowers from Canada are being subsidized within the meaning of the countervailing duty law. In a separate investigation the U.S. International Trade Commission (ITC) determined that imports of fresh cut standard carnations from Canada are materially injuring a U.S. industry. The ITC also determind that imports of fresh cut miniature carnations are not materially injuring, threatening material injury to, or materially retarding the establishment of, a U.S. industry.

Therefore, based on these findings, all unliquidated entries of standard carnations from Canada, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after October 27, 1986, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register,** and prior to or on February 24, 1987, will be liable for the possible asessment of countervailing duties. Entries of standard carnations produced by Unsworth Greenhouses Ltd. (Unsworth) are not subject to our countervailing duty order because we determined in our final affirmative determination that Unsworth received no benefits during the review period of our countevailing duty investigation.

Furthermore, a cash deposit of estimated countervailing duties of 1.47 percent *ad valorem* must be made on all such entries or withdrawals from warehouse, of standard carnations, for consumption, made on or after the date of publication of this countervailing duty order in the **Federal Register,** except for entries of standard carnations produced by Unsworth. All estimated countervailing duties deposited on entries of fresh cut miniature (spray) carnations shall be refunded and the appropriate bonds or other security released.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377–0161 (Taverman) or 202/377–2786 (Moreland).

SUPPLEMENTARY INFORMATION: The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and standard carnations currently provided for in item 192.21 of the TSUS.

In accordance with section 703 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671b), on October 27, 1986, the Department published its preliminary determination that there was reason to believe or suspect that producers or exporters of certain fresh cut flowers from Canada receive benefits which constitute subsidies within the meaning of the countervailing duty law (51 FR 37925). In accordance with section 705 of the Act (19 U.S.C. 1671d), on January 20, 1987, the Department published its final determination that these imports are being subsidized (52 Fr 2134).

On March 5, 1987, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department ot its determination that imports of standard carnations from Canada are materially injuring a U.S. industry. Therefore, in accordance with section 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department is directing U.S. Customs officers to assess, upon further advice by the administering authority pursuant to sections 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the estimated net subsidy on all entries of standard carnations from Canada other than those produced by Unsworth. These countervailing duties will be assessed on all unliquidated entries of standard carnations from Canada which were entered, or withdrawn from warehouse, for consumption, on or after October 27, 1986, the date on which the Department published its preliminary affirmative countervailing duty determination notice in the **Federal Register** (51 FR 37925, October 27, 1986) and prior to or on February 24, 1987, and on all entries and withdrawals of standard carnations made on or after the date of publication of this order in the **Federal Register.** Entries of standard carnations from Canada made between February 25, 1987, and the day prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 1.47 percent *ad valorem* on all entries of standard carnations from Canada except for entries of standard carnations produced by Unsworth.

On March 5, 1987, in accordance with section 705(d) of the Act [1671d(d)], the ITC also notified the Department of its determination that imports of fresh cut miniature (spray) carnations from Canada are not materially injuring, threatening material injury to, or materially retarding the establishment of a U.S. industry. Therefore, the Department is directing U.S. Customs officers to refund all estimated countervailing duties deposited on entries of fresh cut miniature (spray) carnations from Canada and to release the appropriate bonds or other security.

This determination constitutes a countervailing duty order with respect to standard carnations from Canada pursuant to section 706 of the Act [19 U.S.C. 1671e(a)(1)] and § 355.36 of the Commerce Regulations (19 CFR 355.36). We have deleted from the Commerce Regulations Annex III of 19 CFR Part 355, which listed countervailing duty

orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Richard Moreland at (202) 377-2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

March 10, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-5479 Filed 3-11-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-421-601]

Countervailing Duty Order; Standard Chrysanthemums From the Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that certain fresh cut flowers from the Netherlands are being subsidized within the meaning of the countervailing duty law. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of fresh cut standard chrysanthemums (standard chrysanthemums) from the Netherlands are materially injuring a U.S. industry. The ITC also determined that imports of fresh cut miniature carnations, alstroemeria, and gerbera from the Netherlands are not materially injuring, threatening material injury to, or materially retarding the establishment of, a U.S. industry.

Therefore, based on these findings, all unliquidated entries of standard chrysanthemums from the Netherlands, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after October 27, 1986, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register**, and prior to or on February 24, 1987, will be liable for the possible assessment of countervailing duties.

Furthermore, a cash deposit of estimated countervailing duties of 3.48 percent *ad valorem* must be made on all such entries, and withdrawals from warehouse, of standard chrysanthemums, for consumption, made on or after the date of publication of this countervailing duty order in the **Federal Register**. All estimated countervailing duties deposited on entries of fresh cut miniature carnations, alstroemeria, and gerbera from the Netherlands shall be refunded and the appropriate bonds or other security released.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0161 (Taverman) or 377-2786 (Moreland).

SUPPLEMENTARY INFORMATION: The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and standard chrysanthemums, alstroemeria, and gerbera, currently provided for in item 192.21 of the TSUS.

In accordance with section 703 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671b), on October 27, 1986, the Department published its preliminary determination that there was reason to believe or suspect that producers or exporters of certain fresh cut flowers from the Netherlands receive benefits which constitute subsidies within the meaning of the countervailing duty law (51 FR 37944). In accordance with section 705 of the Act (19 U.S.C. 1671d), on February 3, 1987, the Department published its final determination that these imports are being subsidized (52 FR 3301).

On March 5, 1987, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department of its determination that imports of standard chrysanthemums from the Netherlands are materially injuring a U.S. industry. Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department is directing U.S. Customs officers to assess, upon further advice by the administering authority pursuant to sections 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the estimated net subsidy on all entries of standard chrysanthemums from the Netherlands. These countervailing duties will be assessed on all unliquidated entries of standard chrysanthemums from the Netherlands which were entered, or withdrawn from warehouse, for consumption, on or after October 27, 1986, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register** (51 FR 37944), and prior to or on February 24, 1987, and on all entries and withdrawals of standard chrysanthemums made on or after the date of publication of this order in the **Federal Register**. Entries of standard chrysanthemums from the Netherlands made between February 25, 1987, and the day prior to the date of publication of this order in the **Federal Register**, are not liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 3.48 percent *ad valorem* on all entries of standard chrysanthemums from the Netherlands.

On March 5, 1987, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC also notified the Department of its determination that imports of fresh cut miniature carnations, alstroemeria, and gerbera from the Netherlands are not materially injuring, threatening material injury to, or materially retarding the establishment of, a U.S. industry. Therefore, the Department is directing U.S. Customs officers to refund all estimated countervailing duties deposited on entries of fresh cut miniature carnations, alstroemeria, and gerbera from the Netherlands and to release the appropriate bonds or other security.

This determination constitutes a countervailing duty order with respect to standard chrysanthemums from the Netherlands pursuant to section 706 of the Act (19 U.S.C. 1671e(a)(1)) and § 355.36 of the Commerce Regulations (19 CFR 355.36). We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355, which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Mr. Richard Moreland at (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 U.S.C. 355.36).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 10, 1987.

[FR Doc. 87–5480 Filed 3–11–87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Species; Proposed Permit Modification No. 2: The Massachusetts Cooperation Fishery Research Unit (P330)

Notice is hereby given that the Massachusetts Cooperative Fishery Research Unit, University of Massachusetts, Amherst, Massachusetts 01003, has requested a modification to Permit No. 448 issued on February 7, 1984 (49 FR 4541), as modified on December 24, 1986 (52 FR 126), under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1543), and the regulations governing endangered species permits (50 CFR Parts 217 and 222).

The Permit Holder is requesting to capture, weigh, measure, tag and release an unspecified number of shortnose sturgeon (Acipenser brevirostrum) from any river system in Massachusetts, New Hampshire, and Connecticut for scientific rsesearch as described in the origianl application.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the view of the National Marine Fisheries Service.

Documents submitted in connection with the above modification are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: March 5, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–5287 Filed 3–11–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of General Permits; Scan Ocean Inc., et al.

General Permits have been issued to the Applicants listed below to take marine mammals incidental to commercial fishing operations pursuant to 50 CFR 216.14:

1. Scan Ocean Inc., Gloucester, Massachusetts on behalf of Netherlands fishing companies to take up to 15 cetaceans in the North Atlantic Ocean.

2. VEB Fischfang Rostock, German Democratic Republic to take up to 10 cetaceans in the North Atlantic Ocean.

3. Northeast Fisheries Center, NMFS/GRYS-Polish Peoples Republic to take up to 15 cetaceans in the North Atlantic Ocean.

The general permits are available for public review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC.

Dated: March 5, 1987.

Richard B. Roe,

Director, Office of Fishery Management, National Marine Fisheries Service.

[FR Doc. 87–5289 Filed 3–11–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification; Center for Coastal Marine Studies (P79D); University of California

Notice is hereby given that the Center for Coastal Marine Studies, University of California, Santa Cruz, California 95064, has requested a modification to Permit No. 496 issued on April 8, 1985, under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to perform a series of small, circular skin biopsies on twenty (20) weaned elephant seal pups (*Mirounga angustirostris*) for allo- and auto grafts.

Current with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The Permit and modification request are available for review by interested persons in the following offices:

Office of protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: March 6, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–5288 Filed 3–11–87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. 61090–6237]

Allocation of Duty-Exemptions for Calendar Year 1987 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Allocation of duty-exemptions for calendar year 1987 among producers located in the Virgin Islands.

SUMMARY: This action allocates 1987 duty-exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377–1660.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the insular possessions and the Northern Mariana Islands. The Departments established for 1987 a total quantity of watches and watch movements which could be entered free of duty from the insular possessions and the Northern Mariana Islands of 6,000,000 units, 4,000,000 of which could be allocated to Virgin Islands producers, 1,000,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (52 FR 3794).

The criteria for the calculation of the 1987 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations (15 CFR Part 303) as amended on February 6, 1987 (52 FR 3794).

The Departments have verified the data submitted on application form ITA–334P by producers in the territories and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1986 the Virgin Islands watch assembly firms shipped 2,116,796 watches and watch movements into the customs territory of the United States under General Headnote 3(a) of the Tariff Schedules of the United States. The dollar amount of corporate income taxes paid by Virgin Islands producers during calendar year 1986, less penalty payments and refunds and subsidies, plus the creditable wages paid by the industry during calendar year 1986 to residents of the territory totalled $4,113,127.

The calendar year 1987 Virgin Islands annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and are made in accordance with the formula governing the allocation of the duty-exemptions set forth in § 303.14 of the regulations. The allocations reflect:

(1) Adjustments made in data supplied on the producers' annual application forms (ITA Form–334P) as a result of the Departments' verification;

(2) Reallocation of duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations; and

(3) An allocation to a new firm under authority of § 303.6(d) of the regulations.

The duty-exemption allocations for calendar year 1987 in the Virgin Islands are as follows:

Name of firm	Annual allocation
1. Belair Quartz, Inc	500,000
2. Hampden Watch Co., Inc	300,000
3. Master Time Co., Inc	660,000
4. Progress Watch Co., Inc	488,764
5. Unitime Industries, Inc	551,236
6. Tropex, Inc	500,000
7. Timex V.I., Inc	500,000

Joseph A. Spetrini,

Deputy to the Deputy Assistant Secretary for Import Administration.

Richard T. Montoya,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 87–5344 Filed 3–11–87; 8:45 am]

BILLING CODE 4310–93–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Reduction of Charges for Imports of Cotton Textile Products Produced or Manufactured in Turkey

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 13, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

On August 18, 1986, a notice was published in the **Federal Register** (51 FR 29513), as amended, which establishes import restraint limits for certain cotton and man-made fiber textile products, including Category 339, produced or manufactured in Turkey and exported during the agreement which began on July 1, 1986 and extends through June 30, 1987.

In reviewing the import charges, the Committee for the Implementation of Textile Agreements has determined that an error in the import data has resulted in 26,473 dozen being incorrectly charged to the limit for Category 339. Accordingly, in the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to deduct 26,473 dozen from the import charges. This will reopen the category.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.9, 1987.

Committee for the Implementation of Textile Agreements

March 9, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, between the Governments of the United States and Turkey, I request that, effective on March 13, 1987, you deduct 26,473 dozen from the imports charged to the restraint limit established in the directive of August 12, 1986 for cotton textile products in Category 339, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–5296 Filed 3–11–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Strategic Defense Initiative Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will

meet in closed session in Washington, DC, on April 7–8–9, 1987.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on April 7–8–9, 1987 the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Committee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

March 9, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–5324 Filed 3–11–87; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;

(2) Title of Information Collection and Form Number, if applicable;

(3) Abstract statement of the need for and the uses to be made of the information collected;

(4) Type of Respondent;

(5) An estimate of the number of responses;

(6) An estimate of the total number of hours needed to provide the information;

(7) To whom comments regarding the information collection are to be forwarded;

(8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Industrial Security Survey/Inspection Report (Commercial Carrier); DIS Form 1148 (0704–0127)

The Defense Investigative Service (DIS) uses the DIS Form 1148 to record the results of their interviews with commercial carrier officers and employees, and to record the results of DIS inspections of commercial carriers. The report is completed by DIS Industrial Representatives based upon information provided by carrier representatives. Information obtained provides a basis for determining eligibility of commercial carriers for a Government Facility Security clearance.

Responses 124.

Burden Hours 248.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Dale L. Hartig, DIS, Chief, Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700, telephone (202) 475–1062.

Dated: March 9, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–5323 Filed 3–11–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 26, 1987.

The USAF Scientific Advisory Board Armament Division Advisory Group will meet on March 31, 1987, from 8:00 a.m. to 5:00 p.m. and April 1, 1987, from 8:00 a.m. to 3:00 p.m. at the Armament Division Headquarters, Building 1, Eglin Air Force Base, FL.

The purpose of this meeting is to receive briefings on and to discuss selected programs and projects related to the mission of the Armament Division.

This meeting will involve discussions of classified defense 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) 697–4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 87–5236 Filed 3–11–87; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Requirements for Deregulated Surface Freight Forwarders Doing Business With the Department of Defense

AGENCY: Military Traffic Management Command (MTMC), Army Department, Department of Defense (DOD).

ACTION: As a result of the Surface Freight Forwarder Deregulation Act of 1986, the DOD established new qualification requirements for all surface freight forwarders wishing to transport for the DOD.

SUMMARY: Beginning May 1, 1987, shipments of DOD freight will be tendered only to those freight forwarders approved by MTMC. Surface freight forwarders will be required to sign an agreement which outlines the conditions of doing business with the DOD and requires them to maintain minimum insurance coverage of $1,000,000 for public liability and $250,000 for cargo. Additional requirements are enumerated in the agreement.

SUPPLEMENTARY INFORMATION: For information on obtaining approval to transport DOD freight as a surface freight forwarder, contact Miss Betty Yanowsky at (202) 756–1565/1356, or write: Headquarters, Military Traffic Management Command, Attention: MT–INFF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87–5253 Filed 3–11–87; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

To Prepare a Draft Environmental Impact Statement; Indiana Harbor and Ship Canal, in Lake County, IN

AGENCY: U.S. Army Corps of Engineers, Chicago District, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed project involves the construction, operation and maintenance of a confined disposal facility to contain dredgings classified as polluted or unsuitable for open lake disposal from the Indiana Harbor and Canal. The amount of material to be disposed of during a twenty-year maintenance period includes approximately 900,000 cubic yards of backlog dredging, 1,000,000 cubic yards

of maintenance dredging, and 100,000 cubic yards of private dredging, or a total of 2,000,000 cubic yards.

2. The alternatives being considered are as follows:

a. No action.

b. Dredging the Indiana Harbor and Canal, with use of one of various potential upland and in-lake disposal sites. The exact locations and configurations will be determined during the scoping process. Information on these sites will be released to the public during the scoping process.

c. Dredging with incineration or other "alternative" treatment of material affected by the Toxic Substances Control Act.

3. Coordination regarding the selection of the site for the confined disposal facility and other aspects of the project is being undertaken with the U.S. Environmental Protection Agency, Indiana Department of Environmental Management, U.S. Fish and Wildlife Service, City of East Chicago, City of Hammond, City of Gary, and Lake County Board of Commissioners.

4. Significant issues to be analyzed include a detailed characterization of the physical and chemical nature of the sediments to be confined in the disposal facility, the potential for degradation of the quality of groundwater, impacts on fisheries and water quality, and a determination of the future use of the disposal facility.

5. A scoping meeting has been tentatively scheduled for the week of 16 March 1987 in northwestern Indiana; interested parties and affected agencies will be invited to participate. Notice of the precise time and location will be given at a later date. The scoping process has beean undertaken as part of the ongoing public participation and interagency coordination program.

6. The DEIS is expected to be available to the public in September 1987.

7. Questions about the proposed action and DEIS can be answered by Mr. John Dorkin, U.S. Army Corps of Engineers, Chicago District, Environmental and Social Analysis Section, 219 South Dearborn, Chicago, Illinois 60604. Mr. Dorkin's telephone number is (312) 886-0451.

Dated: February 23, 1987.

Frank R. Finch, P.E.,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 87-5259 Filed 3-11-87; 8:45 am]

BILLING CODE 3710-HN-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Closed Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Proposal Review Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 6–10, 1987, 9:00 a.m. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 202/732–1887.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street, NW., Suite 574, Washington, DC. 20036 (202/634–6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Proposal Review Committee of the Council will meet in closed session starting at approximately 9:00 a.m., and will end at the conclusion of business each day, approximately 5:00 p.m. The agenda includes reviewing applications submitted under the:

(1) Indian Controlled Schools authorized by Part A of the Indian Education Act;

(2) Planning, Pilot and Demonstration Projects and Educational Personnel Development (sections 1005 and 422) authorized by Part B of the Indian Education Act;

(3) Planning, Pilot and Demonstration Projects for Indian Adults Program and Educational Services for Indian Adults Program authorized by Part C of the Indian Education Act; and,

(4) Title IV, Indian Fellowship Program of the Indian Education Act. Under section 442(b)(2) of Part D of the Indian Education Act, the Council is authorized to review applications for assistance submitted under this program and to make recommendations to the Secretary of Education with respect to their approval.

The reviewing of applications must be held in the highest confidence until the announcement is released by proper authorities as to which projects will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of agency action. Financial information which is privileged or confidential contained in and related to these proposals will be discussed at the review session. In addition, discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4), and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: February 18, 1987. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 87-5356 Filed 3-11-87; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Adult Education Meetings

AGENCY: National Advisory Council on Adult Education, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions on the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: March 30–31, 1987, 8:30 a.m., to 5:00 p.m., Full Council Meeting.

ADDRESS: The Ambassador Hotel, 3400 Wilshire Boulevard, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Karen Shepard Saunders, National Advisory Council on Adult Education, 2000 L Street, NW., Suite 570, Washington, DC 20036, (202) 634–6300.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1209). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council is open to the public. The proposed agenda includes:

Reauthorization of the Adult Education Act
Fiscal Year 1986 Annual Report
Symposium
Program Visitations
Standing Committee Meetings and Reports
Reports on U.S. Department of Education Area Workshops
Federal Legislative Update

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 2000 L Street, NW., Suite 570, Washington, DC 20036, from the hours of 8:30 a.m. to 5:30 p.m.

Signed at Washington, DC, on March 6, 1987.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 87-5247 Filed 2-11-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Announcement of Availability of Final Environmental Impact Statement; Remedial Actions at the Former Climax Uranium Company Uranium Mill Site, Grand Junction, Mesa County, CO

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The U.S. Department of Energy (DOE) has prepared a final Environmental Impact Statement (DOE/EIS-0126F) on the proposed remedial action at the inactive uranium milling site located in Grand Junction, Mesa County, Colorado. The EIS is being distributed to the public. DOE will issue a Record of Decision no sooner than 30 days after publication in the **Federal Register** of the Environmental Protection Agency's Notice of Availability.

Background

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95-604, was enacted in order to address a Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential health hazard to the public. On November 8, 1979, DOE designated 24 inactive processing sites for remedial action under Title I of UMTRCA, including the inactive uranium mill tailings site at Grand Junction, Colorado (44 FR 74892).

UMTRCA charges the Environmental Protection Agency (EPA) with the responsibility for promulgating remedial action standards for inactive uranium mill sites. The purposes of these standards are to protect the public health and safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were promulgated on January 5, 1983, and became effective on March 7, 1983. The DOE has proposed a plan of remedial action that will satisfy the EPA standards.

Under UMTRCA, the DOE and the State of Colorado entered into a cooperative agreement effective October 19, 1981, for remedial action at the Grand Junction site and eight other sites. Under the agreement, the State of Colorado must concur with the remedial action plan to be developed for the Grand Junction site. The DOE and the State of Colorado will share the costs of remedial action.

Project Description

The Grand Junction site is a 114-acre property adjacent to the south side of the city of Grand Junction, Colorado, and adjacent to the north side of the Colorado River. The site consists of the tailings area, mill site, and effluent ponds from the former Climax Uranium Mill site which was operated by the Climax Uranium Company between 1951 and 1970. The State of Colorado presently uses a portion of the site (the State Repository) for temporary storage of material obtained from remedial action at vicinity properties in the Grand Junction area.

The Grand Junction site contains an estimated 3.1 million cubic yards of contaminated material in the form of finely ground sand and slimes and contaminated soils. The tailings are covered with approximately six inches of soil, and sparse vegetation occurs on the site. Concrete and brick from the demolished mill buildings were placed as riprap along the north bank of the Colorado River.

Many vicinity properties also occur in the Grand Junction area. Vicinity properties are homes, businesses, public buildings, and vacant lots which may have been contaminated during construction by the use of tailings as a building material or as fill material before the hazards associated with this material were known. The use of the tailings for these purposes is no longer allowed.

Approximately 6905 properties in Mesa County have been found to possibly have elevated levels of radiation. Of these it is estimated that 3465 will be formally included on the vicinity property list and thereby require remedial action. It is estimated that the other properties will not be included on the vicinity property list because their levels of radiation will be within UMTRA project standards or because the elevated levels of radiation at these properties are not due to the Grand Junction tailings. Remedial action is being performed at vicinity properties under the state-operated Grand Junction Remedial Action Program (GJRAP) and the DOE-operated Uranium Mill Tailings Remedial Action (UMTRA) Project. To date more than 200 vicinity properties have already been decontaminated; approximately 3465 vicinity properties will be decontaminated and restored during remedial action of the Grand Junction tailings pile.

Preferred Alternative

The preferred alternative (Alternative 3 in the final EIS) is to dispose of the wastes at the Cheney Reservoir site using truck transportation. Under this alternative, the tailings and other contaminated material would be relocated to the Cheney Reservoir site, located 18 miles southeast of the Grand Junction site. A pit averaging 14 feet in depth would be excavated at the

Cheney Reservoir site and a low-permeability layer would be constructed in the bottom of the pit. The tailings and other contaminated material (including material from remedial action at vicinity properties and the State Repository adjacent to the Grand Junction site) would be relocated by truck to the Cheney Reservoir site and placed on the low-permeability layer. The truck haul routes would be determined during the preparation of final engineering designs.

The tailings and contaminated material would be covered with an earthen radon barrier and an erosion protection layer of small rock. After removal of the tailings and other contaminated material, the Grand Junction site would be recontoured and revegetated.

Five alternatives to the preferred alternative were analyzed in the EIS. These included: (1) No action; (2) stabilization at the Grand Junction site; (3) disposal at the Cheney Reservoir site with train and truck transport; (4) disposal at the Two Road site with truck transport; and (5) disposal at the Two Road site with train and truck transport.

Single copies of the EIS are available from: James Anderson, UMTRA Project Manager, U.S. Department of Energy, UMTRA Project Office, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico 87108 (505) 844-3941.

FOR FURTHER INFORMATION CONTACT: Carolyn Osborne, Office of NEPA Project Assistance, EH-25, Office of the Assistant Secretary for Environment, Safety and Health, Room 3G092, Forrestal Building, U.S. Department of Energy, Washington, DC 20585 (202) 252-4600.

Issued at Washington, DC, February 13, 1987.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87-5277 Filed 3-11-87; 8:45 am]

BILLING CODE 6450-01-M

[Notice No. 1]

Proposed Establishment of Federally Funded Research and Development Centers; Continuous Electron Beam Accelerator Facility, Newport News, VA

AGENCY: Department of Energy.

ACTION: Notice No. 1 of proposed establishment of Federally Funded Research and Development Center (FFRDC).

SUMMARY: In accordance with paragraph 6.b.(2) of the Office of Federal Procurement Policy, Policy Letter No. 84-1, the Department of Energy (DOE) announces its intention to establish the Continuous Electron Beam Accelerator Facility (CEBAF) located in Newport News, Virginia, as a Federally Funded Research and Development Center (FFRDC). The facility will include a continuous beam recirculating linear accelerator of approximately one mile circumference. The accelerator will be capable of providing high-duty-factor electron beams throughout the energy range from 0.5 to 4.0 billion electron volts. The CEBAF laboratory will be a center for basic research and training related to nuclear structure and the accelerator techniques utilized to carry out that research. Related theoretical studies will be conducted, and institutional relationships will be developed to assure strong involvement of the scientific community. The unique capabilities of CEBAF will serve as a focus for research programs of the U.S. and the international scientific community for many years. The CEBAF laboratory and accelerator construction project is the highest priority new research facility in the U.S. nuclear physics program. CEBAF will have the only accelerator facility in the world capable of producing electron beams which meet the criteria of energy, duty factor, and beam intensity necessary to study minute details of nuclear structure, and thus provide new scientific knowledge about the underlying quark-gluon substructure in nuclear matter. Based upon the research plans and scope of this laboratory, the DOE has determined that the CEBAF laboratory should be designated as an FFRDC.

FOR FURTHER INFORMATION CONTACT: Dr. David L. Hendrie, Director, Division of Nuclear Physics, Office of Energy Research, ER-23, U.S. Department of Energy, Washington, DC 20545.

DATE: Any comments on this proposed action must be received within 30 days of publication of this notice in the **Federal Register.**

ADDRESS: Address comments to Dr. David L. Hendrie at the address listed above.

Issued in Washington, DC, on March 4, 1987.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 87-5278 Filed 3-11-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. CP87-108-000]

Columbia Gas Transmission Corp.; Intent To Prepare an Environmental Assessment for the Delmarva-South Jersey Pipeline Project and Request for Comments on Environmental Issues

March 6, 1987.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket. Columbia Gas Transmission Corporation (Columbia) is seeking a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act to construct and operate 32.9 miles of 16- and 20-inch diameter pipeline in Chester and Delaware Counties, Pennsylvania, New Castle County, Delaware, and Gloucester County, New Jersey. New interconnections and metering facilities would also be located in New Castle County, Delaware and Gloucester County, New Jersey. Columbia would use these facilities to deliver up to 20,000 dekatherms per day of gas to Delmarva Power and Light Company (Delmarva) and 25,000 dekatherms per day of gas to South Jersey Gas Company (South Jersey). Delmarva and South Jersey have requested that this service commence on July 1, 1987, or as soon thereafter as the proposed facilities have been constructed. On February 20, 1987, Columbia filed a modified route for the project that would require the construction of approximately 33.3 miles of pipeline.

The proposed pipeline would require a 75-foot-wide construction right-of-way with 50 feet to be maintained as permanent right-of-way on land. The route also includes a 1.4-mile crossing of the Delaware River and crossings of the West Branch of Brandywine Creek and Brandywine Creek. The width of the construction area within the Delaware River is not known at this time. The proposed pipeline would begin about one mile southeast of Thorndale, Pennsylvania, and head southeast passing near Marshallton, Chadds Ford, Brandywine Summit, and Booth Corner in Pennsylvania, Carpenter and Naaman in Delaware, and Nortonville and Center Square in New Jersey. The pipeline would then cross the corporate boundary of Swedesboro, New Jersey, and end at a new meter station located just east of Lake Narraticon

Columbia's proposed route skirts most of the large developed residential areas and follows powerline, pipeline, and railroad rights-of-way for about 11 miles of its 23.8-mile length on land in Pennsylvania and Delaware. Approximately 300 acres would be disturbed in the tristate area crossed by the proposed project, and about 200 acres would be retained as permanent right-of-way. Both of the meter stations would be located on land that is currently owned by the gas companies that are seeking the additional gas supply.

The EA will address the environmental concerns that have been identified by individuals in their letters to the FERC. The following issues have been identified to date:

Cultural Resources—Effect on a Pennsylvania Registery of Historic Homes site on Featherbed Lane.
—Effect on Lenni-Lenape Indian burial grounds and Brandywine Battlefield.
Water Resources—Impacts on the Chester water line, Delaware River, Brandywine Creek Watershed, Downington Borough water reservoir.
—Impact on water quality, streams, and springs.
Vegetation—Impacts on wetlands, removal of trees, and wildlife.
Aesthetics—Effect of appearance of right-of-way.
Restoration—Erosion control and revegetation.
Pipeline Safety—Safety considerations.
Land Use—Eminent domain.
—Future development effects and tax considerations.
—Effects on local roads.
Air and Noise Quality—Operations at the Downington Compressor Station.

Alternatives, route modifications, and specific mitigating measures will also be considered in the staff's analysis.

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and State agencies, and to interested members of the public.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214).

Comments from Federal, State, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Written comments should be submitted on or before April 11, 1987, reference Docket No. CP87-108-000, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to the Project Manager identified below.

Detailed maps showing the location of the facilities have been provided to those on the distribution list. Additional information about the proposal is available from Mr. Kenneth Frye, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9039.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5290 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9608-002]

McCallum Hydro Enterprises; Surrender of Preliminary Permit

March 2, 1987.

Take notice that the McCallum Hydro Enterprises, permittee for the proposed Samuel P. Senior Reservoir Dam Project No. 9608, requested by letter dated February 13, 1987, that its preliminary permit be terminated. The preliminary permit was issued on July 21, 1986, and would have expired on July 31, 1989. The project would have been located on the Saugatuck River, in Fairfield County, Connecticut.

The permittee filed the request on February 19, 1986, and the preliminary permit for Project No. 9608 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, amy be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5291 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4309, Project No. 1061]

Tuolumne Regional Water District; Pacific Gas & Electric Co.; Acceptance of Withdrawal of Competing Application for License

March 5, 1987.

On February 9, 1987, the Tuolumne Regional Water District filed a request to withdraw its application for license for the Phoenix Power Project No. 4309 as a result of reaching a settlement agreement with Pacific Gas & Electric Company, a competing applicant for license for Project No. 1061.

Pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216 (1986), the withdrawal becomes effective automatically at the end of 15 days from the date the request is filed, unless a motion in opposition is filed within that time period or the Commission issues an order disallowing the withdrawal within that time period. Since no such motion in opposition was filed or Commission order was issued within that time period, the withdrawal became effective at the end of February 24, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5292 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-31-000, 001]

Arkla Energy Resources; Filing of Revised Tariff Sheets, Reflecting Tariff Adjustment

March 6, 1987.

Take notice that on March 2, 1987, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

Rate Schedule No. X-26
Original Volume No. 3
42nd Revised Sheet No. 185
15th Revised Sheet No. 185A
Rate Schedule No. G-2
First Revised Volume No. 1
43rd Revised Sheet No. 4
15th Revised Sheet No. 4A

The purpose of the above described tariff sheets reflecting AER's regular

semi-annual PGA changes is to: (1) Reflect the projected average cost of purchased gas for the six-month period commencing April 1, 1987; (2) recover or refund accumulated deferred purchased gas costs as of December 31, 1986; and (3) set for the incremental pricing calculation applicable to this PGA period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5312 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-15-000,001]

Mid Louisiana Gas Co.; Proposed Change in Rates

March 6, 1987.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on March 2, 1987, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Fifty-Ninth Revised Sheet No. 3a and Sixteenth Revised Sheet No. 3c to become effective April 1, 1987. Mid Louisiana also tendered for filing as a part of the First Revised Volume No. 1 of its FERC Gas Tariff, Alternate Fifty-Ninth Revised Sheet No. 3a to become effective April 1, 1987.

Mid Louisiana states that the purpose of the filing of Fifty-Ninth Revised Sheet No. 3a is to reflect a 15.57¢ per Mcf reduction in its gas cost, a Purchased Gas Cost Surcharge of (1.89¢) per Mcf and a NGPA Pricing Surcharge of 44.83¢ per Mcf.

Mid Louisiana states that the purpose of the filing of Alternate Fifty-Ninth Revised Sheet No. 3a is to reflect a 15.57¢ per Mcf reduction in its gas cost, a Purchased Gas Cost Surcharge of (1.89¢) per Mcf, the elimination of the NGPA Pricing Surcharge, the restatement of Mid Louisiana's Revised Cost of Service Rates pursuant to the Stipulation and Agreement in Docket No. RP86-69-000, and implementation of the Gas Cost Stability Index, also pursuant to the Stipulation and Agreement in Docket No. RP86-69-000.

Mid Louisiana requests a waiver of § 154.38 (d) (iv) (a) of the Commission's Regulations to change its PGA effective dates from February 1 and August 1 to April 1 and October 1, respectively. Mid Louisiana also requests a waiver of § 282.602 (d) (2) (i) of the Commission's Regulations to permit it to omit the filing of the supplemental pricing information required by the Incremental Pricing Regulations.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5313 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-43-000]

MIGC, Inc.; Proposed Changes in FERC Gas Tariff

March 6, 1987.

Take notice that MIGC, Inc. (MIGC), on February 27, 1987, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes are designed to increase MIGC's non-gas cost jurisdictional revenues by $673,345 based on the twelve-months ending on October 31, 1986, as adjusted for known and measurable changes with period ending July 31, 1987 MIGC has proposed that the increased rates and tariff sheets become effective April 1, 1987.

MIGC states that the requested change in rates is to recover deficiencies experienced in its annual jurisdictional cost of service. MIGC notes that the principal reason for the proposed rate changes are increased costs of labor, operation and maintenance expenses, working capital requirements, and taxes.

MIGC states that copies of this filing were served upon all of MIGC's jurisdictional customers, as well as interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5314 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-44-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 6, 1987.

Take notice that on February 27, 1987, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be part of its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and Original Volume No. 1-A, the following tariff sheets:

First Revised Volume No. 1

Eighteenth Revised Sheet No. 10-A

Original Volume No. 2

Fourth Revised Sheet No. 2.3
Twelfth Revised Sheet No. 2-B

Original Volume No. 1-A

Second Revised Sheet No. 202

Northwest states the purpose of the filing is to reflect a new Fuel Reimbursement Percentage to be effective April 1, 1987, pursuant to the provisions contained in Northwest's FERC Gas Tariff, Volumes 1, 2 and 1-A.

The proposed effective date of the tendered tariff sheets is April 1, 1987.

A copy of this filing has been served on Pacific Interstate Transmission Company, Northwest's jurisdiction

customers, and 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, 835 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 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 filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5315 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-220-000 et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the followings filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP87-220-000]

March 4, 1987.

Take notice that on February 25, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-220-000 an application pursuant to section 7(c) of the Natural Gas Act for authority to make firm and interruptible direct natural gas sales to various customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it received permission to abandon certain firm direct industrial sales services to 48 customers whose contracts had expired. United further states that the following customers are those who have signed new firm or interruptible contracts with United.

Customer name	CDQ
Firm Contracts	
1. Boise Cascade Corporation (formerly Allied Paper Corp.)	300
2. Candies, Dugas, Dugas & Candies	35
3. Gonzales Products Company, Inc	600
4. Kinder Canal Company, Inc	60
5. Kinder Canal Company, Inc	250
6. Kleinpeter Farms Dairy, Inc	15
7. Kleinpeter Farms Dehydration Company	3
8. Lufkin Industries, Inc	900
9. Marathon LeTourneau Company—Marine Division	150
10. St. Mary Parish Consolidated Gravity Drainage District No. 1	200
11. St. Mary Parish Consolidated Gravity Drainage District No. 1	150
Interruptible Contracts	
12. Amerada Hess Corporation	10,000
13. Armstrong World Industries, Inc	4,000
14. Benton Creosoting Works	150
15. Boise Cascade Corp. (formerly Allied Paper Corp.)	6,000
16. Boise Southern Company	10,000
17. Brookhaven Wood Preserving Co., Inc. (formerly Schneider Brick Company)	400
18. Courtaulds North America	8,000
19. du Pont de Nemours & Co., E.I., Inc. (formerly Shell Chemical Company	3,000
20. East Texas Salt Water Disposal Company	50
21. East Texas Salt Water Disposal Company	75
22. Equitable Petroleum Corporation	250
23. Fernwood Industries	500
24. Georgia Pacific Corporation	2,400
25. Grant Chemical Division, Ferro Corporation	600
26. Griffin Industries, Inc. of Mississippi	800
27. Jeems Bayou Production Corp. (formerly Arcadia Refining Co.)	250
28. Kaiser Aluminum & Chemical Corporation	1,500
29. Kaiser Aluminum & Chemical Corporation	250
30. Kleinpeter Farms Dairy, Inc	50
31. Kleinpeter Farms Dehydration Co	50
32. Marathon LeTourneau Co.—Marine Division	1,500
33. McMurrey Pipe Line Company	150
34. Mobile Paperboard Corp. (formerly Stone Container Corp.)	1,600
35. Morton Thiokol, Inc., Morton Chemical Division	1,500
36. St. James Sugar Cooperative, Inc	3,600
37. Scott Paper Company	23,000
38. Scurlock Oil Company	50
39. Stone Hodge Incorporated (formerly Stone Container Corp.)	22,000
40. Trappey's, B. F., Sons, Inc	900
41. Triad Oil & Gas Company	500
42. Triad Oil & Gas Company	200
43. Tyson, R. W., Producing Company, Inc	300
44. Vicksburg Chemical, Inc. (formerly Vertac Chemical Corp.)	7,000
45. Zapata Haynie Corporation	4,000
46. Zapata Haynie Corporation	3,000
47. Zapata Haynie Corporation	5,000
48. Zapata Haynie Corporation	3,000

Note.—United states it would utilize existing facilities to serve those listed above.

Comment date: March 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP87-212-000]

March 4, 1987.

Take notice that on February 18, 1987, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-212-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Kerr Glass Manufacturing Company (Kerr Glass), Quanex Corporation (Quanex) and Anderson Clayton Foods, a Division of Anderson, Clayton & Company (Anderson Clayton) and pregranted authority to abandon this service when the contract term expires, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that pursuant to three transportation agreements dated October 22, 1986, September 11, 1986, and July 22, 1986, respectively, Panhandle has agreed to transport, on an interruptible basis, a volume of natural gas of up to 3,000 Mcf per day on behalf of Kerr Glass, up to 3,000 Mcf per day on behalf of Quanex and up to 3,500 Mcf per day on behalf of Anderson Clayton. Panhandle further states it would receive the gas for the account of Kerr Glass at 14 existing receipt points Quanex and Anderson Clayton at 92 existing receipt points all in Oklahoma, Texas, Kansas and Illinois. Panhandle would redeliver gas for Kerr Glass' account to Indiana Gas Company in Grant County, Indiana; for Quanex's account in Oakland County, Michigan, and for Anderson Clayton's account in Morgan County, Illinois. Kerr Glass, Quanex and Anderson Clayton would pay Panhandle 70.00 cents per Mcf of natural gas received from gathering facilities and 43.53 cents per Mcf of natural gas received from field zone transmission facilities for this service.

Panhandle proposes that service be effective from the acceptance of certificate authorization until the earlier of: (a) two years from the date of the agreements or (b) thirty days following the date Panhandle accepts a blanket certificate under Order No. 436, pursuant to Commission Regulations.

Comment date: March 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP87-205-000]

March 5, 1987.

Take notice that on February 13, 1987, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP87-205-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce for the City of Indianapolis, Indiana, by and through its Department of Public Utilities, a municipal corporation of the state of Indiana doing business as Citizens Gas & Coke Utility (Citizens Gas) and the construction and operation of certain pipeline facilities and appurtenances necessary to render the proposed service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that it seeks authorization to render firm sales

service under Rate Schedule G–3 to Citizens Gas, with a contract demand of 122.125 billion Btu equivalent of gas per day and an annual quantity of 30,000 billion Btu equivalent of gas. The service is proposed to commence November 1, 1988, the date after which Citizens Gas' service agreement with its present pipeline supplier, Panhandle Eastern Pipe Line Company, terminates. The application states that Citizens Gas has determined that it is in its Customers' best interest to contract with Texas Gas for approximately one-half of the peak day and annual quantities provided in the existing service agreement.

Texas Gas states that, while its mainline facilities have sufficient capacity to render the proposed service, 61.83 miles of 16-inch pipeline would be necessary on its Hardinsburg, Kentucky, to Bedford, Indiana, 16-inch branchline, and that 60.28 miles of new 20-inch pipeline would be constructed to extend such branchline in Lawrence County, Indiana, to a point of interconnection with the facilities of Citizens Gas in Johnson County, Indiana. In addition, Texas Gas proposes to construct and operate a meter station at the Johnson County interconnection of Texas Gas' and Citizens Gas' facilities and to reactivate a 12,000 horsepower compressor at the Hardinsburg compressor station, Breckenridge County, Kentucky. Texas Gas estimates that the proposed facilities would cost approximately $45,188,000.

Texas Gas states that Citizens Gas has agreed to purchase and/or transport not less than 90,000 billion Btu equivalent of natural gas during the initial three years of service. Texas Gas states that the annual incremental revenues generated by the proposed service to Citizens Gas would exceed by approximately $2,500,000 the annual incremental costs of providing such service. Texas Gas asserts that the proposed service would provide net benefits to the existing customers of its system, as well as to Citizens Gas and its customers.

Texas Gas states that the proposed construction would traverse certain areas which are environmentally sensitive. The application includes the required impact study detailing the short-term consequences of the proposed construction, the procedures proposed to minimize and mitigate such short-term impact and a comparison with the long-term benefits provided. Texas Gas concludes that the short-term consequences are significantly outweighed by both the short-term and long-term benefits derived therefrom.

Comment date: March 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Co.

[Docket No. CP87–211–000]

March 5, 1987.

Take notice that on February 17, 1987, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87–211–000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of certain transportation service rendered in connection with a Gas Transportation Agreement (Agreement) with Stauffer Chemical Company of Wyoming (Stauffer), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CIG requests authority to abandon the transportation of natural gas for Stauffer because the term of the Agreement expired on September 6, 1986, and because no gas has been available for transportation since May 31, 1986. The transportation service under the Agreement was authorized by order issued August 20, 1984, in Docket No. CP84–162–000, it is stated. The Agreement constitutes Rate Schedule X–51 of CIG's FERC Gas Tariff, Original Volume No. 2, which will be canceled by CIG upon receipt of the authority requested in the instant application, it is stated. No facilities are proposed to be abandoned in the instant application. It is stated that Stauffer has been advised of CIG's proposed abandonment of service and concurs with that proposal.

Comment date: March 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Erie Pipeline System

[Docket No. CP86–329–001]

March 5, 1987.

Take notice that on February 18, 1987, Erie Pipeline System (Erie), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–329–001 pursuant to section 7(c) of the Natural Gas Act and Subpart E of Part 157 of the Federal Energy Regulatory Commission's Regulations an application for a blanket certificate of public convenience and necessity in order to construct and operate natural gas pipeline and related facilities and to provide transportation services for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Erie states that it is a newly-formed interstate pipeline, owned by a partnership between ANR Eastern Pipeline company and a subsidiary to be formed by the Columbia Gas System, Inc.

Erie requests authorization to construct and operate a total of 379 miles of pipeline, 39,800 horsepower of compression and related facilities. These facilities have been designed to transport up to 425,000 Mcf per day of natural gas between a point located in Defiance County, Ohio, and a point located in Clinton County, Pennsylvania, it is stated. In addition, Erie proposes to provide interruptible transportation service.

The total cost of the proposed facilities is estimated to be $313,000,000, which cost would be financed on a conventional basis and would be capitalized with 75 percent debt and 25 percent equity, Erie states.

Erie states that it is concurrently filing for a blanket transportation certificate under § 284.221 of the Commission's Regulations and would comply with the conditions in Subpart A of Part 284 of the Commission's Regulations. Erie also states that it is concurrently filing an application for a blanket certificate under Part 157, Subpart F, of the Commission's Regulations.

Comment date: March 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Erie Pipeline System

[Docket No. CP86–330–001]

March 5, 1987.

Take notice that on February 18, 1987, Erie Pipeline System (Erie), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–330–001 pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Federal Energy Regulatory Commission's Regulations an application for authorization to provide transportation service for others, all as more fully set forth in the application which is on file with the commission and open to public inspection.

Erie states that this filing amends a request previously filed on February 14, 1986, in Docket No. CP86–330–000.

Erie states that it is a newly-formed interstate pipeline, owned by a partnership between ANR Eastern Pipeline Company and a subsidiary to be formed by the Columbia Gas System, Inc.

Erie states that it does not have any present operations but is applying for an optional certificate of public convenience and necessity in Docket No. CP86–329–001 to construct and operate a natural gas pipeline and to provide transportation service as a

natural gas company engaged in the business of transporting natural gas in interstate commerce subject to the Commission's jurisdiction under the Natural Gas Act.

Erie states that it would comply with the conditions set forth in Subpart A of Part 284 of the Commission's Regulations.

Comment Date: March 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Lone Star Gathering Co.

[Docket No. CP87-216-000]

March 5, 1987.

Take notice that on February 24, 1987, Lone Star Gathering Company (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87-216-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a portion of a transportation service and related facilities for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests permission and approval to abandon a portion of the transportation service performed by Applicant for Natural under authorization granted by the Commission on February 9, 1973, in Docket No. CP71-274. It is stated that the request for abandonment authorization is limited to Applicant's transportation of gas produced from the Carthage, S.W. Carthage, J.G.S. and Penn-Griffith Fields through approximately 38 miles of Applicant's pipeline and appurtenances in Rusk and Panola Counties, Texas, and does not include other transportation service authorized in the Commission's February 9, 1973, order. Applicant also requests permission and approval to abandon from interstate service the facilities required for the performance of the transportation service described above. It is stated that these related facilities, the acquisition or construction of which was authorized by the Commission in Docket Nos. CP71-274 and CP82-160, are identified as follows:

(1) Line S2 (Sta. 4621+47 to Sta. 5655+38, end) approximately 19.581 miles of 14-inch pipeline in Rusk and Panola Counties, Texas.
(2) Line S2H (Sta. 0+00 to Sta. 397+93, end) approximately 7.536 miles of 6-inch pipeline off of Line S2 in Rusk County, Texas.
(3) Line S2J (Sta. 0+00 to Sta. 700+90, end) approximately 9.270 miles of 6-inch and 4.000 miles of 4-inch pipeline off of Line S2 in Rusk and Panola Counties, Texas.
(4) Line S2R (originally S2J) (Sta. 0+00 to Sta. 31+42, end) approximately 0.600 mile of 6-inch pipeline off of Line S2 in Rusk County, Texas.
(5) Line CT-1533-T (originally S2JB (EXP)) (Sta. 0+00 to Sta. 0+08) approximately 8 feet of 2-inch pipeline off of Line S2J in Rusk County, Texas.
(6) Line CT-1534-T (originally S2JD (EXP)) (Sta. 0+00 to Sta. 0+06) approximately 6 feet of 2-inch pipeline off of Line S2R in Rusk County, Texas.
(7) Line CT-1535-T (originally S2JC (EXP)) (Sta. 0+00 to Sta. 0+07) approximately 7 feet of 2-inch pipeline off of Line S2J in Panola County, Texas.

It is stated that, upon issuance of the requested abandonment authorization by the Commission, these facilities would be operated in the future in a manner not subject to the jurisdiction of the Commission under the Natural Gas Act. It is explained that Applicant would reestablish a connection between its Line S2 and Line S2 of Lone Star Gas Company (Lone Star), an intrastate pipeline. It is further explained that henceforth gas transported through the subject facilities would be used in Lone Star's general system supply.

Applicant states that Natural no longer needs the small volume of gas transported to it by Applicant from the Carthage, S.W. Carthage, J.G.S. and Penn-Griffith Fields. It is stated that termination of this transportation service for Natural would allow Applicant to more fully utilize the capacity of the subject facilities which at the current time transport for Natural only 400 Mcf of gas per day. It is stated that Natural receives adequate supplies of natural gas from other sources, and no termination of service to any customer would result if the requested authorization is granted. It is further stated that Applicant and Natural are executing an agreement for cancellation and termination of the related transportation agreement.

Comment date: March 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Mid Louisiana Gas Co.

[Docket No. CP87-218-000]

March 5, 1987.

Take notice that on February 24, 1987, Mid Louisiana Gas Company (Mid La), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-218-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of natural gas to certain existing customers under proposed new service agreements. In addition, Mid La requests an order permitting and approving the related abandonment of existing service rendered to such customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid La states that the application is made in connection with the Stipulation and Agreement (Stipulation) filed with the Commission on January 23, 1987, in Docket Nos. RP86-69-000 *et al.*, TA86-2-15-000 *et al.*, RP82-51-000 *et al.*, RP86-138-000 and GP82-31-000. Mid La further states that such Stipulation resolves numerous issues including the agreement of the parties to revise their contracts with Mid La which have resulted in a reduction in their contract demand quantities. In addition, the Stipulation provides that the customers shall enter into new contracts to incorporate the provisions agreed to in the Stipulation as well as the provisions contained in the customer's existing contracts which are not otherwise modified by the Stipulation.

Mid La states that its request for a certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of natural gas under proposed new service agreements would include all of Mid La's G-1 Rate Schedule customers and the following SG-1 Rate Schedule customers:

SG-1 Rate Schedule

Town of Clinton
Town of Jackson
Village of Slaughter
Town of St. Francisville
Sicily Island Gas Company
Town of Jonesville
Town of Woodville
Town of Centerville
East Feliciana Gas Utility District Nos. 1 and 2
Town of Zachary-Plains
Louisiana Gas Services—Alto, Chase, Crew Lake, Gilbert and Wisner

Mid La also states that its request should include all necessary certificate authority to render service for other existing customers [1] under the SG Rate Schedule, which may, after the filing herein, desire to enter into new service agreements under the SG-1 Rate Schedule. Mid La indicates that these contracts would be deemed "Eligible Firm Sales Service Agreements" under § 284.10(b) of the Commission's Regulations for purposes of the contract

[1] These customers include the Village of Clayton, Long Gas Co., Lucknow Gas Co., Peck Gas Co., Simmons Gas Co., Buffalo Gas Co. and Mississippi Gas Corp. Such customers represent less than 1 percent of Mid La's jurisdictional sales volumes.

demand reduction and conversion provisions of § 284.10 of the Commission's Regulations.

Comment date: March 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make the protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5311 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-535-001]

Zapata Exploration Co.; Application

March 6, 1987.

Take notice that on March 2, 1987, Zapata Exploration Company (Zapata) of 3100 Zapata Tower, Houston, Texas 77002, filed an application to extend and amend the blanket abandonment and sales authority granted by the Commission on September 17, 1986 in Docket No. CI86-535-000. Zapata requests (1) that the term of its authority be extended through March 31, 1990 and (2) that the authority prospectively apply to supplies of gas priced equal to or higher than the Natural Gas Policy Act section 109 price. Zapata states that the requested extension and amendment are consistent with orders previously issued by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 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 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5316 Filed 3-11-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in disbursing the specified consent order funds to members of the public. These funds are being held in escrow following the settlement of enforcement proceedings involving Pennzoil Company that were brought by the Economic Regulatory Administration of the Department of Energy.

DATE AND ADDRESS: Comments must be filed in duplicate on or before April 13, 1987, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to the Case Number KCF-0047.

FOR FURTHER INFORMATION CONTACT: Virginia A. Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2400.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a July 9, 1981 consent order between the Pennzoil Company and the Department of Energy. That consent order settled certain disputes between the firm and the DOE concerning Pennzoil's possible violations of DOE regulations in its sales of crude oil and refined petroleum products.

The Proposed Decision effectuates a remand order of the United States District Court for the Eastern District of Michigan. The remand order directed the OHA to either (1) evaluate whether Pennzoil refund recipients merited additional refunds based on six equitable factors set forth in the original Pennzoil implementation order or (2) establish, through appropriate procedures, new standards for evaluating additional claims for Pennzoil refunds. In the Proposed Order, the OHA elected the second option and tentatively decided that no additional refunds should be granted to Pennzoil refund claimants.

Any member of the public may submit written comments regarding this proposal. Commenting parties should submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: March 4, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

March 4, 1987.

Name of Case: Pennzoil Company
Date of Filing: July 17, 1986
Case Number: KCF-0047

This proceeding is before the Office of Hearings and Appeals (OHA) on remand from the United States District Court for the Eastern District of Michigan. The proceeding involves an appeal filed with that court by Oerther Brothers Sales and Service and Maybee Gas and Oil (Oerther and Maybee), of refunds issued to them by the OHA from a consent order fund made available by Pennzoil Company. The facts leading to this remand are as follows.

On March 10, 1982, the OHA issued a Decision and Order instituting special refund proceedings for distribution of the Pennzoil consent order fund. *Office of Special Counsel*, 9 DOE ¶ 82,545 (1982) (hereinafter referred to as *Pennzoil*). The procedures under which this type of special refund proceeding is conducted are set forth at 10 CFR Part 205, Subpart V. Under the terms of the consent order, Pennzoil placed $3,000,000 into an escrow account to be distributed, together with interest, in accordance with the directives of the OHA pursuant to the Subpart V regulations governing special refund proceedings. In *Pennzoil* we decided to generally allocate refunds to claimants on a volumetric basis. That is, an applicant's allocable share of the total consent order fund would be calculated by multiplying the number of eligible gallons purchased by the applicant by a factor using the consent order fund as the numerator and the total gallons of product covered by the consent order as the denominator. We also stated that we would consider at a future date granting refunds to successful claimants beyond the volumetric level, based upon our evaluation of six equitable factors.[1] Subsequently, in *Pennzoil Company/Paul L. Strycula*, 12 DOE ¶ 85,211 (1985) (*Strycula*) we found no justification for any additional *Pennzoil* refunds based on the equitable factor approach.

Oerther and Maybee, two claimants to which refunds were granted in the Pennzoil proceeding under the volumetric approach, appealed to the United States District Court for the Eastern District of Michigan our determination not to grant further refunds based on a consideration of the equitable factors.[2] *Oerther v. DOE*, No. 84-CV-7240-DT (E.D. Mich. 1986). By Order of June 30, 1986, the court remanded the Oerther proceeding to the OHA. The court stated that we may either evaluate the Plaintiffs' refund claims pursuant to the six equitable factors enumerated in *Pennzoil*, or, through approptiate proceedings, establish new standards for evaluating additional claims for Pennzoil refunds pursuant to our Subpart V regulations.

After reviewing the court's memorandum opinion, we have decided to fulfill its directive by electing the later option. Accordingly, as set forth below we propose a new plan for distribution of the remaining Pennzoil fund.[3]

After considering all relevant issues, we have tentatively decided that no additional refunds should be issued to successful Pennzoil claimants based on the equitable factors approach. As we stated in our *Strycula* Decision, *Pennzoil* was one of our earliest Subpart V refund implementation orders. At that time we believed that it might be appropriate to grant classes of successful claimants refunds beyond volumetric levels, based on the six equitable factors. We have gained considerable experience in formulating Subpart V procedures during the six-year period since *Pennzoil* was issued. We now believe that augmenting refunds to classes of applicants in that manner is not justified, is administratively difficult to implement and could well confer unwarranted benefits. We find no justification for providing additional disbursements from the contents of an escrow account on a class basis. In fact, in no Subpart V proceeding has the DOE made this kind of incremental distribution. Furthermore, as we have stated in the past, as a general rule, we are reluctant to distribute refunds beyond volumetric amounts to those applicants that simply happened to have filed applications. *E.g., Office of Special Counsel for Compliance, Economic Regulatory Administration: In the Matter of Standard Oil Company (Indiana) (Amoco)*, 10 DOE ¶ 85,048 (1982). We therefore have tentatively decided that a general distribution above volumetric levels should not be made to claimants in the Pennzoil proceeding.

We have always been willing to consider claims of individual applicants that they were disproportionately overcharged and should therefore receive a refund greater than the volumetric amount. *E.g., Strycula*, 12 DOE at 88,669; *Amoco*, 10 DOE at 88,199. We specifically considered such a claim in the Pennzoil proceeding itself. *Pennzoil Co./Gulf Oil Corp.*, 12 DOE ¶ 85,057 (1984).[4] Pennzoil applicants should therefore have been well aware that in order to receive a refund beyond the volumetric amount, they would have had to show that they experienced a disproportionate Pennzoil overcharge. No Pennzoil applicant made this type of showing, and refunds were approved in this proceeding on a volumetric, pro-rata basis. In view of these considerations, we have tentatively determined that all Pennzoil consent order funds that the DOE has not disbursed to purchasers of Pennzoil products for purposes of direct restitution should be distributed to state governments in order to effect indirect restitution.[5]

[1] The equitable factors set forth in *Pennzoil* are (i) the amount of interest accumulated in the Pennzoil escrow account; (ii) the number of qualified applicants and their aggregate purchase volumes compared to the amount of Pennzoil product sales during the consent order period; (iii) the impact of the alleged violations on the claimant's business; (iv) market conditions during the consent order period; (v) the claimant's position in the distribution chain (reseller, retailer, consumer) and (vi) the manner in which the claimant's business is governed by regulatory agencies or contractual agreements, such as those affecting cooperatives. *Pennzoil*, 9 DOE at 85,248.

[2] In a memorandum opinion of November 21, 1984, the court granted Oerther and Maybee's Motion for Class Certification. The certified class included all those that had received refunds in our Pennzoil refund proceeding. In the appeal, Oerther and Maybee also argued that the volumetric approach was improper and that the entire Pennzoil fund must be distributed on a pro rata basis among all successful Pennzoil claimants. In this regard, the firms maintained that the mere showing of banks of unrecouped product costs was a showing of injury sufficient to warrant such a distribution. The court rejected this aspect of the firms' appeal.

[3] Pursuant to 10 CFR 205.282(a), the OHA issues a Proposed Decision and Order setting forth standards and procedures that it intends to apply in evaluating refund claims. The Proposed Decision is to be published in the Federal Register and there must be at least a 30 day period in which any member of the public may file comments with respect to that tentative determination. 10 CFR 205.282(b). Pursuant to 10 CFR 205.282(c) the OHA will consider comments received and issue a final Decision and Order governing the disposition of refunds. It is this process that will govern the Pennzoil remand proceeding.

[4] In that proceeding, Gulf alleged that it was overcharged in its purchases of crude oil from Pennzoil. The measure of the overcharges alleged by Gulf was the difference between the price it paid Pennzoil and the correct ceiling price for the crude oil. After fully considering this claim of an overcharge in an amount greater than the volumetric amount, we rejected the application, finding that Gulf had not adequately established that the prices it paid Pennzoil exceeded the correct ceiling prices.

[5] In order to effect this indirect restitution, a division of the remaining Pennzoil funds among affected States was made pursuant to *Pennzoil Company*, 12 DOE ¶ 85,183 (1985). The States' rights to those funds were preserved under section 3002(c)(3) of the Petroleum Overcharge Distribution and Restitution Act of 1986. No funds have yet actually been disbursed to the States pending the outcome of the Oerther appeal.

As required by 10 CFR 205.282(b) we shall publish in the Federal Register this Proposed Decision and Order regarding disposition of the remaining Pennzoil funds and provide a 30 day period during which the public may provide comments on our tentative determination.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by the Pennzoil Company pursuant to a consent order made final on July 9, 1981 shall be distributed in accordance with the foregoing Decision.

[FR Doc. 87-5280 Filed 3-11-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3166-9]

Science Advisory Board, Environmental Health Committee, Drinking Water Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on April 2-3, 1987, at the U.S. Environmental Protection Agency, 401 M Street, SW. On April 2nd the meeting will be held in the Administrator's Conference Room 1101 West Tower. On April 3rd the meeting will be held in Room #3, North Conference Center. The meeting will start at 9:30 a.m. on April 2nd and adjourn no later than 3:00 p.m. on April 3rd.

The purpose of the meeting will be to discuss an outline of a report on relative risks of disinfection technologies; a pending review of research in progress on disinfection by-products; a pending review of an Agency proposal on filtration technologies; documents that support a Drinking Water Criteria Document for p-dichlorobenzene; and prioritization of other forthcoming reviews.

The meeting will be open to the public. Any member of the public wishing to atttend or to obtain further information should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Dr. Terry F. Yosie, Director, Science Advisory Board, or Mrs. Frederica Jones, staff secretary, on (202) 382-2552 or by mail to the Science Advisory Board (A-101F), 401 M Street, SW., Washington, DC 20460, no later than c.o.b. on March 31, 1987.

Dated: March 6, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-5283 Filed 3-11-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 4, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB No.: None

Title: Section 73.1635, Special Temporary Authorizations (STA)

Action: Existing collection in use without OMB control number

Respondents: Licensees/permittees of broadcast stations

Frequency of Response: On occasion

Estimated Annual Burden: 2,350 Responses; 9,400 Hours

Needs and Uses: Section 73.1635 allows licensees/permittees of broadcast stations a file a request for special temporary authority to operate a broadcast facility for a period not to exceed 180 days at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station. The data is used by FCC staff to insure that the public interest is being served.

Federal Communications Commission,

William J. Tricarico,

Secretary.

[FR Doc. 87-5232 Filed 3-11-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; A. Edward Royce STOLZ, II; et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station and for renewal of license of an existing FM station:

Application	City/State	File No.	MM Docket No.
A. Edward Royce Stolz, II, tr/as Royce International Broadcasting.	Sacramento, CA.	BRH-830719BD.	87-28
B. Wong Communications Limited Partnership.	....do....	BPH-831031AY	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Comparative	All
2. Ultimate	All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW.,

Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–5231 Filed 3–11–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–787–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–787–DR), dated March 5, 1987, and related determinations.

DATED: March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice: Notice is hereby given that, in a letter of March 5, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.* Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from severe storms, tornadoes, and flooding beginning on February 28, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Paul E. Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Mississippi to have been affected adversely by this declared major disaster and is designated eligible as follows:

Jones County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

(Billing Code 6718–02)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–5251 Filed 3–11–87; 8:45 am]

BILLING CODE 6718–01–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.: 203–011075

Title: Central America Discussion Agreement

Parties:

United States-Central America Liner Association

Ecquadorian Line, Inc.

Synopsis: The proposed agreement would permit the parties to meet, exchange information and agree upon rates, rules and charges. Adherence to any agreed upon rate, rule or charge would be voluntary and establishment of a common tariff would not be authorized.

By Order of the Federal Maritime Commission.

Dated: March 6, 1987.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87–5211 Filed 3–11–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; 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 27, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *James P. Metzen,* South St. Paul, Minnesota; to acquire 31.14 percent of the voting shares of South St. Paul Bancshares, Inc., South St. Paul, Minnesota, and thereby indirectly acquire Southview Bank, South St. Paul, Minnesota.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Noel S. Bailey,* Cooper, Texas; L.W. Bassett, Jr., Paris, Texas; and Aaron R. Blankenship, Cooper, Texas; to acquire 80 percent of the voting shares of Entex Bancshares, Inc., Enloe, Texas, and thereby indirectly acquire The Enloe State Bank in Enloe, Enloe, Texas.

Board of Governors of the Federal Reserve System, March 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–5206 Filed 3–11–87; 8:45 am]

BILLING CODE 6210–01–M

Manteno Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 1, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Manteno Bancshares, Inc.*, Manteno, Illinois; to acquire 100 percent of the voting shares of First Midwest Bank, Bradley, Illinois. Comments on this application must be received by March 30, 1987.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Fayette County Bancshares, Inc.*, St. Elmo, Illinois; to become a bank holding company by acquiring at least 84.83 percent of the voting shares of Fayette County Bank, St. Elmo, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *McIntosh County Bank Holding Company, Inc.*, Ashley, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of McIntosh County Bank, Ashley, North Dakota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Collegiate Peaks Bancorporation, Inc.*, Buena Vista, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Collegiate Peaks Bank, Buena Vista, Colorado, a *de novo* bank. Bank intends to offer credit related life, accident and health insurance.

Board of Governors of the Federal Reserve System, March 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5207 Filed 3-11-87; 8:45 am]

BILLING CODE 6210-01-M

Security Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act of (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 nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Govenors not later than March 27, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Security Bancorp, Inc.*, Southgate, Michigan; to acquire United Bankers Life Insurance Company, Phoenix, Arizona, and thereby expand its approved activity of underwriting, as reinsurer, credit life and credit disability insurance which is directly related to extensions of credit in the State of Michigan, to include the underwriting of such coverages in all other States and the District of Columbia, except New Hampshire and North Carolina, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5208 Filed 3-11-87; 8:45 am]

BILLING CODE 6210-01-M

Valley West Bancorp; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than April 2, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Valley West Bancorp*, Springfield, Oregon; to engage *de novo* through its subsidiary, Centennial Mortgage Co., Inc., Springfield, Oregon, in the origination and brokering of commercial and residential mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5205 Filed 3-11-87; 8:45 am]

BILLING CODE 6210-01-M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

March 4, 1987.

The Depository Library Council to the Public Printer will hold its next meeting April 1-3, 1987, at the Grosvenor Inn, 3145 Sports Arena Blvd., San Diego, CA.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting will be open to the public. Anyone who wishes to attend should notify the Meeting Coordinator, U.S. Government Printing Office, Library Programs Service (LPS), Washington, DC 20401, Telephone: 202-275-1114.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: February 28, 1987.

Ralph E. Kennickell, Jr.,

Public Printer.

[FR Doc. 87-5258 Filed 3-11-87; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is amended to reflect a transfer of responsibilities within the Office of the Assistant Secretary for Management and Budget. Specifically, Chapter AMM (Office of Management Analysis and Systems) (as last published at 52 FR 866 on January 9, 1987, and Chapter AMN (Office of Finance) (as last amended at 50 FR 30236 of July 24, 1985) are amended to reflect the transfer of the Division of Systems Applications from the Office of Management Analysis and Systems to the Office of Finance. This change is made to better align management responsibilities. Automatic data processing (ADP) support staff for financial systems will now be located within the organization principally responsible for the management of those systems.

The changes are as follows:

1. Amend Chapter AMM, Office of Management Analysis and Systems as follows:

a. Delete from *AMM 10, Organization*, the following: Division of Systems Applications;

b. Delete *AMM 20 Functions*, paragraph B, subparagraph c, *Division of Systems Applications* in its entirety.

2. Amend Chapter AMN, Office of Finance, as follows:

a. Amend Section AMN 10, Organization, by adding the following: Division of Financial Systems Applications;

b. Amend Section AMN 20, Functions, by adding the following subsection 4 to read as follows:

4. Division of Financial Systems Applications:

(a) Designs, develops, implements, and maintains assigned computer-based system applications. This includes, for example, the Departmental Accounting System, the Departmental Payment Management System, and related subsystems, software, and procedures for Departmentwide use.

(b) Assures that applications are properly integrated where feasible to improve the timeliness and accuracy of administrative and management information, and to promote efficient and effective use of resources.

(c) Develops and recommends policies for managing the design, development, modification, and maintenance of assigned computer-based systems and the acquisition of associated resources.

(d) Develops and maintains systems specifications and software, and supports the users/program hardware necessary to meet approved Departmental requirements.

(e) Performs all data base management and administration functions for assigned systems.

(f) Assures the physical and data security of assigned systems, and conducts risk analyses as necessary.

(g) Serves as technical expert and adviser to the Operating Divisions, the Staff Divisions, and Regions on the computer aspects (hardware, data base systems, software, telecommunications) of administrative and management information systems.

(h) Supports users/program sponsors in the development and maintenance of near and long-term ADP plans for the development and operation of assigned systems.

Dated: March 5, 1987.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 87-5274 Filed 3-11-87; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, of the Statement of Organizations, Functions and Delegations of Authority of the Department of Health and Human Services is amended. Specifically, Chapter AMM (Office of Management Analysis and Systems) as last amended at 52 FR 866 (January 9, 1987), is amended to reflect the transfer of the Division of Administrative Analysis to the Office of Facilities and Management Services, and Chapter AMS (Office of Facilities and Management Services) as last amended at 51 FR 30546 (August 27, 1986) is amended to reflect a change in title of the Office to the "Office of Administrative and Management Services" and the receipt of the transferred Division of Administrative Analysis. These changes are being made to streamline the provision of administrative and management services to the Department. The changes are as follows:

1. Amend Chapter AMM (Office of Management Analysis and Systems) as follows:

(a) Delete from Section AMM.00 Mission, paragraph B, items 4, 8 and 9 and renumber the remaining items in paragraph B sequentially as item 4 thru item 7.

(b) Delete from Section AMM.10 Organization, the organization titled "Division of Administrative Analysis" from the Office of Management Analysis.

(c) Delete Section AMM.20 Functions, paragraph C, the entire subparagraph (a), the Division of Administrative Analysis, and reletter subparagraph (b) as (a).

2. Amend Chapter AMS (Office of Facilities and Management Services) as follows:

(a) Replace the name Office of Facilities and Management Services where it appears in Chapter AMS with

the name Office of Administrative and Management Services.

(b) Delete Section AMS.00 Mission, and replace it with the following:

Section AMS.00 Mission

The Office of Administrative and Management Services (OAMS) provides Department-wide leadership and direction for administrative services, management services, management policy, real property, occupational safety and health, emergency preparedness, and environmental and historic preservation responsibilities. Provides administrative services and support to all HHS components in the Southwest Washington, DC area complex, and plans and administers telecommunications responsibilities for the Office of the Secretary.

(c) Delete Section AMS. 10 Organization and replace it with the following:

Section AMS.10 Organization

The Office of Administrative and Management Services, headed by a Deputy Assistant Secretary for Administrative and Management Services who reports to the Assistant Secretary for Management and Budget, consists of the following components:

Office of the Deputy Assistant Secretary
Office of Special Programs Coordination
Division of Contract Operations
Office of Buildings Management and Telecommunications
Division of Administrative Services
Office of Management Programs

(d) Amend Section AMS.20 Functions, paragraph A, by replacing the title Office of the Director with Office of the Deputy Assistant Secretary.

(e) Amend Section AMS. 20, Functions by adding a new paragraph F to read as follows:

F. *Office of Management Programs.* The Office of Management Programs advises senior departmental officials on management issues related to the effective and efficient operation of the Department's programs and components.

(1) Serves as the principal source of advice to the Secretary on all aspects of departmentwide organization analysis including: (a) Planning for new organizational elements; (b) evaluating current organizational structures for effectiveness; (c) conducting the review process for reorganization proposals; and (d) maintaining documentation of the entire HHS organization to the prescribed level.

(2) Administers the Department's system for the review, approval, and documentation of delegations of authority.

(3) Analyzes and makes recommendations related to legislative proposals with potential impact upon the Department's organizational structure or managerial procedures.

(4) Manages, in accordance with the Paperwork Reduction Act of 1980, the Department's activities related to the review and approval of all public-use reports and recordkeeping requirements which impose paperwork burden on the public.

(5) Develops policies for, and manages the Department's Information Collection Budget and the Information Collection Budget process.

(6) Develops policies and procedures for, and carries out analytical and oversight activities related to the Department's paperwork burden reduction efforts.

(7) Establishes departmental statistical policies.

(8) Oversees HHS compliance with the National Environmental Policy Act the National Historic Preservation Act, and related statutes and Executive Orders.

(9) Coordinates the review of environmental impact statements developed by other Federal departments and agencies.

(10) Analyzes and recommends action on Freedom of Information Act appeals for documents denied by officials in the Office of the Secretary.

(11) Manages the HHS administrative directive system, with emphasis upon incorporation of Secretarial directives into that system.

Dated: March 6, 1987

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 87-5275 Filed 3-11-87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Meetings

1. A meeting with the cruise ship industry, private sanitation consultants, and other interested parties will be convened by the Division of Quarantine (DQ), Center for Prevention Services (CPS), Centers for Disease Control (CDC), on June 24:

Time and Date: 9 am, Wednesday, June 24, 1987

Place: Miami Port Authority, Conference Room, 1007 North America Way, Miami, Florida

Status: Open to the public for participation, comment, and observation, limited only by the space available.

Matters to be considered: Experience to date with the operation of the Vessel Sanitation Program.

Copies of CDC's operations manual describing the vessel sanitation program in detail are available on request.

2. A meeting with the cruise ship industry, private sanitation consultants, and other interested parties will be convened by the DQ, CPS, CDC, on September 23:

Time and Date: 9 am, Wednesday, September 23, 1987

Place: Miami Port Authority, Conference Room, 1007 North America Way, Miami, Florida

Status: Open to the public for participation, comment, and observation, limited only by the space available.

Matters to be considered: All aspects of the Vessel Sanitation Program, including components of the operations manual and experience to date in implementing the program.

Copies of CDC's operations manual describing the vessel sanitation program in detail are available on request.

Contact Person for More Information (both meetings): Laurence S. Farer, M.D., Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333. Telephones: FTS: 236-2574, Commercial: (404) 329-2574.

Dated: March 6, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-5204 Filed 3-11-87; 8:45 am]

BILLING CODE 4160-18-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting location of the March 18-19 meeting of the National Kidney and Urologic Diseases Advisory Board, which was published in the **Federal Register** on March 6, 1987, 52 FR 7036.

The Board was to have met at the Bethesda Marriott, but the location has been changed to the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

The meeting will be held from 1 p.m. to approximately 5 p.m. on March 18 and from 8:30 a.m. to approximately 12 noon on March 19. The notice of the meeting room will be posted in the hotel lobby.

Dated: March 9, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-5362 Filed 3-10-87; 9:46 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-4333-11]

Camping Closure of Lands West of Ferguson Lake Road Within Little Picacho Peak Wilderness Study Area No. 356, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure to camping and roadside parking of lands west of the Ferguson Lake Road in Little Picacho Peak Wilderness Study Area #356, Imperial County, California.

SUMMARY: This notice affects lands west of the Ferguson Lake Road in sections 13, 24, 25, and 35, T. 14S., R. 23E., SBM, and section 36 T. 14S., R. 23E., SBM. This area is under the administrative responsibility of the El Centro Resource Area, California Desert District. The affected lands are hereby closed to camping and roadside parking.

This area is receiving increasing amounts of camping overlfow from the adjacent Imperial Dam Long-Term Visitor Area. This use threatens to impair the suitability of WSA #356 if allowed to continue. Although camping has previously been limited to 14 days in this area, this limitation has not been adequate to prevent damage to natural desert pavement surfaces and degradation of scenic values. Closure to camping and roadside parking will prevent impairment of wilderness suitability.

This area is being closed to camping and roadside parking under the authority of 43 CFR 8364.1. This closure was effective February 24, 1987, and shall remain in effect until the U.S. Congress designates the affected lands wildnerness or releases them for other uses, or until this order is modified or rescinded by the Area Manager, El Centro Resource Area. The affected area has been posted "Day Use Only—No Overnight Camping". Maps showing the location of the affected lands are available from the El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243.

Any person who knowingly and willfully violates this closure order may be subject to a fine of up to $1,000 or imprisonment of up to 12 months, or both under authority of 43 CFR 8364.1(d).

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier; District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, (714) 351-6386.

Dated: March 3, 1987.

H.W. Riecken,

Acting District Manager.

[FR Doc. 87-5238 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-40-M

[(NV-930-07-4212-24; N-40976)]

Amendment; Airport Lease Application; Nevada

March 5, 1987.

Notice is hereby given that pursuant to the Act of May 24, 1928, (49 U.S.C. 211 through 214), the County of Nye has applied to amend their airport lease application N-40976 (originally published in the **Federal Register**, Thursday, March 27, 1986, 10576), to include the following described lands only:

Mount Diablo Meridian, Nevada

T.21S., R 53E.,
Sec. 5, SW¼;
Sec. 8, ALL;
Sec. 9, SW¼;
Sec. 16, W½;
Sec. 17, NE¼.

The area describes 1,440 acres and is located in Nye County, Nevada. The purpose of this notice is to inform the public that the filing of this amended application on December 8, 1986, segregated the described public lands from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126.

Ben F. Collins,

District Manager.

[FR Doc. 87-5237 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-HC-M

[AK-932-07-4220-10; AA-50224]

Alaska; Notice of Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes to withdraw 600 acres of forest land necessary for the Cape Fanshaw Natural Area. This notice closes the land for up to 2 years from appropriation under the public land laws including the mining and mineral leasing laws.

DATE: Comments must be received on or before June 10, 1987.

ADDRESS: Comments and meeting requests should be sent to: Alaska State Director, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, (907) 271-5477.

On February 6, 1987, the U.S. Forest Service filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Cape Fanshaw Natural Area Tongass National Forest Copper River Meridian (Unsurveyed)

T. 54 S., R. 75 E.,

Corner #1, the true point of beginning, is a 2238 foot high peak located in the E2NE4SE4NW4, W2NW4SW4NE4, protracted section 10, T. 54, S., 75 E., Copper River Meridian, Alaska as shown on the Sumdum A-5 USGS Quad Map.

From corner #1 proceed north approximately 32 chains to corner #2 which is located on the north bank of an unnamed intermittent stream; from corner #2 proceed northwesterly meandering the left bank of that stream to corner #3 which is a piont on the left bank of that stream 16 chains from its outlet into South Passage; from corner #3 proceed south 42 chains to corner #4; thence S. 48° W. approximately 76 chains to corner #5 which is located on the right bank of an unnamed intermittent stream; thence easterly and northeasterly following the southwestern spur of the 2238 peak approximately 140 chains to the point of beginning. The area described contains 600 acres near Cape Fanshaw, Alaska.

The purpose of the proposed withdrawal is to reserve minerals and protect an undisturbed natural area for research and educational purposes. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Alaska State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Alaska State

Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of the notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands.

[FR Doc. 87-5161 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-050-07-4410-08; OEPR Document No. BLM-AZ-PT-87-002-1600]

Unique Natural Areas and Features Sub-Issue of the Resource Management Plan and Environmental Impact Statement; AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Public notice that the Arizona State director has approved, in a record of decision (ROD), the unique natural areas and features sub-issue of the resource management plan (RMP) for the Yuma District.

SUMMARY: The ROD has adopted the Unique Natural Areas and Features subissue of the proposed plan that was presented in the final environmental impact statement (EIS) for the Yuma District RMP. It supplements the ROD for portions of the Yuma District RMP, which was issued on May 1, 1986.

Approval of the Unique Natural Areas and Features sub-issue had been withheld from the ROD for portions of the Yuma District RMP because of an unresolved protest.

EFFECTIVE DATE: March 27, 1987.

Availability

Copies of the Record of Decision will be sent to all individuals, agencies, and groups that received copies of the ROD for portions of the Yuma District RMP. In addition, a limited number of copies of the Record of Decision for the Unique Natural Areas and Features sub-issue will be available upon request from the Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma, Arizona 85364. Public reading copies may be reviewed at the following locations:

BLM, Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona 85019, (602) 241-5504;

BLM, Havasu Resource Area Office, 3819 Sweetwater Avenue, Lake Havasu City, Arizona 86403, (602) 855-8017.

Public Participation

The public was invited to participate in the RMP in the issue identification and development of planning criteria planning steps, during a 90-day comment period allowed on the draft EIS, and at public hearings held during the comment period.

Five protests were received during the 30-day protest period allowed after publication of the final EIS. With the exception of the portion of one protest addressing the Unique Natural Areas and Features sub-issue, all of these protests were resolved prior to the issuance of the ROD for portions of the Yuma District RMP. The portion of the protest addressing the Unique Natural Areas and Feature subissue has been subsequently resolved.

SUPPLEMENTARY INFORMATION:

Management alternatives for the Unique Natural Areas and Features sub-issue are identical to those developed for other portions of the Yuma District RMP.

The preferred alternative presents a cost-effective plan that best responds to the Unique Natural Areas and Features issue in a multiple use/sustained yield framework.

No specific mitigation measures are included in the remainder of the RMP. However, after implementation, site-specific mitigation may be required in activity planning.

Progress toward accomplishing goals and objectives in the remainder of the RMP will be monitored. This portion of the plan will be kept current through maintenance and may be amended or revised if management goals and objectives change.

J. Darwin Snell,

District Manager.

March 4, 1987.

[FR Doc. 87-5337 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-010-07-4410-08]

Draft Sierra Management Framework Plan Amendment/Environmental Assessment and Notice of Public Meeting; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the draft amendment and environmental assessment of the Sierra Management Framework Plan and notice of public meeting.

SUMMARY: The Folsom Resource Area of the Bakersfield District, California has prepared a draft amendment and environmental assessment for the Sierra Management Framework Plan (February 1983). The amendment affects the management of approximately 221,000 acres of public land located in Yuba, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne, and Mariposa Counties. The major issue addressed in the amendment is public land tenure adjustments, especially sales, exchanges and acquisitions.

The environmental assessment analyzes the impact of three alternatives: (1) An agressive land sale program (involving 20,000 acres of mostly scattered, isolated parcels) along with an increased effort in exchanges and acquisitions (Proposed Action); (2) continued case-by-case management of land tenure adjustments (Present Situation); and (3) retention of all public land in public ownership.

Comments on this draft amendment and environmental assessment are being solicited from public agencies and interested individuals. The Bureau invites written comments on the amendment to be submitted by May 15, 1987 to the address below and to attend a public meeting on the subject on April 17, 1987 in Nevada City.

DATE: The public meeting will be held at Tahoe National Forest, Supervisor's Office, Highway 49 and Coyote Street, Nevada City, CA at 7:00 p.m. on Friday, April 17, 1987.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Folsom Resource Area Manager, 63 Natoma Street, Folsom, CA 95630, (916) 985-4474. Also, a limited number of copies of the amendment will be available upon request from the Resource Area Office or Bakersfield District Office, 800 Truxtun Avenue, Room 302, Bakersfield, CA 93301, (805) 861-4191.

Dated: March 3, 1987.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 87-5336 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-40-M

[OR-21324, OR-19252, OR-20586-D, ORE-03102-C, OR-21977, ORE-03588-B, OR-943-07-4220-11: GP-07-117]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of six separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Willamette National Forest

1. OR 21324, Secretarial Order of May 5, 1908. Westfir Nursery, 29.30 acres.
   Located in Lane County, 4 miles northwest of Oakridge.
   T. 21 S., R. 2 E., W.M., Sec. 2.
2. OR 19252, Secretarial Order of September 4, 1908. Wolf Mtn. Lookout Administrative Site, 20 acres.
   Located in Lane County, 14 miles southeast of Oakridge.
   T. 22 S., R. 5 E., W.M., Sec. 33.
3. OR 20586–D, Secretarial Order of October 26, 1906. Westridge Nursery and Rigdon Ranger Station, 80 acres.
   Located in Lane County, 17 miles southeast of Oakridge.
   T. 24 S., R. 4 E., W.M., Sec. 16.

Umpqua National Forest

4. ORE 03102–C, Public Land Order No. 990 of August 11, 1954. Cedar Creek Recreation Area, 420 acres.
   Located in Lane County, 17 miles southwest of Oakridge.
   T. 22 S., R. 1 E., W.M., Secs. 8 and 9.
   Lund Park Recreation Area, 100 acres.
   Located in Lane County, 17 miles southwest of Oakridge.
   T. 22 S., R. 1 E., W.M., Sec. 22.
   Dog Creek Recreation Area, 40 acres.
   Located in Lane County, 16 miles southwest of Oakridge.
   T. 22 S., R. 1 E., W.M., Sec. 16.
   Crawfish Creek Recreation Area, 23 acres.
   Located in Lane County, 16 miles southwest of Oakridge.
   T. 22 S., R. 1 E., W.M., Sec. 16.
   Diamond Lake Recreation Area, 1,793 acres.
   Located in Douglas County, 65 miles east of Roseburg.
   T. 27 S., Rgs. 5 and 6 E., W.M., and T. 28 S., Rgs. 5 and 5½ E., W.M.
   Umpqua Hot Springs Recreation Area, 360 acres.
   Located in Douglas County, 46 miles east of Roseburg.
   T. 26 S., R. 4 E., W.M., Sec. 20.
5. OR 21977, Secretarial Order of April 23, 1908. Wolf Creek Administrative Site, 80 acres.
   Located in Douglas County, 20 miles east of Roseburg.
   T. 27 S., R. 2 W., W.M., Sec. 9.
6. ORE 03588–B, Public Land Order No. 1867 of May 28, 1959. Steamboat Creek Tributaries Streamside Zone, 435 acres.
   Located in Douglas and Lane Counties, 25 to 35 miles northeast of Roseburg.
   Tps. 24, 25 and 25½ S., R. 1 E., W.M. and Tps. 23, 24 and 25 S., R. 2 E., W.M.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawl continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawls will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawls will continue until such final determination is made.

Dated: February 25, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–5338 Filed 3–11–87; 8:45 am]

BILLING CODE 4310–33–M

[ORE-03587-D, ORE-03643, ORE-06580, ORE-010194-A, ORE-013667, ORE-013790, OR-6995, OR-943-07-4220-11: GP-07-101]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of seven separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Siskiyou National Forest

1. ORE 03587–D, Public Land Order No. 1144 of May 4, 1955. Grayback Recreation Area, 250.97 acres.
   Located in Josephine County, 20 miles south of Grants Pass.
   T. 39 S., R 6 W., W.M., Secs. 30 and 31.
2. ORE 03643, Public Land Order No. 1122 of April 12, 1955. Port Orford Cedar Natural Area, 1,240 acres.
   Located in Coos County, 20 miles east of Port Orford.
   T. 32 S., R. 12 W., W.M., Secs. 26, 34, 35, and 36.

ORE 06580, Public Land Order No. 1943 of August 12, 1959. Sunshine Bar Recreation Area, 55 acres.
Located in Curry County, 8 miles east of Port Orford.
T. 33 S., R. 14 W., W.M., Sec. 13.

4. ORE 010194–A, Public Land Order No. 2668 of May 3, 1962. Bolan Lake Recreation Area, 599.68 acres.
   Located in Josephine County, 30 miles south of Grants Pass.
   T. 41 S., R. 6 W., W.M., Secs. 6 and 7, and T. 41 S., R. 7W., W.M., Secs 1 and 12.
5. ORE 013667, Public Land Order No. 3286 of December 3, 1963. Cave Creek Campground, 55 acres.
   Located in Josephine County, 20 miles south of Grants Pass.
   T. 40 S., R. 6 W., W.M., Sec. 5.

Oregon Caves National Monument Buffer Strip, 289.19 acres.
Located in Josephine County, 22 miles south of Grants Pass.
T. 40 S., R. 6 W., W.M., Secs. 9, 10, 15, and 16.

Eight Dollar Mountain Television Translator Site, 4.33 acres.

Located in Josephine County, 20 miles southwest of Grants Pass.
T. 38 S., R. 8 W., W.M., Sec. 17.
Illinois Falls Fish Ladder and Parking Area, 43.55 acres.
Located in Josephine County, 21 miles southwest of Grants Pass.
T. 37 S., R. 9 W., W.M., Secs. 32 and 33.
Fiddler Mountain Lookout, 10 acres.
Located in Josephine County, 25 miles southwest of Grants Pass.
T. 38 S., R. 9 W., W.M., Sec. 28.
6. ORE 013790, Public Land Order No. 3395 of May 15, 1964. Store Gulch Campground and Guard Station, 41.08 acres.
Located in Josephine County, 26 miles southwest of Grants Pass.
T. 38 S., R. 9 W., W.M., Sec. 3.
Upper Indigo Campground, 30 acres.
Located in Curry County, 27 miles northwest of Grants Pass.
T. 34 S., R. 10 W., W.M., Sec. 12.
Sourdough Campground, 50 acres.
Located in Curry County, 13 miles east of Brookings.
T. 41 S., R. 11 W., W.M., Sec. 11.
Elk Creek Falls Picnic and Recreation Area, 60 acres.
Located in Coos County, 23 miles east of Port Orford.
T. 32 S., R. 11., W., W.M., Sec. 5.
Myrtle Grove Campground, 20 acres.
Located in Coos County, 24 miles east of Port Orford.
T. 32 S., R. 11 W., W.M., Sec. 18.
Daphne Grove Campground, 25 acres.
Located in Coos County, 24 miles east of Port Orford.
T. 33 S., R. 11, W., W.M., Sec. 7.
Squaw Lake Campground and Recreation Area, 60 acres.
Located in Coos County, 25 miles east of Port Orford.
T. 33 S., R. 11 W., W.M., Sec. 9.
Maple Campground, 20 acres.
Located in Coos County, 24 miles east of Port Orford.
T. 33 S., R. 11 W., W.M., Sec. 18.
Rock Creek Campground, 60 acres.
Located in Coos County, 25 miles east of Port Orford.
T. 33 S., R. 11 W., W.M., Sec. 19.
Long Ridge Campground, 20 acres.
Located in Curry County, 20 miles southeast of Gold Beach.
T. 30 S., R. 12 W., W.M., Sec. 23.
Little Redwood Campground, 58 acres.
Located in Curry County, 12 miles northeast of Brookings.
T. 39 S., R 12 W., W.M., Secs. 20 and 29.
Winchuk Campground, 40 acres.
Located in Curry County, 9 miles southeast of Brookings.
T. 41 S., R. 12 W., W.M., Sec. 10.
7. OR 6995, Public Land Order No. 5024 of March 1, 1971. Coquille River Falls Research Natural Area, 500 acres.
Located in Coos County, 23 miles southeast of Port Orford.
T. 33 S., R. 11 W., W.M., Secs. 16, 17, 18, 20, and 21.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until final determination is made.

Dated: February 27, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-5339 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-33-M

[WASH-01483-C, WASH-04808, WASH-04812, OR-6138(WASH), OR-22104(WASH), OR-22150(WASH), OR-22150(WASH), OR-22217(WASH), OR-943-07-4220-11; GP-07-108]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of seven separate land withdrawls continue for an additional 20 years and requests that the lands involved remain closed to mining and where closed be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Olympic National Forest

1. WASH 01483-C, Public Land Order No. 2434 of July 13, 1961. Rainbow Campground, 7 acres.
Located in Jefferson County, 4 miles south of Quilcene.
T. 26 N., R. 2 W., W.M., Sec. 3.
Dungeness Recreation area 15 acres.
Located in Clallam County, 7 miles south of Sequim.
T. 29 N., R. 3 W., W.M., Sec. 20.
Collins Campground, 20 acres.
Located in Jefferson County, 12 miles southwest of Quilcene.
T. 25 N., R. 3 W., W.M., Sec. 2.
2. WASH 04808, Public Land Order No. 3336 of February 24, 1984. Lena Creek Campground, 20 acres.
Located in Mason County, 13 miles north of Hoodsport.
T. 24 N., R. 4 W., W.M., Sec. 2.
East Crossing Campground, 10 acres.
Located in Clallam County, 10 miles southeast of Sequim.
T. 28 N., R. 3 W., W.M., Sec. 6.
West Fork Humptulips Work Center Site, 18.91 acres.
Located in Grays Harbor County, 10 miles south of Quinault.
T. 21 N., R. 9 W., W.M., Sec. 2.
Satsop Guard Station Administrative Site, 37.46 acres.
Located in Grays Harbor County, 16 miles southeast of Quinault.
T. 22 N., R. 7 W., W.M., Sec. 27.
Quinault Natural Area, 1,467.51 acres.
Located in Grays Harbor County, 3 miles south of Quinault.
T. 22 N., R. 9 W., W.M., Secs. 5 and 6, and T. 23 N., R. 9 W., W.M., Secs. 31 and 32.
Falls View Campground, 40 acres.
Located in Jefferson County, 5 miles southeast of Quilcene.
T. 27 N., R. 2 W., W.M., Secs. 33 and 34.
Dennie Ahl Seed Orchard, 125.28 acres.
Located in Mason County, 5 miles southweat of Hoodsport.
T. 22 N., R. 5 W., W.M., Sec. 24.
Mt. Walker Lookout, Observation and Picnic Site, 25 acres.
Located in Jefferson County, 2 miles southwest of Quilcene.
T. 27 N., R. 2 W., W.M., Secs. 34 and 35.
Quinault Recreation Area, 206.45 acres.
Located in Grays Harbor County, near Quinault.
T. 23 N., R. 9 W., W.M., Secs. 20, 21 and 30.
3. WASH 04812, Public Land Order No. 3386 of May 7, 1964. Elkhorn, Campground, 30 acres.
Located in Jefferson County, 13 miles southwest of Quilcene.
T. 26 N., R. 3 W., W.M., Sec. 19.
Rainbow Campground, 5 acres.
Located in Jefferson County, 3 miles southwest of Quilcene.
T. 26 N., R. 2 W., W.M., Sec. 3.
Dungeness Recreation area, 7.5 acres.
Located in Clallam County, 6 miles south of Sequim.
T. 29 N., R. 3 W., W.M., Sec. 30.

4. OR 6138 (WASH), Public Land Order No. 5010 of January 26, 1971. Park Gravel Pit Site, 11.33 acres.
Located in Jefferson County, 13 miles northwest of Quinault.
T. 24 N., R. 10½ W., W.M., Sec. 2.
Cook Creek Gravel Pit Site, 10 acres.
Located in Grays Harbor County, 6 miles southwest of Quinault.
T. 22 N., R. 10 W., W.M., Sec. 22.
Lake Cushman, R.P. 2 site, 4.02 acres.
Located in Mason County, 7 miles northwest of Hoodsport.
T. 23 N., R. 5 W., W.M., Sec. 9.
Rocky Brook Pit Site, 2.06 acres.
Located in Jefferson County, 8 miles southwest of Quilcene.
T. 26 N., R. 2 W., W.M., Sec. 18.
Neilton Electronic Site, 20 acres.
Located in Grays Harbor County, 6 miles southwest of Quinault.
T. 22 N., R. 9 W., W.M., Sec. 18.
5. OR 22104 (WASH), Secretarial Order of June 12, 1908. Louella Administrative Site, 30 acres.
Located in Clallam County, 5 miles southeast of Sequim.
T. 29 N., R. 3 W., W.M., Sec. 20.
6. OR 22150 (WASH), Secretarial Order of June 11, 1908. Willaby Administrative Site, 12.95 acres.
Located in Grays Harbor County, 1 mile west of Quinault.
T. 23 N., R. 9 W., W.M., Sec. 19.
7. OR 22217 (WASH), Secretarial Order of January 8, 1907. Norwood Administrative Site, 44.50 acres.
Located in Grays Harbor County, 3 miles northeast of Quinault.
T. 23 N., R. 9 W., W.M., Sec. 10.
Quinault Ranger Station Site, 49.90 acres.
Located in Grays Harbor County, 1 mile north of Quinault.
T. 23 N., R. 9 W., W.M., Sec. 20.
Duckabush Guard Station, 20 acres.
Located in Jefferson County, 12 miles southwest of Quilcene.
T. 25 N., R. 3 W., W.M., Sec. 1.

The withdrawals currently segregate the lands from operation of the mining laws, and some of the lands are closed to operation of the public land law generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the land be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: February 25, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-5340 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-33-M

[ORE-017510(WASH), WASH-05804-A, WASH-05318-C, OR-22244(WASH), ORE-1374(WASH), WASH-01935, OR-943-07-4220-11: GP-07-104]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of six separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Wenatchee National Forest

1. ORE 017510(WASH), Public Land Order No. 4193 of April 10, 1967. Tronsen Campground, 25 acres.
Located in Chelan County, 12 miles southwest of Wenatchee.
T. 21 N., R. 18 E., W.M., Sec. 3.
2. WASH 05804-A, Public Land Order No. 3851 of October 11, 1965. Steliko Work Center Complex Administrative Site, 74.64 acres.
Located in Chelan County, 22 miles north of Wenatchee.
T. 26 N., R. 20 E., W.M., Sec. 20.
3. WASH 05318-C, Public Land Order No. 3607 of April 8, 1965. Mineral Spring Recreation Complex, 50 acres.
Located in Kittitas County, 18 miles southwest of Wenatchee.
T. 21 N., R. 17 E., W.M., Sec. 20.
2. OR 22244 (WASH), Public Land Order No. 725 of June 4, 1951. Swauk Campground Site, 80 acres.
Located in Kittitas County, 18 miles southwest of Wenatchee.
T. 21 N., R. 17 E., W.M., Sec. 12.

Colville National Forest

5. OR 1374 (WASH), Public Land Order No. 4362 of February 12, 1968. Cresent Lake Recreation Area, 10 acres.
Located in Pend Oreille County, 7 miles north of Metaline.
T. 40 N., R. 43 E., W.M., Sec. 12.
6. WASH 01935, Public Land Order No. 1375 of December 20, 1956. Cresent Lake Recreation Area, 112.16 acres.
Located in Pend Oreille County, 7 miles north of Metaline.
T. 40 N., R. 43 E., W.M., Sec. 12.

The withdrawals currently segregate the lands from operation of the mining laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: February 25, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-5341 Filed 3-11-87; 8:45 am]

BILLING CODE 4310-33-M

[WASH-0844, WASH-04835, WASH-05804, OR-3347 (WASH), OR-7308 (WASH), OR-943-07-4220-11; GPD7-106]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of five separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining.

FOR FURTHER INFORMATION CONTRACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905)..

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Olympic National Forest

1. WASH 0844, Public Land Order No. 3870 of November 12, 1965. Brown Creek Campground, 25 acres.
   Located in Mason County, 8 miles west of Hoodsport.
   T. 22 N., R. 5 W., W.M., Sec. 9.
South Sitkum Recreation Area, 92.47 acres.
   Located in Clallam County, 5 miles east of Forks.
   T. 28 N., R. 12 W., W.M., Sec. 6.
Snider Recreation Area, 50.1 acres.
   Located in Clallam County, 15 miles northeast of Forks.
   T. 30 N., R. 11 W., W.M., Secs. 27 and 28.
Hamma Hamma Campground, 20 acres.
   Located in Mason County, 15 miles north of Hoodsport.
   T. 24 N., R. 3 W., W.M., Sec. 6 and T. 24 N., R. 4 W., W.M., Sec. 1.
2. WASH 04835, Public Land Order No. 3372 of April 7, 1964. Big Creek Campground, 30 acres.
   Located in Mason County, 8 miles north of Hoodsport.
   T. 23 N., R. 4 W., W.M., Secs. 8 and 9.
3. WASH 05804, Public Land Order No. 3851 of October 11, 1965. Snider Ranger Station Administrative Site, 62.90 acres.
   Located in Clallam County, 15 miles northeast of Forks.
   T. 30 N., R. 11 W., W.M., Sec. 28.
4. OR 3347 (WASH), Public Land Order No. 4599 of April 10, 1969. Snow Creek Road Rock Pit No. 1, 4.99 acres.
   Located in Clallam County, 17 miles southeast of Port Angeles.
   T. 29 N., R. 3 W., W.M., Sec. 24.
Caraco Creek Road Rock Pit No. 1, 4.99 acres.
   Located in Clallam County, 21 miles southeast of Port Angeles.
   T. 29 N., R. 4 W., W.M., Sec. 23.
5. OR 7309 (WASH), Public Land Order No. 5320 of December 6, 1972. Cene Rock Pit No. 2765–0.0, 3.5 acres.
   Located in Jefferson County, 5 miles west of Quilcene.
   T. 27 N., R. 2 W., W.M., Sec. 18.
Old Bon Jon Rock Pit No. 2849–4.1, 2.5 acres.
   Located in Clallam County, 10 miles northwest of Quilcene.
   T. 28 N., R. 3 W., W.M., Secs. 3 and 10.
Dungeness Rock Pit No. 295–5.5, 1.50 acres.
   Located in Clallam County, 13 miles northwest of Quilcene.
   T. 28 N., R. 3 W., W.M., Sec. 7.
Old Bon Jon Rock Pit No. 2849–2.1, 2.10 acres.
   Located in Clallam County, 10 miles northwest of Quilcene.
   T. 28 N., R. 3 W., W.M., Sec. 14.
Old Bon Jon Rock Pit No. 2909.–1–4.8, 2.80 acres.
   Located in Clallam County, 9 miles northwest of Quilcene.
   T. 28 N., R. 3 W., W.M., Sec. 25.
Townsend Creek Rock Pit No. 2812.2–17.2, 3.70 acres.
   Located in Clallam County, 10 miles northwest of Quilcene.
   T. 28 N., R. 3 W., W.M., Sec. 26.
Cranberry Rock Pit No. 2983–2.2, 3.60 acres.
   Located in Clallam County, 15 miles northwest of Quilcene.
   T. 29 N., R. 3 W., W.M., Secs. 19 and 30.
Dutchman Rock Pit No. 294.3–8.7, 5 acres.
   Located in Clallam County, 10 miles northwest of Quilcene.
   T. 29 N., R. 3 W., W.M., Sec. 24.
Coho Rock Pit No. 29067–0.2, 3.50 acres.
   Located in Clallam County, 11 miles northwest of Quilcene.
   T. 29 N., R. 3 W., W.M., Sec. 35.
Canyon Creek Rock Pit No. 2926–6.7, 1.50 acres.
   Located in Clallam County, 20 miles northwest of Quilcene.
   T. 28 N., R. 4 W., W.M., Sec. 4.
Caraco Rock Pit No. 2927–1.3, 3.80 acres.
   Located in Clallam County, 20 miles northwest of Quilcene.
   T. 29 N., R. 4 W., W.M., Sec. 23.

The withdrawals currently segregate the lands from operation of the mining laws, but not the public land laws or mineral leasing laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: February 25, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–5342 Filed 3–11–87; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Alaska Maritime National Wildlife Refuge; Extention of Processing Time of Right-of-Way Application; Environmental Impact Statement; Afognak Native Corp.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension.

SUMMARY: Notice is hereby given that the Fish and Wildlife Service is extending the processing time for completion of an Environmental Assessment (EA) or Draft Environmental Impact Statement (DEIS) required for Right-of-Way Application M–242–AM. The EA or DEIS originally due for completion March 11, 1987, will be completed by February 23, 1988.

M–242–AM is an application submitted by Afognak Native Corporation for a log transfer facility within the Alaska Maritime National Wildlife Refuge. This notice is issued pursuant to 50 CFR Part 36 and **Federal Register**/Volume 51, No. 171/Thursday, September 4, 1986/Rules and Regulations.

FOR FURTHER INFORMATION CONTACT: William H. Mattice, Deputy Chief, Division of Realty, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, (907) 786–3490.

Dated: March 6, 1987.

James C. Gritman,

Acting Regional Director.

[FR Doc. 87–5203 Filed 3–11–87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Procedures for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed modification to Notice to Lessees-5; extension of comment period.

SUMMARY: This Notice extends the comment period from March 17, 1987 to April 3, 1987 on the Notice of Proposed Modification to NTL–5 (concerning procedures for determining natural gas value for royalty purposes) which was published in the **Federal Register** on January 15, 1987 (52 FR 1671). The comment period was previously extended from February 17, 1987 to March 19, 1987 (52 FR 4195). This extension of the comment period is in response to further requests from the public for additional time and to allow for comments that may be received at the Royalty Management Advisory Committee meeting to be held in Denver, Colorado, from March 30 through April 1, 1987 (52 FR 3178).

DATE: Comments must be delivered or postmarked no later than April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, Chief, Rules and Procedures Branch, telephone: (303) 231–3432, (FTS) 326–3432.

Dated: March 6, 1987.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87–5246 Filed 3–11–87; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

[Civil Action No. CA 4–85–466K]

Lodging of Consent Decree Pursuant to Clean Air Act; Champion International Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 24, 1987 to proposed consent decree in *United States v. Champion International Corporation, Dairypak Division,* Civil Action No. CA 4–85–466K was lodged with the United States District Court for the Northern District of Texas. The proposed consent decree concerns a complaint filed by the United States pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413, that alleged violations of the Texas State Implementation Plan ("SIP") for control of volatile organic compounds at Champion's flexographic printing facility in Fort Worth, Texas. The complaint sought injunctive relief to require defendant to comply with the SIP and civil penalties for past violations. Under the consent decree Champion is required to pay a civil penalty of $67,500 in settlement of the government's civil penalty claims, and is required to limit its emissions of volatile organic compounds.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice Washington, D.C. 20530, and should refer to *United States v. Champion International Corporation, Dairypak Division,* D.J. Ref. 90–5–2–1–744.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Texas, 310 U.S. Courthouse, 10th & Lamar Streets, Fort Worth, Texas 76102 and at the Region VI Office of the United States Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–5241 Filed 3–11–87; 8:45 am]

BILLING CODE 4410–01–M

Change of Date for Public Hearing; Pepper's Steel and Alloys et al.

On February 19, a **Federal Register** Notice was published at 52 FR 5209, notifying the public that a Consent Decree had been lodged with the Court in *United States* v. *Pepper's Steel and Alloys et al.* The Notice indicated that the Court would hold a public hearing on March 27 at 2:00 p.m.

Because of a scheduling conflict, the Court has revised the date for the public hearing. The hearing will take place on March 26, 1987, at 3:00 p.m. in the Courtroom of Hon. Eugene Spellman, United States District Courthouse, Miami, Florida. As indicated in the previous **Federal Register** Notice, the purpose of this hearing is to respond to those written comments received during the 30-day public comment period. That comment period expires on March 21, 1987.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–5242 Filed 3–11–87; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 83–3882]

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; AVX et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 4, 1987, a proposed partial consent decree in *United States* v. *AVX, et al.*, Civil Action No. 83–3882, was lodged with the United States District Court for the District of Massachusetts. The action involves claims by the United States for recovery of damages for injury to natural resources and governmental clean-up costs, and for injunctive relief, under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), *inter alia*, with respect to the polychlorinated biphenyl ("PCB") contamination of New Bedford Harbor in Massachusetts. The proposed partial decree involves the payment by one defendant in the action, AVX Corporation, of two million dollars ($2,000,000) to resolve its liability under CERCLA for the damage to the natural resources of New Bedford Harbor caused by the release of PCBs that resulted from its former operation of a capacitor manufacturing plant adjacent to the Harbor. The settlement does not relieve AVX Corporation of any potential liability to clean up the contamination in the Harbor or to reimburse the government for the costs of investigating and cleaning up the contamination in the Harbor.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AVX, et al.*, D.J. Ref. 90–11–2–32/90–11–2–78.

The proposed consent decree may be examined at the Office of the United States Attorney, 1107 J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109 and at the Region I Office of the Environmental Protection Agency, 22nd Floor, JFK Federal Building, Boston, Massachusetts, 02203, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Washington, DC 20530. A copy of the proposed partial consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of

the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-5240 Filed 3-11-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-51]

LaMoine F. Murray, R.Ph., Murray's Pharmacy; Denial of Application for Registration

On June 5, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to LaMoine F. Murray, R.Ph., Murray's Pharmacy, of 2388 Harrison Boulevard, Ogden, Utah 84401 (Respondent), an Order to Show Cause proposing to deny his application executed on January 7, 1986, for registration as a practitioner under 21 U.S.C. 823(f). The statutory bases for the denial are: (1) Respondent's license as a dispensary of controlled substances was revoked by the State of Utah Division of Registration, Board of Pharmacy, thereby terminating the authority of Murray's Pharmacy to possess, dispense, or otherwise handle controlled substances in the State of Utah; (2) on January 13, 1983, LaMoine Murray, R.Ph., the owner and operator of Murray's Pharmacy, was convicted in the United States District Court for the District of Utah of omitting material information from records required to be kept and maintained, in violation of 21 U.S.C. 843(a)(4)(A), a felony relating to controlled substances; and (3) the registration of Murray's Pharmacy is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f), as evidenced by, but not limited to, the revocation of the controlled substance dispensing license of Murray's Pharmacy by the State of Utah, the felony conviction of LaMoine Murray, and the revocation on July 23, 1984, by the former Administrator, of DEA Certificate of Registration AM3128039 previously issued to Murray's Pharmacy.

Respondent, through 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. During a telephonic prehearing conference on July 14, 1986, Respondent's counsel requested and received a period of time to return to the State authority and request that Respondent's application that was pending before the agency be decided on the merits rather than predicated on his lack of federal registration. The time granted for this purpose expired without a showing of any progress by Respondent's counsel. On October 6, 1986, Government Counsel filed a motion for summary disposition based on Respondent's lack of a State license for Murray's Pharmacy. Respondent filed no opposition to the Government's motion. On November 3, 1986, Judge Young issued this opinion and recommended findings of fact, conclusions of law and decision. No exceptions were filed, and on December 1, 1986, the Administrative Law Judge transmitted the record to the Administrator. The Administrator has considered the 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 on March 26, 1985, the State of Utah Division of Registration, Board of Pharmacy, revoked the license issued to Murray's Pharmacy as a dispensary of controlled substances. As a result of this revocation, Respondent is not authorized to possess, dispense, or otherwise handle controlled substances in the State of Utah. The Administrative Law Judge concluded that the Drug Enforcement Administration does not have statutory authority under the Controlled Substance Act to issue a DEA Certificate of Registration if the pharmacy is without State authority to handle controlled substances as a "practitioner". The agency has consistently so held. See *Emerson Emory, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984).

The Administrative Law Judge also found that in instances where the pharmacy is not authorized to handle controlled substances in the State in which it operates, a motion for summary disposition is properly entertained and must be granted. It is settled law that when no fact question is involved, or where the facts are agreed, a plenary adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory, even though a pertinent statute prescribes a hearing. In such situations it has been concluded that Congress does not intend administrative agencies to perform meaningless tasks. *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); *Alfred Tennyson Smurtwaite, N.D.*, Docket No. 77-29, 43 FR 11873 (1978); *Phillip E. Kirk, M.D.*, Docket No. 82-36, 48 FR 32887 (1983), aff'd *sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984). Therefore, since Murray's Pharmacy is not currently authorized to possess, dispense, or otherwise handle controlled substances in the State of Utah, the Administrator cannot register Murray's Pharmacy. Consequently, there is no need to address Mr. Murray's controlled-substance related felony or the public interest issue raised in the Order to Show Cause. The Administrative Law Judge concludes that Respondent's application for registration should be denied, based solely on Respondent's lack of authorization to possess, dispense, or otherwise handle controlled substances in the State of Utah.

The Administrator adopts the findings of fact, conclusions of law and recommendation of the Administrative Law Judge in its entirety.

Accordingly, 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 Respondent's application for a DEA Certificate of Registration, executed on January 7, 1986, be, and hereby is denied.

This order is effective April 13, 1987.

Dated: March 6, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-5298 Filed 3-11-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-68]

Donald Y. Stewart, M.D.; Revocation of Registration

On August 29, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, (DEA) issued to Donald Y. Stewart, M.D., of the Veterans Administration Domiciliary, Argonne Avenue, Bath, New York 14810 (Respondent), an Order to Show Cause proposing to revoke his DEA Certificate of Registration AS3172690 and to deny any pending applications for its renewal under 21 U.S.C. 823(f). The statutory bases for seeking the revocation and denial are: (1) Dr. Stewart's license to practice medicine in New York was revoked by the Commissioner of

Education of the State of New York on June 11, 1986, thereby terminating Respondent's authority to possess, prescribe, dispense, administer or otherwise handle controlled substances in New York; and (2) on January 9, 1986, Respondent was convicted in the United States District Court for the Southern District of New York of illegal dispensing and distribution of controlled substances in violation of 21 U.S.C. 841(a)(1), a felony relating to controlled substances.

Respondent, acting *pro se*, requested a hearing on the issues raised in the Order to Show Cause and submitted a statement in his own behalf. The matter was placed on the docket of Administrative Law Judge Francis L. Young.

On October 10, 1986, Government counsel filed a motion for summary disposition based on Respondent's admitted lack of a state medical license and lack of authority to possess, prescribe, dispense or otherwise handle controlled substances in New York. Respondent filed another statement in his own behalf. On November 3, 1986, Judge Young issued his opinion and recommended findings of fact, conclusions of law and decision. No exceptions were filed, and on December 1, 1986, the Administrative Law Judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of facts and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on June 11, 1986, the Commissioner of Education of the State of New York revoked the license to practice medicine issued to Dr. Stewart. As a result of this revocation, Respondent is not authorized to possess, prescribe, dispense, or otherwise handle controlled substances in the State of New York. The Administrative Law Judge concluded that the Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to register a physician unless the physician is a "practitioner" authorized by the State in which he practices to handle controlled substances. See 21 U.S.C. 802(21) and 823(f). This agency has consistently so held. See *Emerson Emery, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984).

The Administrative Law Judge also found that in instances where a physician is not authorized to handle controlled substances in the state in which he practices, a motion for summary disposition is properly entertained and must be granted. It is settled law that where no fact question is involved, or when the facts are agreed, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, it has been concluded that Congress does not intend administrative agencies to perform meaningless tasks. *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); *Alfred Tennyson Smurthwaite, N.D.*, Docket No. 77–29, 43 FR 11873 (1978); *Phillip E. Kirk, M.D.*, Docket No. 82–36, 48 FR 32877 (1983), aff'd *sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984). Therefore, since Dr. Stewart is no longer authorized to possess, prescribe, dispense, administer or otherwise handle controlled substances in the State of New York, the Administrator cannot authorize a DEA registration in that state. Consequently, there is no need to address the issue of Respondent's controlled substance-related felony conviction raised in the Order to Show Cause. The Administrative Law Judge concludes that Respondent's application for registration should be denied, based solely on Respondent's lack of authorization to possess, dispense, or otherwise handle controlled substances in the State of New York.

The Administrator adopts the findings of fact, conclusions of law, and recommendations of the Administrative Law Judge in its entirety.

Accordingly, 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 Respondent's DEA Certificate of Registration AS3172609, previously issued to Donald Y. Stewart, M.D., be, and hereby is, revoked; it is further ordered that any pending applications for renewal, executed by Dr. Stewart are denied.

This order is effective April 13, 1987.

Dated: March 6, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87–5299 Filed 3–11–87; 8:45 am]

BILLING CODE 4410–9–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before April 13, 1987.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) and Ms. Judy Egan, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision

Title: Museums and Historical Organizations Guidelines and Application Instructions

Form Number: 3166–0089

Frequency of Collection: Twice a year at each deadline

Respondents: Museums and historical organizations

Use: Collection of information provides a basis for evaluation of applications in a competitive review process of making grants

Estimated Number of Respondents: 339
Estimated Hours for Respondents to Provide information: 31,920

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 87-5310 Filed 3-11-87; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeology/ Physical Anthropology; Closed Meetings

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology/ Physical Anthropology

Date & Time: March 30 & 31 and April 6–8, 1987; 9:00 a.m. to 5:00 p.m. each day.

Place: 3/30–31—Stony Brook University, Stony Brook, N.Y., 4/6–7–8—Rm. 1242, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. John Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550; (202) 357–7804

Purpose of Meeting: To provide advice and recommendations concerning support for archaeology and physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-5317 Filed 3-11-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cultural Anthropology; Meetings

The National Science Foundation announces the following meetings:

Name: Advisory Panel for Cultural Anthropology

Date & Time: March 26 & 27, 1987; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 628, Washington, DC 20550

Type of Meeting: Closed: 3/26/87 9:00–5:00; 3/27/87 9:00–12:00, 2:00–5:00, Open: 3/27/87 12:30–2:00

Contact Person: Dr. Stuart Plattner, Program Director, Cultural Anthropology, Room 320, National Science Foundation, Washington, DC 20550; (202) 357–7804

Purpose of Meeting: To provide advice and recommendations concerning support in cultural anthropology.

Agenda: Closed: To review and evaluate research proposals as part of the selection process for awards. Open: To provide advice on trends and opportunities in research in cultural anthropology.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information, concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-5318 Filed 3-11-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecosystem Studies; Meetings

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Date and Time: March 26 & 27, 1987—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Jerry M. Melillo, Program Director, Ecosystem Studies, (202) 357–9596, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-5319 Filed 3-11-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for History and Philosophy of Science; Closed Meetings

The National Science Foundation announces the following:

Name: Advisory Panel for History and Philosophy of Science

Date/Time: March 27, 1987, 9:00 a.m. to 5:00 p.m., March 28, 1987, 9:00 a.m. to 4:00 p.m.

Place: Golden Gate Holiday Inn, San Francisco, CA

Type of Meeting: Closed

Contact Person: Ronald J. Overmann, Program Director, History and Philosophy of Science, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9677, and Dr. Sara B. Nerlove, Acting Associate Program Director for History and Philosophy of Science (202) 357–7969, Room 336.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning research in the History and Philosophy of Science Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-5320 Filed 3-11-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Metabolic Biology; Closed Meetings

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology.

Date and Time: March 26, 27, and 28, 1987, 9:00–5:00

Place: The St. James Hotel, 924 25th Street, NW, Washington, DC 20037

Type of Meeting: Closed

Contact Person: Dr. William van B. Robertson, Metabolic Biology Program, Rm. 325–H, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7987.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in metabolic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–5321 Filed 3–11–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments To Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 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 26, 1987 (52 FR 5849) through March 2, 1987.

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 am to 5:00 pm. 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 April 13, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right, under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no

significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of 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) through (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.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: October 17, 1986 (partial).

Description of amendment request: The following proposed changes to the Units 1 and 2 Technical Specifications (TS) are in partial response to the BG&E application dated October 17, 1986. All of these proposed changes would modify their associated surveillance periods from at least once per 18 months to at least once per refueling interval, which shall be defined as 24 months. The following TS Surveillance Requirements, grouped by basis for proposed no significant hazards consideration determination, are those proposed to be changed: Change No. 1. TS 4.1.2.2.c (boron injection flow path operability), TS 4.5.2.f (emergency core cooling system operability), TS 4.6.2.1.b (containment spray system operability), TS 4.7.3.1.b (component cooling water operability), TS 4.7.4.1.a (service water system operability) and TS 4.7.5.1.b (salt water system operability); Change No. 2. TS 4.6.5.2.b (containment hydrogen recombiner operability); and Change No. 3 TS 4.4.13.2 (reactor coolant system vents operability).

Basis for proposed no significant hazards consideration determination: The Change No. 1 TS surveillance requirements verify, upon receipt of a safety injection actuation system (SIAS) test signal, that: (1) Each boric acid pump starts and each automatic valve in the boron injection flow path actuates to its correct position (TS 4.1.2.2.c); (2) each charging pump starts (TS 4.1.2.4.a); (3) each high-pressure safety injection (HPSI) and low-pressure safety injection (LPSI) pump starts and each automatic emergency core cooling system (ECCS) valve actuates to its correct position (TS 4.5.2.f); (4) each automatic valve in the containment spray flow path actuates to its correct position (TS 4.6.2.1.b.1); (5) each automatic component cooling water system valve (TS 4.7.3.1.b), service water system valve (TS 4.7.4.1.b), and salt water system valve (TS 4.7.5.1.b) which service safety related equipment actuates to its correct position.

In addition, each automatic service water system valve servicing safety related equipment is verified to actuate to its correct position (TS 4.7.4.1.b) and each containment spray pump starts (TS 4.6.2.1.b.2) upon receipt of a containment spray actuation system (CSAS) test signal.

The licensee has proposed that the surveillance interval for performance of these tests be extended from at least once every 18 months to at least once every refueling interval (24 months). The surveillance period of at least one every 18 months matches the length of the current refueling interval. The proposed extension in the surveillance interval to 24 months is required to facilitate a 24-month operating cycle.

The licensee evaluated the proposed changes against the standards in 10 CFR 50.92 and has determined that these amendments would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

The SIAS and CSAS actuated pumps and valves that are tested by these 18-month surveillances are tested also for SIAS and CSAS actuation by the performance of the monthly channel functional tests (CFT's) of the engineered safety feature actuation system (ESFAS) as required in TS 3/4.3.2. This is true for all of the 18-month tested components with the exception of the volume control tank discharge isolation valve (CVC–5011 and the service water isolation valves to the turbine building (SRW–1600, 1637, 1638, and 1639). Due to operational constraints, none of these five valves can be tested while the reactor is at power.

The probability or consequences of these components (pumps and valves) failing to actuate on a SIAS or CSAS actuation signal due to electrical or mechanical degradation is not significantly increased by the proposed extension in the surveillance intervals from 18 to 24 months. The performance of the ESFAS CFT's ensures on a monthly basis that these components (those tested by the CFT's) will all actuate to their proper positions on a SIAS or CSAS actuation signal. This is the method currently used to demonstrate the operability of these automatic actuation functions during power operations. If a component failed

to properly actuate during the CFT, action is required to be taken to restore it to operability or the affected unit would be shut down, if necessary.

A review of plant history for both Units 1 and 2 indicates that the SIAS and/or CSAS actuation functions of the five valves not tested on each unit by the ESFAS CFT's are highly reliable. Of these ten valves total which have been each tested at least nine times, only one (SRW–16371 has ever failed to actuate on a SIAS or CSAS signal. This valve failed on Unit 1 during pre-operational testing when the valve failed to fully close. In 1979 at Unit 1 an apparent failure of this valve to fully close was detected that was attributed to a burned-out closed indication light bulb. The low number of failures occurring in the valve test population indicates that the SIAS and CSAS actuation functions are highly reliable and that their reliability would not be significantly degraded by the proposed increase in the surveillance intervals from 18 to 24 months.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change system design, operation, or operability requirements other than extending the surveillance interval for demonstrating the operability of these pumps and valves, while shutdown, on an SIAS or CSAS actuation signal. The SIAS and CSAS functions are unchanged. Consequently, this proposed extension in these surveillance intervals would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety . . .

The only consequence of these proposed extensions of the surveillance intervals by 6 months is a minimal degradation in the reliability of SIAS and CSAS. The performance of the monthly ESFAS CFT's and the plant history of the valves not CFT tested indicates that there is no significant decrease, with time, in the availability or capability of the SIAS and CSAS functions and, therefore, no significant reduction in a margin of safety.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that these proposed changes involve no significant hazards considerations.

The Change No. 2 TS Surveillance Requirement 4.6.5.2.b is conducted to verify the operability of the containment hydrogen recombiners by performing channel calibrations of all recombiner instrumentation and control circuits, by visually inspecting the recombiners for abnormal conditions and deterioration, by verifying the appropriate heater sheath temperature and heat up rate during a recombiner system functional test, and by verifying proper heater circuitry continuity and resistance to ground following the system functional test. The licensee has proposed that the interval for performing this surveillance requirement be extended from at least once per 18 months to at least once per refueling interval (24 months) to facilitate a change to a 24-month operating cycle.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that these amendments would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

The function of the hydrogen recombiners is to maintain the hydrogen concentration of the containment atmosphere below the flammable limit for the post loss-of-coolant accident (LOCA) conditions.

The probability that the containment hydrogen concentration would exceed the flammable limit following a LOCA would not be significantly increased by extending this verification interval from 18 to 24 months. The consequences of exceeding the flammable limit for hydrogen would remain unchanged. A review of the plant history of this surveillance for the two recombiners at each plant as conducted since 1976 yielded only one instance where the recombiners did not meet all operability requirements. In February 1977, the #11 hydrogen recombiner of Unit 1 had a low phase A, B and C resistance to ground due to a frayed lead at the cable connector for the third heater bank's power cable. No other out-of-specification results have occurred during the performances of these surveillance requirements. This single test failure in this large test population demonstrates that the probability of the instrumentation and control circuits drifting out of calibration or of electrical or material degradation occurring has not been significant over the last 10 years and as such, would not be significant over the 6-month surveillance interval extension. Therefore, an extension of the length of the surveillance interval from 18 to 24 months would not significantly increase the probability of exceeding the flammable hydrogen limit due to a hydrogen recombiner failure or of degraded recombiner performance.

The consequences of exceeding the containment atmosphere's flammable hydrogen limit would be unchanged as all other plant systems and functions would be unaffected by this extension in this surveillance interval.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change any system design, function, operation, or operability requirements other than extending the surveillance interval for demonstrating the operability of the hydrogen recombiners from 18 to 24 months. Consequently, this proposed extension in the surveillance interval would not create the possibility of any new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety . . .

The margin of safety potentially affected by this 6-month surveillance interval extension is the capability to maintain the containment hydrogen concentration below the flammable limit for post-LOCA conditions. Plant history has shown that the degradation of the operability of the hydrogen recombiners with time is minimal, therefore, no significant reduction in the reliability or capability of the recombiners will result due to this surveillance interval extension.

Based upon the above, the NRC staff proposes to determine that the proposed change to TS Surveillance Requirement 4.6.5.2.b involves no significant hazards considerations.

The Change No. 3 TS Surveillance Requirement 4.4.13.2 verifies that all manual isolation valves in each reactor coolant system (RCS) vent path are locked open and that flow occurs through these vent paths when the solenoid operated vent valves are opened. The licensee has proposed that the interval for performing this surveillance requirement be extended from at least once per 18 months to at least once per refueling interval (24 months) to facilitate a change to a 24-month operating cycle.

The NRC staff has reviewed the licensee's proposed change and justifications against the standards in 10 CFR 50.92 and proposes to determine that these amendments would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

The function of the RCS vents is to vent noncondensible gases from high points of the RCS to assure that core cooling during natural circulation will

not be inhibited. These noncondensible gases may have accumulated possibly due to fuel damage, zircaloy hydriding, nitrogen addition to the RCS from drained safety injection tanks, or unit refueling.

The RCS vent paths from the reactor vessel head and the pressurizer head to the quench tank are both located within containment.

The probability or consequences of a previously evaluated accident would not be significantly increased by extending the verification that the manual vent valves are locked open from 18 to 24 months. These manual valves, located in containment, generally are operated only when the unit is in a refueling outage tn facilitate system maintenance or RCS refill. The 6-month extension in this surveillance interval coincides with a proposed 6-month extension in the length of the operating cycle. In addition, these valves are locked and the licensee does maintain administrative controls over locked valves. As such, the likelihood of a containment entry during the operating cycle in which these valves are unlocked or unlocked and closed remains negligible.

Likewise, the probability of losing the ability to vent the RCS due to a solenoid valve power supply failure or to solenoid valve failure remains negligible as the solenoid valves on the two separate vent lines are powered from two separate emergency bases and the probability of failure of one solenoid valve on each of the two vent lines due to material degradation is only negligibly increased due to the extension in surveillance interval. Hence, the reliability and the capability of the RCS vent system to ensure the continuation of effective natural circulation core cooling will be only minimally degraded by this surveillance interval extension of 6 months.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change any system design, function, operation, or operability requirements other than extending the surveillance interval for demonstrating the operability of the RCS vent paths from 18 to 24 months. Consequently, this proposed extension in the surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety . . .

The margin of safety potentially affected by this 6-month surveillance interval extension is the capability to vent noncondensible gases from the RCS to ensure the continuation of effective decay heat removal via natural circulation core cooling. The degradation in the RCS vent system due to this extension is minimal, therefore, no significant reduction in the reliability or capability of this system to vent noncondensibles and maintain core decay heat removal will result due to this surveillance interval extension.

Based upon the above, the NRC staff proposes to determine that the proposed change to TS Surveillance Requirement 4.4.13.2 involves no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ashok C. Thadani.

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: December 15, 1986, as amended on February 10, 1987.

Description of amendment request: The amendment would consist of the following proposed changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF–58):

(1) Reference to specification 3.7.9.1 in Definition 1.18, Fuel Handling Building (FHB) Integrity, would be changed to specification 3.7.7.1. This will correct a typographical error.

(2) Table 3.8.4.1–1 would be changed to correctly identify the overcurrent protection device for circuit 1R25–B522X as OR25–S153–CB13 rather than 1R25–S153–CB13.

(3) Charts of the licensee's corporate and unit organizations, Figures 6.2.1–1 and 6.2.2–1, would be deleted and references to them would be changed to indicate their locations in the Perry Final Safety Analysis Report (FSAR). This change would enable the licensee to modify its organization more expeditiously since it would no longer have to obtain prior Commission approval.

(4) The words ". . . the Managers, Perry Plant Departments, approval for . . ." would be removed from specification 6.5.3.1.e which presently includes the requirement that "Pursuant to 10 CFR 50.59, NRC approval of items involving unreviewed safety questions shall be obtained prior to the Managers, Perry Plant Departments, approval for implementation." This change would remove unnecessary administrative burdens on the plant managers and, thus, allow flexibility in administrative programs at the plant.

(5) The number and locations of the instruments used to determine the drywell average air temperature would be increased from 6 to 17 in order to obtain a more representative average air temperature when the surveillance required by specification 4.6.2.6 is performed.

(6) An allowable value of greater than or equal to 151.9 psig would be added to specification 4.5.1.e.2.c for surveillance of the automatic depressurization system (ADS). This specification requires, at least once per 18 months, performance of a channel calibration of the safety related instrument air system low pressure alarm system and verifying an alarm setpoint of greater than or equal to 155 psig on decreasing pressure. Recognizing that the above setpoint may drift during the interval between calibrations, the licensee proposes to incorporate an allowable value which allows for drift and instrument inaccuracy but will still ensure that the setpoint does not go below the 150 psig analytical limit of the instrument air system. In addition, this proposed change would delete an obsolete footnote pertaining to the high pressure alarm system which was replaced by the low pressure alarm system.

(7) Surveillance requirement 4.6.5.1.b.3 presently specifies that the opening setpoint for the containment vacuum breaker isolation valve shall be greater than or equal to 0.0 psid and less than or equal to 0.112 psid (containment to outside containment). The amendment would substitute 0.052 for 0.0 and 0.160 for 0.112 as the bounds for this setpoint. These changes would allow for sensor loop inaccuracies and instrument drift between calibrations but would not impair the ability of the isolation valve to perform its intended function.

(8) This change would identify the Unit 2 divisional batteries in Specification 3.8.2.2 as alternative DC power sources for use in shutting down Unit 1. This provision would allow the Unit 2 batteries to serve this function while Unit 1 batteries are disconnected for maintenance or equalizing.

Basis for proposed no significant hazards consideration determination: The licensee has provided an analysis of significant hazards considerations in its request for a license amendment and has concluded that the proposed

changes involve no significant hazards considerations.

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 in accordance with a proposed amendment would not: (1) Involve a siqnificant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has also provided quidance concerning the application of the above standards by providing certain examples in the **Federal Register** on March 6, 1986 (51 FR 7744). One example of amendments that are considered not likely to involve significant hazards considerations is "(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature."

A discussion of the proposed changes, as they relate to the standards and example above, is presented below:

Proposed changes (1) and (2) are corrections of errors in the Technical Specifications such as those covered by example (i) in (51 FR 7744). Therefore, the staff has determined that these two changes do not involve any significant hazards considerations.

Proposed change (3) would remove the organization charts from the Technical Specifications but not from the FSAR and any changes in the FSAR are controlled under the provisions of 10 CFR 50.59, which includes standards similar to those in 10 CFR 50.92. Proposed change (4) would delete specific reference to the plant managers but would not relieve the licensee from meeting all requirements of 10 CFR 50.59. Neither of these proposed changes would affect any aspect of plant design, criteria or operation. The licensee and the staff, therefore, concluded that these changes are simply administrative and would not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in a margin of safety.

Proposed change (5) would not affect the upper limit (135 °F) on drywell average air temperature or its intent, which is to ensure that the peak drywell temperature does not exceed the design temperature (330 °F) during LOCA conditions. Because the basic surveillance requirement would not be changed and the surveillance will still be conducted in the same manner and at the same frequency, the licensee concluded, and the staff agrees, that the change would neither increase the probability or consequences of a previously evaluated accident nor create the possibility of a new or different kind of accident. Furthermore, a more representative average air temperature better meets the intent of this specification; thus, this change will not result in a decrease in any margin of safety.

Proposed change (6) would enhance the present ADS surveillance requirement by establishing a minimum value for the low pressure alarm trip setpoint to ensure that it does not drift below the 150-psig pressure required by the instrument air system during the 18-month intervals between channel calibrations. Thus, this change would not increase the probability or consequences of a previously evaluated accident or create the possibility of a new or different kind of accident. Since the allowable value of 151.9 psig was initially used to derive the present trip setpoint of 155 psig and that setpoint would not be affected by this change, the licensee concluded, and the staff agrees, that this change would not involve a significant reduction in a margin of safety.

Proposed change (7) is an operational enhancement in that increasing the allowable and limiting values for the opening setpoint of the containment vacuum relief isolation valve will provide greater assurance that this outboard valve will open in time to allow the inboard vacuum breaker to relieve a vacuum inside the containment. Such a vacuum can develop when cooling sprays operate inside the containment. However, the vacuum breaker would remain closed with positive containment pressure. Consequently, this change would not increase the probability or consequences of an accident previously evaluated. The intended functions of the outboard isolation valve and its actuation setpoint would not change as a result of the proposed amendment; thus, it does not create the possibility of a new or different kind of accident from any previously evaluated. Increasing the upper limit on the setpoint could potentially allow the normally-closed outboard isolation valve to be in the open position while a positive containment pressure slightly higher than the present limit is present. However, the amount of the increase is insignificant and it is highly unlikely that the vacuum breaker (which is a butterfly valve) would not be closed by a very small positive pressure. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Proposed change (8). As permitted by IEEE Standard 308–1980, Perry's design includes the ability to provide inter-unit ties between the Class IE dc buses of Units 1 and 2 through tie bus breakers. These breakers are normally open but may be closed under administrative control, provided any single component failure does not degrade the Class IE power systems of any unit below an acceptable level and provided the independence of the redundant systems is maintained. Perry's circuit design meets these criteria. Therefore, the staff concluded that this change would not involve an increase in the probability or consequences of an accident previously evaluated. This proposed change was previously reviewed and approved by the staff in SER Supplement 10 (Section 16.2.15) for both TS 3.8.2.1, D.C. Sources—Operating, and TS 3.8.2.2, D.C. Sources—Shutdown, but it was inadvertently omitted from the latter when the TSs were issued with the full power license. Thus, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated. Finally, the proposed change will not involve a significant reduction in a margin of safety because the surveillances performed for the Unit 2 batteries are the same as those performed for the Unit 1 batteries and all Unit 2 loads would be removed from its batteries before the Unit 1 loads are connected to the Unit 2 batteries.

Based on the above considerations, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler.

Commonwealth Edison Company, Docket No. 50–374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of amendment request: February 26, 1987.

Description of amendment request: The proposed amendment to Operating

License NPF–18 would revise the La Salle Unit 2 Technical Specifications to reflect a low and/or degraded grid voltage modification as required by License Condition 2.C(11) for Unit 2. These modifications have already been installed on Division II and III for Unit 2. The modification of Division I for Unit 2 will be completed prior to startup after the first refueling as required by the Unit 2 license.

The installation of this modification to Unit 2 Division I will make the protection the same for all divisions. This proposed amendment will reflect this in the Unit 2 Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously 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 NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because this modification reduces the possibility of common mode failure of electrical equipment due to operation outside the qualified voltage range of the equipment.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because this modification will enhance the safety capability.

3. Involve a significant reduction in the margin of safety because this change provides additional limitations, restrictions, or control not presently included in the Technical Specifications.

In addition, the staff has evaluated the plant with these modifications in its Safety Evaluation Report supporting the original license condition.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Beale, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Directorate: Elinor G. Adensam.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: December 17, 1986.

Description of amendment request: The proposed changes to the Technical Specifications (TS) would rearrange the "Partial Scram" trips in the Rod Control and Scram System so that both a low oil level indication and a lower gas pressure indication in any of the 29 control rod drive accumulators would be required to cause a partial scram of the reactor. The changes which are to limiting conditions for operation and surveillance requirements are the following: (1) Delete TS 2.8.7, (2) revise TS 4.2.4.7, (3) add TS 4/5.2.7, (4) revise channel descriptions in the Table on Minimum Frequencies for Testing, Calibrating and/or Checking of Instrumentation, and (5) revise action statement and keyswitch bypass provisions in Table 1 operating limits.

This would be a change from the current arrangement in which a partial scram results from either a low oil level or a low gas pressure indication in any of the 29 control rod drive accumulators. The "Partial Scram" trip logic would thereby be changed from a 1-out-of-58 logic to a 1-out-of-29 logic.

A "Partial Scram" in the LACBWR is a rapid full insertion (scram) of 13 control rods of a pre-selected pattern that ensures the reactor will be subcritical in a hot, non-boiling condition at any stage of fuel lifetime. A full scram is a rapid insertion of all 29 control rods into the core. The purpose of the partial scram is to allow the reactor to attain criticality and return to power more quickly than if all control rods needed to be withdrawn to the operating program.

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.

The licensee has reviewed the proposed amendment against the standards set forth in 10 CFR 5.92(c) for determining whether a significant hazards consideration is associated with the proposed amendment and finds that no significant hazards are associated with the proposed amendment in that the amendment does not: (1) Involve a significant increase in the probability or consequences of any accident previously analyzed because the partial scram resulting from low oil level or low gas pressure in the accumulator was not used as the shutdown mechanism in any accident analysis; (2) create the possibility of a new or different kind of accident from any accident previously analyzed, because the change in the logic required to produce a partial scram trip cannot itself cause a new or different kind of accident from any previously analyzed; or (3) involve a significant reduction in the margin of safety, in that the logic change can only affect the condition required for a single control rod to drive home or a partial scram trip condition, and even the failure of a control rod drive mechanism is of no serious consequence to the ability to achieve a partial scram trip condition of the reactor.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: Kevin P. Gallen, Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Acting Project Director: Jack N. Donohew, Jr.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: December 19, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications to reflect the new nuclear instrumentation to be installed in the unit to replace the old and less reliable nuclear instrumentation. More specifically:

a. Delete section 2.8.6. The rod test circuit is described in the Final Safety Analysis Report (FSAR), paragraph 7.2.4, 7.2.8, and 7.4.4. The 7-second trip point and conditions for a rod scram test are unchanged.

b. Delete sections 2.10.1.1, 2.10.1.2, and 2.10.1.3, as these simply describe the functions and capabilities of the instrumentation being replaced.

c. Delete section 2.10.2.3, as the control rod withdrawal interlock is already described in the FSAR, paragraphs 7.2.4, 7.2.5, and 7.4.4.

d. Delete section 2.10.2.4, as the reactor start interlock is already described in the FSAR, paragraphs 7.2.4 and 7.4.4.

e. Delete section 2.10.2.5, as the process of removing the "seal-in" after full scram is already described in the FSAR, paragraph 7.4.4.

f. Delete section 2.10.2.6, as the replacement instrumentation does not change the manual scram capability as already described in the FSAR, paragraph 7.4.15.

g. Delete section 2.10.3, as this describes the ranges, limits and characteristics of instrumentation being replaced.

h. Table 4.0.2.2.1–1 is revised to reflect the new scheme of instrumentation, but no changes in values are made, except that trips from the wide range monitors are arranged in a 2-out-of-4 logic.

i. Section 4.2.6.3, item (3) is deleted since Intermediate Range Channels 3 and 4 are removed.

j. Sections 4.2.6.4 and 4.2.6.5 are revised to clarify their meaning and delete descriptive material no longer applicable.

k. Section 4.2.6.6 is deleted and the requirements are included in sections 4/5.0.2.3.1.

l. Section 4.2.6.7 is deleted and the requirements are included in sections 4/5.0.2.3.2.

Many of the changes in this amendment remove descriptive material of the nuclear instrumentation being replaced in the unit. The replacement instrumentation will be described in the next FSAR update, paragraph 7.2, which is the appropriate reference document for such material.

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. The licensee has reviewed the hazards considerations referenced in 10 CFR 50.92(c) and has determined that no significant hazards result from this proposed amendment, because the amendment:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. The replacement source range instruments provide the exact same interlocks and protection functions at the same values, i.e., reactor start interlock will still require the determination that the system is detecting and counting core neutrons above system and gamma "noise" level in order to have a reactor start permit. Also, both source ranges must be operable in order to obtain the reactor start permit.

The wide range instruments incorporate a high flux trip (120%) that is always available to terminate a transient originating from any reactor power level. This trip is arranged in a 2-of-4 logic to produce a reactor scram, not unlike the present system when above 15% reactor power.

The 2-of-4 logic will reduce the challenges to the plant safety systems in the event of single failures of equipment or components and still provide adequate protection in the event of a reactor transient, thus increasing the margin of safety, and giving rise to no increased probability or consequences of any accident previously evaluated.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because the range of monitoring is the same, the parameters monitored are the same, and the trip values are the same as the present instrumentation.

(3) Does not involve a significant reduction in a margin of safety because:

(a) The replacement instrumentation is fabricated to today's standards, a major improvement in reliability over the present instrumentation;

(b) The new instrumentation has internal redundancy and self testing ability;

(c) The increased use of 2-of-4 scram logic and;

(d) The elimination of manual ranging of the monitoring instrumentation all help to increase the margin of safety in responding to any reactor transient.

The substitution of the high flux trip on discrete ranges of the wide range instruments with the GETRAM type of trip will not involve a significant reduction in the margin of safety because the GETRAM design will cause a trip at a low power during a rapid power increase, while eliminating the manual ranging, a contribution to unnecessary reactor scrams, thereby increasing rather than decreasing the margin of safety.

The proposal of not inserting a trip in the scram string when testing or maintenance is being performed on a wide range monitor will not involve a significant reduction in the margin of safety because its effect will be to reduce the scram logic from 2-of-4 to 2-of-3 if a channel is out of service. A scram would still occur if there is a failure of one of three remaining instruments coincident with a high power condition, and the proposed Action Statement will require reactor shutdown if two channels are inoperable, so that there is no reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and concurs with the licensee's analysis. Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: Kevin P. Gallen, Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Acting Project Director: Jack N. Donohew, Jr.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Dates of amendment request: December 17, 1986, and February 13, 1987.

Description of amendment request: The proposed amendments would delete a portion of the surveillance requirement of Technical Specification (TS) 4.5.1. This TS requires periodic verification of the operability of each ECCS cold leg injection accumulator by verifying, in part, that each isolation valve be open and that power to the isolation valve operators is disconnected by removal of the breaker from the circuit. Because of a design change which adds a power disconnect switch, removal of the breaker from the circuit would no longer be necessary and would be deleted from existing TSs 4.5.1.1.1c and 4.5.1.2.1c.

Basis for proposed no significant hazards consideration determination: The isolation valves in the discharge piping of the ECCS cold leg accumulators are required to be open during Operating Modes 1, 2 and 3 to assure that the accumulators can discharge their borated water into the reactor coolant system when needed to mitigate the consequences of a depressurization accident such as a LOCA. Once the valves are in proper ECCS position during startup, the TS requires that power to the valves be disconnected, and periodically verified to remain disconnected, in order to assure that the valves do not subsequently change position. Power was previously disconnected by removing the breaker from the circuit. The licensee has now installed on Unit 1 and will install on Unit 2 a switch on the control board to accomplish this power disconnect. The design modification provides for verification of power removal (as well as valve position indication) from the control room, and conforms to NRC Branch Technical Positions ICSB–4 (PSB) and ICSB–18 (PSB) to assure that no failure of the valve to function or undesirable function may occur. The proposed TS change would continue to require that power to

the valves be disconnected, but would provide for use of the switch to disconnect power in lieu of breaker removal.

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 and it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the design modification accomplishes the same function (power removal and subsequent verification) as was previously accomplished by removal of the breaker. Also, it would not (3) involve a significant reduction in a margin of safety because, as discussed above, design modification provides equal assurance that the isolation valve is open and, therefore, that an unimpeded flow path for emergency core cooling exists when required.

Accordingly, the Commission proposes to find that the change does not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: 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: November 19, 1985, as supplemented June 16, 1986.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to allow the use of multielement (three fuel assembly) spent fuel casks in the Oconee Unit 3 spent fuel pool.

To retain fuel storage capability at Oconee, the licensee is presently transferring Oconee spent fuel to its McGuire Nuclear Station in single fuel assembly spent fuel casks. To expedite these spent fuel transfers, the licensee plans to use the multielement spent fuel casks which will result in larger and heavier multielement casks being used in the Oconee spent fuel pools.

To mitigate the consequences of potential cask drop events, the current TS 3.8.13.b allows the movement of spent fuel casks in the Unit 3 spent fuel pool only after the first 31 rows of spent fuel located closest to the spent fuel handling area have decayed for at least 70 days. Radiological consequence calculations for a hypothetical worst case cask drop event involving the heavier multielement spent fuel casks indicate that the spent fuel stored in the first 33 rows of the storage racks closest to the cask handling area must have decayed for at least 70 days for the radiation dose resulting from the accidental cask drop event to be less than the limits under accident conditions set forth in 10 CFR 100. Therefore, to allow the use of the heavier multielement spent fuel casks in the Oconee Unit 3 spent fuel pool, the licensee proposes to change the number of spent fuel rows in TS 3.8.13.b from 31 rows to 33 rows. The current accident analysis for the Oconee Units 1 and 2 spent fuel pool bounds the use of the multielement spent fuel casks. Therefore, TS 3.8.13.a which governs spent fuel cask movement in the Oconee Units 1 and 2 spent fuel pool is not being changed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed TS amendments and, on the basis of these three criteria, has determined that the proposed amendments do not represent a significant hazards consideration. The proposed amendments will allow the use of larger and heavier spent fuel casks in the Oconee Unit 3 spent fuel pool. While these are larger and heavier casks, the procedures, load paths and equipment that will be used for handling them are essentially unchanged from those set for the single element cask. Consequently, the previously evaluated cask accident casual mechanisms are essentially unchanged. Therefore, use of the multielement cask does not involve a significant increase in the probability of the previously evaluated cask drop accident. Also, under the proposed amendments, the movement of spent fuel casks in the Oconee Unit 3 spent fuel pool will not be allowed unless the first 33 rows of spent fuel adjacent to the spent fuel cask handling area have decayed a minimum of 70 days. The licensee has stated that this would assure that the previously evaluated cask drop events will continue to be bounding and that the radiological consequences will remain within the limits set forth in 10 CFR Part 100. The Oconee FSAR evaluation of a hypothetical cask drop accident uses conservative assumptions to ensure that the results of the analyses on dose at the exclusion area boundary are within the 10 CFR Part 100 limits. The licensee has performed a new analysis with the new cask, and it ensures that it is bounded by the current FSAR evaluation and is well within the 10 CFR Part 100 limits. Therefore, the proposed amendments do not involve a significant increase in the previously evaluated consequences of an accident.

Because recertification of the casks is not required and significant variations in procedures and equipment usage are not involved, no new or different kinds of accidents, other than the previously evaluated cask drop accident, will be created as a result of the proposed amendments.

The multielement spent fuel casks have been issued and continue to hold a U.S. Nuclear Regulatory Commission Certificate of Compliance for radioactive materials, packages, and the procedures, load paths and equipment to be used for cask handling are essentially unchanged from those used for the single element casks. Also, for the Oconee 3 spent fuel pool, the proposed amendments will require that the first 33 rows of spent fuel adjacent to the cask handling area have decayed a minimum of 70 days before any cask movement is allowed. Therefore, the proposed amendments will not involve a significant reduction in a margin of safety.

Based on the above, the Commission concurs with the licensee's determination and proposes to determine that the standards for determining that a license amendment involves no significant hazards consideration are met, and that the application involves no significant hazards considerations.

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.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: January 27, 1987 (TSCR 156).

Description of amendment request: The proposed amendment would add a license condition on an integrated schedule for modifications to the license for Oyster Creek. This new condition would require the licensee to follow the Plan for the Long Range Planning Program for Oyster Creek but would allow changes to the dates for the completion of items identified in Categories B and C of the Plan to be changed without a license amendment. Dates for Category A items would be changed in accordance with applicable NRC procedures.

The submittal date for the Plan was inadvertently omitted from the wording of the proposed license condition. The Plan was submitted in the licensee's amendment request dated January 27, 1987 and this date will be considered part of the proposed wording.

Basis for proposed no significant hazards consideration determination: The licensee proposed Technical Specification Change Request (TSCR) No. 156 to add new requirements concerning its long range planning for Oyster Creek. It has evaluated TSCR 156 to determine if a significant hazards consideration exists. The results of this evaluation are given below in terms of the criteria in 10 CFR 50.92(c):

Generic Letter 85–07, dated May 2, 1985 requested nuclear power plant licensees to document [their] intentions regarding implementation of the Integrated Implementation Schedule concept. GPU Nuclear responded by letter dated August 27, 1985 indicating our intention to pursue the development of an Integrated Implementation Schedule for both Oyster Creek and Three Mile Island I. As the long range planning function was implemented for Oyster Creek first, a proposed license amendment incorporating the Long Range Planning Program into the operating license can now be requested.

This amendment request is to incorporate the Plan for the Long Range Planning Program (LRPP) into the Oyster Creek Nuclear Generating Station Operating License (DPR–16) The LRPP by itself has no safety function but the projects covered by the Plan may affect the function of safety systems or components at Oyster Creek. The LRPP will establish an improved basis for planning, scheduling and implementing necessary plant projects.

The primary objectives of the Plan for the LRPP are:

(1) To optimize the allocation of GPUN and NRC resources to those projects necessary to assure safe, reliable and economic plant operation.

(2) To achieve the appropriate balance and prioritization among all proposed projects based on their relative value and effect regardless of source.

The Plan contains three categories of projects, as follows:

Category A: All projects involving regulatory issues which have resolutions and/or issue resolution dates mandated by NRC rules, orders or license conditions.

Scheduled completion dates for Category A items will be modified only upon receipt of prior approval from the NRC in accordance with applicable NRC procedures.

Category B: Projects involving issues identified by the NRC and/or GPUN for which commitments have been made to NRC by GPUN. The issue resolutions would result in significant (a) plant modifications, (b) procedure revision, or (c) changes in facility staffing requirements.

GPUN will inform the Oyster Creek NRR Project Manager when a change is made to the schedule completion date for a Category B project. GPUN will provide the NRC with written notification of a change including the basis for the change and any compensatory action initiated.

Category C: Other major projects, identified by GPUN or other regulatory agencies.

GPUN will advise the NRC for information only of changes to Category C projects semi-annually.

The long range planning function is not currently described in any Licensing Basis Document. It was initiated in 1984 to establish controls for the efficient utilization of resources to implement identified projects which significantly impact available resources. The proposed amendment would incorporate this function as a license condition.

The LRPP by itself has no safety function. The projects covered by the Plan may affect the function of plant systems important to safety; however, any changes in plant configuration or operation resulting from projects in the Plan are required to be evaluated separately in accordance with safety review and/or configuration control procedures. The long range planning function results in a prioritization and ranking of projects so that appropriate implementation schedules can be established.

The proposed license amendment does not in and of itself result in any change to Appendix A or B Technical Specifications. Therefore, margins of safety stated in Technical Specification bases are not changed.

Determination

We [the licensee] have determined, based upon the above discussion, that this license amendment request involves no significant hazards considerations in that operation of the Oyster Creek plant in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in margin of safety.

In summary, the basis for the above determination is as follows:

The establishment as a license condition of the Plan for the Long Range Planning Program by itself performs no safety function. The long range planning function does not directly change plant configuration or operation.

Projects covered by the Plan may affect systems important to safety; however, any impact resulting from these projects is evaluated separately in accordance with applicable safety review and/or configuration control procedures. As no changes to Appendix A or B Technical Specifications occur as a direct result of this proposed amendment there is no change in margins of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr.; Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Project Director: Jack N. Donohew, Jr.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: November 4, 1986 (TSCR No. 161), as revised on February 25, 1987.

Description of amendment request: The proposed Technical Specification (TS) amendment would revise Section 6, "Administrative Controls", to delineate all major functional titles associated with the Radiological and Environment Controls (R&EC) Department reorganization. More specifically, Figures 6–1 (GPUN corporate organization chart) and 6–2 (TMI–1 Unit Staff organization chart) would be revised to depict the major functional sections of R&EC, including associated lines of reporting and/or communication. Along with the administrative reorganization of

department titles, this amendment would eliminate the previous distinction between TMI–1 and TMI–2 Radiological Controls management. Dual unit radiological controls responsibilities would be incorporated into one, larger organization as part of GPUN's long-range merger plans. Also, in Section 6.3.2 of the TSs, this amendment proposes a Radiological Controls management title change to reflect the new organization. Notice of TSCR 161 was originally published in the **Federal Register** (51 FR 45203) on December 17, 1986. Subsequently, GPUN has proposed a revision to Figure 6–2 that more clearly shows that the Radiological Controls Department Head has direct access to the Vice President, TMI–1.

Basis for proposed no significant hazards consideration determination: Pursuant to the provisions of 10 CFR 50.91, the licensee has provided an analysis of no significant hazards consideration using the standard criteria prescribed by 10 CFR 50.92(c). The Commission's staff has reviewed the proposed amendment and associated analysis. Based on this review, the staff has concluded the amendment is a purely administrative change to TSs similar to example (i) of "Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations" (51 FR 7751). This change will allow for the gradual and controlled merger of the TMI–1 and TMI–2 radiological controls functions. The transfer will result in more functional responsibilities for the existing TMI–1 Radiological Controls management, but it will not impact the overall performance of the Department. This change should not have an effect on plant operation or the technical contents of the Safety Analysis Report or TSs. As such, the Commission's staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr, of Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Gulf States Utilities Company, Docket No. 50–458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: January 28, 1987.

Description of amendment request: Technical Specification 3/4.6.2.2, Drywell Bypass Leakage, Surveillance Requirement 4.6.2.2.b presently requires drywell bypass leakage rate tests at intervals no greater than 18 months because Technical Specification 4.6.2.2.b states that the provision of Specification 4.0.2 is not applicable. Specification 4.0.2 states that:

> Each Surveillance Requirement shall be performed within the specified time interval with:
>
> (a) A maximum allowable extension not to exceed 25% of the surveillance interval, but
>
> (b) The combined time interval for any 3 consecutive surveillance intervals shall not exceed 3.25 times the specified surveillance interval.

The licensee states that the present Technical Specification requirements will result in a station outage in April 1987, specifically to perform this test. Approval of the proposed change would allow continued operation through August 1987 (approximately the expected date of the next refueling outage).

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 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; 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 no significant hazards consideration in its January 28, 1987 request for a license amendment and has concluded that the proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's submittals as discussed below. The purpose of the 18-month test in the Technical Specification is to provide assurance that steam bypass of the suppression pool from the drywell to the containment during an accident does not exceed the values specified in the Technical Specifications. The proposed extension of this surveillance interval by up to 25 percent will not result in a significant change in the probability that drywell bypass leakage in excess of allowable values will go undetected. The licensee addresses this issue in the following comments taken from its January 28, 1987 submittal.

The following discussions show that neither the intent of the test frequency will be affected nor will there be a significantly increased probability of the test failing the required acceptance criteria. If the proposed change is approved, River Bend Station will be allowed to continue operation without performing the leak test through August 1987.

Standard Review Plan (NUREG–0800), Section 6.2.1.1.c Appendix A, states that low-pressure leak tests of the drywell structure should be performed at each refueling outage. This same position was adopted in the River Bend Station FSAR Section 6.2.1.1.3.4 which also committed to a drywell bypass leak test during each refueling outage. The River Bend Station SER Section 6.2.1.7 indicates that the NRC staff finds the GSU commitment to each refueling outage acceptable. The present River Bend Station fuel cycle is equivalent to 18 months with the provisions of Specification 4.0.2 available to allow for operational flexibility. The requirement of Specification 4.6.2.2.b of technical specifications was the result of an interpretation by the NRC Staff to the Licensing Review Group–II (LRG–II) position on Periodic Low Pressure Leakage Testing of the Drywell (Generic Issue 3–CSB) dated January 17, 1985. In this response it is stated that drywell leak testing be conducted at intervals not exceeding 18 months. Elsewhere in the same letter statements are made of conducting the test at each refueling outage thus implying that Specification 4.0.2 is applicable based on a plant's variable operating capacity. Since the intent of Specification 4.0.2 was to afford the licensee flexibility to maximize the plants capacity factor while still meeting the requirements of surveillance testing, it is GSU's position that adherence to Specification 4.0.2 does not contradict the intent of the test interval.

Providing allowable tolerances for performing surveillance activities as allowed by Specification 4.0.2 is consistent with the passive nature of the drywell where little change in the leak rate resulting in suppression pool bypass is expected. Assurance of drywell integrity is demonstrated by Technical Specification Surveillance Requirements which monitor the configuration of possible drywell bypass pathways.

The licensee then lists these pathways and states that the associated openings are the only significant suppression pool bypass pathways which could be opened and that each one is verified to be in the correct configuration at intervals not exceeding 31 days. Test data previously obtained by the licensee reveal that the current drywell bypass leakage is a small fraction of the allowed leakage hence removing further the possibility of exceeding the design analysis. Specifically, the licensee reported that the pre-operational test for measuring drywell bypass leakage was performed in February 1985. The test results have shown that at a test pressure of 3 psig, the measured leakage was about 16% of the allowable limit. At

a design pressure of 25 psig, the measured leakage was about 25% of the allowable limit. Since that time, the licensee performed a drywell bypass leakage test on October 25, 1985, just prior to initial criticality, utilizing the surveillance test procedure. During the test, the effective measured leakage area (A divided by the square root of K) was determined to be .014 ft^2, well within the limiting value of 0.1 ft^2, i.e., corresponding to only 14% of the limiting value for the leak rate. The change to the effective measured leakage area that may have resulted from maintenance performed since October 25, 1985 was analyzed and determined to be insignificant.

On the basis of the above discussions regarding the Standard Review Plan position and the FSAR contents, the staff concurs with the licensee's conclusion that the proposed change involves no changes from the design or performance of plant systems or components from those analyzed in the FSAR and that the proposed revision is consistent with the accident analyses described in the FSAR. Based on this consideration, the continuation of surveillance requirements on the possible drywell bypass pathways between drywell bypass leakage tests and the previous testing experience as discussed above, the staff finds that there would be no increase in the probability or consequences of any accident previously analyzed.

The staff concurs with the licensee's assessment that the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated because this change does not involve a design change or involve a change in the operating mode of existing equipment. Thus, no new accident scenario is introduced.

The staff concurs with the licensee's assessment that the proposed change does not involve a significant reduction in the margin of safety because the margin of safety discussed in FSAR Section 6.2.1.1.3.4 assumes the drywell bypass leakage test to be conducted at each refueling outage. Changing the Technical Specification to agree with the bases reported in the FSAR does not, therefore, cause a reduction in the margin of safety previously evaluated.

Accordingly, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

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: February 10, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow a one time extension of the ice condenser surveillance interval until the next refueling outage currently scheduled to begin about the end of May 1987. The current interval for the surveillance ends on May 10, 1987 and would require a plant shutdown at about 20 days before the plant will be shutdown for the refueling. The proposed amendment is similar to three previous requests; two were approved by license amendment 100 dated December 20, 1986 (52 FR 1561) and the third was noticed on February 11, 1987 (52 FR 4409).

Basis for proposed no significant hazards consideration determination: The Commission's standard for determining whether a significant hazard 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 different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed changes by the licensee would delay the ice condenser surveillance requirements from May 10, 1987 until the refueling outage currently scheduled to begin the end of May 1987; about 20 days. The surveillances are performed every 9 months and for the most part, require the unit to be shutdown. Although some of the surveillances could be done at power, there is a consideration for unwarranted exposures during the short extension period. Further, the licensee has provided supporting data to show that for the short extension period, little if any detrimental effects will occur in the ice baskets and almost none that would affect safety. The short extension period, 20 days as compared to 9 months, is not expected to result in any significant change in the ice condenser condition, therefore, the proposed change would not significantly increase the probabilities or consequences of any accident previously evaluated. The change is to temporarily delay ice condenser surveillance, such as ice weighing and visual examinations. No change in plant operation will occur with the proposed change, thus the change would not create the possibility of a new or different kind of accident from any evaluated. The short period of extension should result in little change in the ice or ice condenser condition that would change the ability to adequately cool the containment in the unlikely event of an accident, therefore, the change does not involve a significant decrease in any margin of safety.

On the basis of the above considerations, the staff has proposed to determine that the application does 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 M. 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: December 3, 1986.

Description of amendment request: The proposed amendment revises the Duane Arnold Energy Center Technical Specifications so that the two Standby Liquid Control System (SLCS) boundary valves may be tested with water instead of air.

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:

(1) The probability of occurrence or the magnitude of the consequences of an accident or malfunction of equipment important to safety previously analyzed in the FSAR is *not* increased. Performing this leak tightness test using water instead of air as the test medium will . . . reliably demonstrate that primary containment integrity is maintained post-accident. In addition, the probability or consequences of any accident previously analyzed is not affected by changing the test medium for the SLCS isolation valves.

(2) Does not create the possibility of a new or different kind of accident because this proposal does not involve any changes in hardware at the plant or in the operation of existing equipment. Switching the testing fluid from air to water, the actual operating fluid, cannot create the possibility of a new type of accident.

(3) Does not involve a significant reduction in a margin of safety because testing these valves with water instead of air provides equal assurance that a significant leak is not present. The margin of safety in the reliability that a significant leak does not exist is maintained. The margin of safety in the reliability that these valves will perform their safety function is not affected.

Therefore, this proposed license amendment is judged to involve no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, 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, SE., 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.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 2, 1986 as modified by letter dated December 29, 1986.

Description of amendment request: The proposed amendment would modify the Technical Specifications as follows:

A. The amendment would modify Table 3.1.1 "Reactor Protection System Instrumentation Requirements" of the Technical Specifications to:

(1) Indicate that the APRM downscale reactor trip function is automatically bypassed in the RUN mode when the companion IRM instrumentation is operable and not upscale,

(2) Indicate that the APRM downscale reactor trip function is automatically bypassed when in the SHUTDOWN, REFUEL or STARTUP condition,

(3) Specify that the ratio of FRP (Fraction of Rated Thermal Power) to MFLPD (Maximum Fraction of Limiting Power Density) for the APRM flow biased high flux reactor trip setting shall be set equal to 1.0 unless the actual operating value is less than the design value of 1.0, in which case the actual operating value will be used,

(4) Eliminate one of two indicated action statements applicable when the minimum number of APRM channels cannot be met. "Initiate insertion of operable rods and complete insertion of all operable rods within four hours" would he retained as the sole indicated action. The action statement "Reduce power level to IRM range and place mode switch in the Startup position within 8 hours and depressurize to less than 1000 psig would be deleted, and

(5) Change the APRM downscale reactor trip minimum setting from 2.5% of indicated scale to 2.5% of rated thermal power.

Note.—The December 29, 1986 letter modified item (4) above to reverse the deleted and retained statements.

B. The amendment would modify Table 3.2.C "Control Rod Withdrawal Block Instrumentation" of the technical specifications to:

(1) Specify that the ratio of FRP to MFLPD for the APRM flow biased upscale rod block setting shall be set equal to 1.0 unless the actual operating value is less than the design value of 1.0, in which case the actual operating value will be used

(2) Change the IRM downscale rod block minimum trip level setting from 2.5% of rated thermal power to 2.5/125 of full scale, and

(3) Delete statements that the APRM and RBM downscale rod blocks are automatically bypassed during RUN if the companion IPM instrumentation is not upscale or inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has provided criteria 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.

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment serves only to clarify design and operational features of existing equipment and would not reduce the reliability of the reactor trip or rod block protective functions nor would it modify any associated protective system setpoints. It would thus not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not create a new or different kind of accident from any accident previously evaluated because the proposed amendment serves only to clarify design and operational features and does not modify any of the systems, structures and equipment, or allow new modes of operation of the facility. The facility would thus not be subject to any new or different accidents.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because the proposed amendment serves only to clarify established design and operational features and would not modify any of the facility's safety limits or limiting safety system settings. Equipment operability requirements would not be reduced. Therefore no safety margins would be reduced.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Daniel R. Muller.

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 20, 1987.

Description of amendment request: The proposed amendment would add six (6) fire protection water suppression systems to the list of fire protection systems in Technical Specification 3.12.B.1. Four (4) of the proposed

suppression systems are located in the turbine building. The other two (2) are located in the reactor building. The proposed additions are new requirements for suppressing fires in the lube oil systems of the condensate booster pumps, reactor feedwater pumps and motor generator sets, as well as in the curbed area of the motor generator sets, turbine building unloading area and the mezzanine level cable tray.

Basis for proposed no significant hazards consideration determination: These proposed changes enhance administrative control over the fire suppression systems by requiring via the new technical specifications that they be operable whenever the specified equipment is required to be operable; e.g., if the condensate booster pump is required to be in service the associated fire protection spray system must be operable. By telephone on February 6, 1987, the licensee proposed to delete redundant references to spray systems in the January 20, 1987 proposal. These deletions are responsive to a staff suggestion to clarify the technical specifications, and there is mutual agreement between the NRC and NNECO staffs on this change to the original proposal.

The licensee has concluded pursuant to 10 CFR 50.59 that the proposed changes do not constitute an unreviewed safety question. The probability of occurrence or the consequences of a previously analyzed accident have not been increased and the possibility for a new type of accident has not been created since the proposed change increases the margin of safety by subjecting additional equipment to limiting conditions for operations and surveillance requirements.

The licensee has also determined that the proposed changes are in accordance with 10 CFR 50.92, and do not involve a significant hazards consideration since the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because placing additional operability restrictions on six existing fire suppression systems would represent neither changes to the plant equipment, nor a change in the allowable operating modes for the plant.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed change merely places additional restrictions on the operation of the plant by adding six new fire protection water suppression systems to Technical Specification 3.12.B.1.

3. Involve a significant reduction in a margin of safety, in that the proposed change provides more restrictions in the limiting conditions for operation; hence increasing the margin of safety.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750, March 6, 1986). The proposed change is similar to example (ii), a change that constitutes an additional limitation, restriction or control not presently included in technical specifications.

Based on the information provided by the licensee, the staff proposes to determine that the license amendment request involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Pope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–499.

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: February 6, 1987.

Description of amendment request: By application for license amendment dated February 6, 1987. Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2 as follows: (1) A new Limiting Condition for Operation (LCO) and a corresponding Surveillance Requirement (SR), TS 3/4.1.7 "Control Rod Drive Mechanisms," has been proposed to assure that control rods cannot be withdrawn prior to establishing conditions consistent with the safety analysis, (2) a change to the LCO and SR for the reactor protection system (RPS), TS 3/4.3.1, would extend operability and surveillance requirements, for the Power Level-High trip function, to Mode 3.

Basis for proposed no significant hazards consideration determination: On July 23, 1986, the NRC issued Generic Letter (GL) 86–13, "Potential Inconsistency Between Safety Analyses and Technical Specifications." The conclusions of GL 86–13 indicate that the TS may not provide sufficient restrictions to assure that, should a continuous control rod bank withdrawal occur from subcritical conditions, the consequences are within those predicted by the safety analysis. This conclusion is based upon a comparison of Westinghouse safety analysis and plant TS which show that fewer than a full complement of reactor coolant pumps (PCP's) are permitted to be operating at zero power while the safety analysis assumes that all RCP's are operable. Under such conditions, the departure from nucleate boiling ratio (DNBR) criteria demonstrated in the safety analysis might not be met in the event of an accident.

The licensee's letter dated November 4, 1986 submitted LER 86–010–00 which reported that the conclusions of GL 86–13 were valid for Millstone Unit 2. The licensee committed to provide an administrative control for the control element drive mechanisms (CEDM's) to assure that they are deenergized when less than four (all) RCP's are operating; thus, a continuous control bank withdrawal from subcritical conditions would be prevented. The licensee subsequently submitted their application, dated February 6, 1987, which provided proposed changes to the TS to assure that the consequences of any continuous control bank withdrawal from subcritical conditions will be less severe than those predicted by the safety analysis.

The licensee has proposed a new LCO and an associated SR, which reflect a revised analysis of continuous rod withdrawal from subcritical conditions, to be designated TS 3/4.1.3.7, "Control Rod Drive Mechanisms." The proposed LCO would require the control rod drive mechanisms (CRDMs) to be deenergized in reactor operating Modes 3, 4, 5 and 6 (hot standby and all shutdown modes) unless the reactor coolant system soluble boron concentration exceeds 1720 ppm. A boron concentration of 1720 ppm provides sufficient shutdown margin to prevent criticality in the event of a continuous rod withdrawal. In Mode 3 (hot standby) the CRDM's may be reenergized if ". . . 4 reactor coolant pumps are OPERATING, the reactor coolant system temperature is greater than 500 °F, the pressurizer pressure is greater than 2000 psia and the high power trip is operable." The preceding conditions are bounding and necessary in order to prevent the DNBR from being less than 1.30 in accordance with the licensee's reanalysis of continuous rod withdrawal from subcritical conditions. In the event that LCO 3.1.3.7 is not satisfied, the associated Action Statement requires that the reactor trip breakers be opened within 2 hours; this action would also prevent rod withdrawal. The proposed SR requires that the CRDM's be verified to be deenergized at least once per 24 hours.

The proposed changes to the LCO and SR for the RPS, TS 3/4/3.1 are consistent with the reanalysis of continuous rod withdrawal from subcritical conditions. The Power Level-High trip function, which is the subject of the proposed change, is relied upon to terminate the transient by tripping the reactor. The Power Level-High function would now be required to be operable, and undergo surveillance, in Modes 1, 2 and 3; previously these requirements only applied to Modes 1 and 2. The licensee has proposed exceptions to operability requirements for the Power Level-High trip function in Mode 3, as follows:

> Trip does not need to be operable if all the control rod drive mechanisms are de-energized or if the RCS boron concentration is greater than or equal to the refueling concentration of Specification 3.9.1.

Thus, the Power Level-High trip need not he operable when continuous rod withdrawal is precluded. The Power Level-High trip function is not relied upon to terminate on other accidents or transients initiated from Mode 3.

The licensee has also proposed suitable changes to the TS Bases that are consistent with the proposed TS changes.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example provided in 51 FR 7751 of amendments not likely to involve significant hazards considerations is example (ii) which provides for "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement."

The new proposed TS 3/4.1.3.7 and the proposed changes to TS 3/4.3.1 represent additional restrictions not presently included in the TS. Based upon the above, the Commission proposes to determine that the proposed TS 3/4.1.3.7 and changes to TS 3/4.3.1 involve 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.

Northeast Nuclear Energy Company, Docket No. 50–423, Millstone Nuclear Power Station Unit 3, New London County, Connecticut

Date of application for amendment: December 5, 1986.

Brief description of amendment: The amendment would revise Millstone Unit No. 3 Technical Specification Figure 6.2–2, Unit Organization, by changing the depiction of the Millstone Station Services Organization as individual Security, Quality Services and Radiological Services groups reporting to the Station Services Superintendent to depiction as one group of staff including QA, Security, Health Physics, Chemistry and other Site Support Services Staff reporting to the Station Services Superintendent. This change would establish consistency between the Millstone Unit No. 3 Technical Specifications and the Millstone Unit Nos. 1 and 2 Technical Specifications.

Basis for proposed no significant hazards consideration determination: The proposed amendment is administrative and would establish consistency between the Millstone Unit No. 3 Technical Specification depiction of the Millstone Station Services Organization and its depiction in Millstone Unit Nos. 1 and 2 Technical Specifications. The Commission has provided examples (48 FR 14870, April 6, 1983) of actions not likely to involve significant hazards considerations. Example (i) of this guidance states that a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or changes in nomenclature would not likely constitute a significant hazard. The staff has reviewed the proposed license amendment and concludes that it falls within the envelope of example (i) since the change is to achieve consistency throughout the technical specifications. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Poom location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry, and Howard, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Vincent S. Noonan.

Northeast Nuclear Energy Company, Docket No. 50–423, Millstone Nuclear Power Station Unit 3 New London County, Connecticut

Date of amendment request: December 10, 1986.

Description of amendment request: The amendment would revise Millstone Unit No. 3 Technical Specification Sections 4.6.1.2.d, 4.6.1.2.g, 4.6.1.7.2 and Technical Specification Bases Section 3/4.6.1.7 to delete the requirement to leak test the containment purge supply and exhaust isolation valves every six months. Instead, these valves would be leak tested at intervals no greater than 24 months in accordance with Technical Specification Section 4.6.1.2.d and 10 CFR 50, Appendix J in conjunction with a valve seat replacement program.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and proposes to determine that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the 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 amendment would delete the requirement to leak test the containment purge supply and exhaust isolation valves every six months. Instead, these valves would be leak tested at intervals no greater than 24 months in conjunction with valve seat replacement every other refueling outage. Although the surveillance requirement in Section 4.6.1.7.2 would be relaxed; this would be combined with a valve seat replacement program which would ensure containment integrity. The staff is reviewing the proposed license amendment and concludes that the proposed change has no adverse effect on the consequences of the design basis accidents, does not create the possibility of an accident or malfunction not previously analyzed, and does not reduce the margin of safety. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

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, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Vincent S. Noonan.

Northeast Nuclear Energy Company, Docket No. 50–423, Millstone Nuclear Power Station Unit 3 New London County, Connecticut

Date of amendment request: December 18, 1986.

Description of amendment request: The amendment would revise Millstone Unit No. 3 Technical Specification Section 3.3.3.1 to delete the control building inlet ventilation radiation signal from Tables 3.3–6, 4.3–3 and corresponding action statement #27. The requirements are being deleted as these are duplicated in Technical Specification Section 3.3.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (March 6, 1986 51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. The proposed change is enveloped by example (i), a purely administrative change to the Technical Specifications. The proposed amendment removes some redundancy in the Technical Specifications for the control building inlet ventilation radiation monitor. The staff has reviewed the licensee's submittal and agrees with its conclusion that the amendment does not involve a significant hazard consideration.

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, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Vincent S. Noonan.

Northeast Nuclear Energy Company, Docket No. 50–423, Millstone Nuclear Power Station Unit 3 New London County, Connecticut

Date of amendment request: January 30, 1987.

Description of amendment request: The amendment would revise Millstone Unit No. 3 Technical Specification Sections 4.8.1.1.2f and add Section 4.0.6 to extend on a one-time basis the 18 month surveillance testing requirements up to 4 months beyond the maximum allowed by Technical Specification Section 4.0.2. This would allow the plant to complete the present fuel cycle and shutdown before January, 1988, since the Diesel Generator must be tested during an extended outage.

Basis for proposed no significant hazards consideration determination: According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

Currently, the diesels are tested once per 31 days on a staggered basis as required by Technical Specifications Table 4.8–1. Since the surveillance requirements are to determine operability, and the operability has been demonstrated more frequently than the 18-month requirement; the confidence for operability is high for the proposed extension period. Also, since there will be no change to equipment, setpoints, or operation of the diesel generator system for which operability has been sufficiently demonstrated less frequently than 18 months, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee has therefore concluded that the three criteria of 10 CFR 50.92(c) are not compromised and the proposed amendment does not involve a significant hazard consideration.

The staff has reviewed the licensee's submittal and agrees with its no significant hazards determination.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry, and Howard, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Vincent S. Noonan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 22, 1987 as supplemented February 13, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS's) to support upcoming Cycle 11 operation. The proposed amendment would modify the TS's as follows:

(1) the definitions on pages 5 and 6 and TS's 2.10.1, 2.10.2(5), 2.10.4(2), 2.10.4(3) and 4.3.2 would be changed to reflect the replacement of part-length control element assemblies (CEA's) with full-length non-trippable CEA's. The part-length assemblies will soon exceed their design lifetime and the replacement full-length CEA's will provide additional operating flexibility with extra shutdown margin;

(2) Figure 1–3 and TS's 2.10.4(5) and Footnote ** on page 2–57c would be changed to raise the currently reduced cold leg temperature from 540 °F to 545 °F. The asymmetric core loading pattern in Cycle 10 reduced the thermal margin availability. In order to gain additional thermal margin, the cold leg temperature was reduced to 540 °F. The Cycle 11 core loading pattern returns to the symmetric loading; thus, additional thermal margin is available to return the cold leg temperature to 545 °F;

(3) TS's 1.3(8) and 1.3(9) would be changed to reflect an increase in the power-to-centerline melt linear heat rate limit from 21 KW/ft to 22 KW/ft. This limit of 22 KW/ft is consistent with the limits at other Combustion Engineering plants with 14x14 fuel of the same design as the Fort Calhoun fuel;

(4) Figures 2–6 and 2–9 of the TS's would be changed to raise the linear heat rate (LHR) limiting condition for operation (LCO) of the axial shape index (ASI) "tent." The Cycle 11 symmetric core loading pattern is less restrictive in a set point analysis than the asymmetric pattern of Cycle 10;

(5) Figure 2–8 of the TS's would be changed to reflect the reduction augmentation factors for both Combustion Engineering and Exxon fuel to 1.0. This proposed change is based on the licensee's evaluation of flux peaking augmentation factors;

(6) TS 3.10(2)3 would be changed to reflect increasing the allowable time window for performing moderator temperature coefficient (MTC) of reactivity tests upon reaching a rated power equilibrium boron concentration of 300 ppm from 7 effective full power days (EFPD) to ± 14 EFPD. This larger time window is to allow for additional flexibility for the daily plant operations; and

(7) administrative changes that would correct a typographical error in TS 1.3(1) and change references to the final safety analysis report (FSAR) to updated safety analysis report (USAR).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists

as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application.

(1) Replacement of part-length CEA's with full-length. CEA's. With regard to the three standards, the licensee states that operation of the facility in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely allows the replacement of the part-length CEA's with full-length CEA's with no changes in administrative specifications. On the basis of technical safety evaluation, the drop of one non-trippable, full-length rod would be less limiting than the drop of the most limiting trippable rod. Therefore, this change does not significantly increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different kind of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Administrative specifications involving the non-trippable CEA's ensure that the full-length CEA's conform to current plant conditions and, therefore, preserve the margin of safety. Replacing the part-length CEA's with full-length CEA's increases the available operational shutdown margin once manually inserted and, therefore, will not reduce the margin of safety.

(2) Increase the cold leg temperature from 540° F to 545° F. With regard to the three standards, the licensee states that operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely allows the return of T_c to 545°F with no changes in administrative specifications[c]. The temperature change is bounded by previous technical safety analysis which addressed the 545° F inlet temperature. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different kind of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Administrative specifications involving T_c ensure that operating at a T_c of 545° = F conforms to current plant conditions and, therefore, preserves the margin of safety. The temperature change is bounded by previous technical safety analysis which addressed the 545° F inlet temperature, and therefore will not reduce the margin of safety.

(3) Increase in the power-to-centerline melt linear heat rate limit from 21 kw/ft. to 22 kw/ft. With regard to the three standards, the licensee states that operation of the facility in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely allows the Fort Calhoun Station peak linear heat rate to be consistent with the standard CE 14 x 14 limit with no changes in administrative specifications. On the basis of a limiting safety system setting reanalysis using 22 KW/ft, the change of the power-to-centerline melt to 22 KW/ft would not significantly decrease the margin to centerline melt. Therefore, this change does not significantly increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different kind of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Administrative specifications involving the power-to-centerline melt ensure that operation in accordance with the revised power-to-centerline melt linear heat rate of 22 KW/ft conforms to current plant conditions, and therefore, does not significantly reduce the margin of safety.

(4) Raise the linear heat rate limiting condition for operation of the axial shape index "tent." With regard to the three standards, the licensee states that operation of the facility in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely allows utilization of the additional margin available with the symmetric core loading pattern with no changes in administrative specifications. On the basis of technical safety evaluation, operating with the gain in margin for the Cycle 11 LHR LCO would be no more limiting than operating with the Cycle 10 LHR LCO. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different kind of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Administrative specifications involving LHP LCO ensure that operation with the extra margin gained from the symmetric core loading pattern conforms to current plant conditions and, therefore, preserves the margin of safety. Raising the LHR LCO ASI tent does not affect the available margin, and therefore, will not reduce the margin of safety.

(5) Reduction of the flux peaking augmentation factors to 1.0. With regard to the three standards, the licensee states that operation of the facility in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely allows the flux peaking augmentation factors to be reduced to 1.0 for all axial locations with no changes in administrative specifications. On the basis of technical safety evaluation, changing augmentation factors to 1.0 would be no more limiting than operating with Cycle 10 augmentation factors. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different kind of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Administrative specifications involving flux peaking augmentation factors ensure that the new augmentation factors conform to current plant conditions, and therefore does not significantly reduced the margin of safety. The augmentation factors change has been implemented through strict administrative procedures and, therefore, will not significantly reduce the margin of safety.

(6) Expanding the Window for the moderator Temperature Coefficient Test at Rated Equilibrium Boron Concentration of 300 ppm. With regard to the three standards, the licensee states that operation of the facility in

accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely allows the MTC test to be performed within a larger time window at a rated power equilibrium boron concentration of 300 ppm with no changes in administrative specifications. On the basis of technical safety evaluation, changing the MTC test window to ± 14 EFPD would be no more limiting than performing the test 7 EFPD after reaching a rated power equilibrium boron of 300 ppm. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different kind of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Administrative specifications involving MTC testing ensure that the new time window conforms to current plant conditions and, therefore preserves the margin of safety. Changes made to the MTC testing window are implemented through strict administrative procedures and therefore, will not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

The proposed administrative changes (item 7), are very similar to Example (i) provided by the Commission of the types of amendments not likely to involve siqnificant hazards consideration. Example (i) is a purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Accordingly, the Commission's staff proposes to determine that the proposed changes to the Technical Specifications involve no 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

Pennsylvania Power and Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 23, 1986.

Description of amendment request: The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 2 Technical Specifications to raise the Main Steam Line Radiation—High setpoint from less than or equal to three times normal background radiation to a setpoint of less than or equal to seven times the normal background radiation. Previous operation at full power has resulted in spurious reactor trips and main steam line isolations during normal plant operation. The proposed Technical Specification change is similar to the change previously approved for SSES Unit 1 in Amendment No. 58 to Facility Operating License No. NPF–14.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously 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 staff's previous review of an identical Technical Specification change request for Unit 1 found that no credit was taken for operation of the main steam line radiation detectors in any of the accidents previously evaluated, and reduction of spurious trips would enhance plant safety. Furthermore, the purpose of the radiation monitors is to provide a quick means of detecting gross degradation of the fuel. The fuel design and fuel management at the boiling water reactors have improved such that fuel failure occurrences are significantly lower than those that existed at the time the monitoring requirement to detect fuel degradation was promulgated.

The staff therefore finds that the proposed amendment.

(1) Does not involve a significant increase in the probability or consequences of previously evaluated accidents because no credit was taken for the Main Steam Line Radiation Monitor in the evaluation of the accidents;

(2) Does not create a possibility of a new or different kind of accident from any accident previously evaluated, because changing the setpoint of the radiation monitor is unlikely to create a new or different kind of accident; and

(3) Does not involve a significant reduction in a margin of safety because no credit was taken for Main Steam Line Radiation Monitor in any accident evaluation.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: August 19, 1986.

Description of amendment request: Generic Letter No. 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes" was issued on September 27, 1985 to all licensees and holders of construction permits. The Generic Letter stated that the NRC staff had determined that the reporting requirements for iodine spiking could be changed from a short term report (Special Report or Licensee Event Report) to an item which is to be included in the Annual Report. The information to be included in the Annual Report would be similar to that previously required in the Licensee Event Report but would be changed to more clearly designate certain desired information. Accordingly, by application dated August 19, 1986, the licensee requested that the Limerick Technical Specification (TS) Section 3.4.5, BASES Section 3/4.4.5 and Section 6.9.1.5 be amended to incorporate the revised reporting requirements as described in the Model TS accompanying Generic Letter No. 85–19.

The current Limerick TS require short term Special Reports within 30 or 90 days in response to the requirements of TS 3.4.5 ACTION statements a.1, b and c. Certain additional information is also specified by TS 3.4.5 for inclusion in several of these short term reports.

In addition to these short term reporting requirements currently contained in the Limerick TS's, the Commission's regulations in 10 CFR 50.72 (Immediate Notification Requirements of Significant Events at Operating Nuclear Power Reactors) and in 10 CFR 50.73 (Licensee Event Peport System) impose reporting requirements which include the following:

(1) An LER is required following the completion of any plant shutdown, required by the TS [50.73 (a)(2)(i)].

(2) One hour notification of the NRC is required when initiating a nonemergency event plant shutdown, which is required by the TS [50.72(b)(1)(i)].

(3) One hour notification of the NRC is required in the event of fuel cladding failures that exceed expected values or that are caused by unexpected factors [50.72(b)(1)(ii).

As stated in the BASES of the TS's, the purpose of the short term reporting requirements was to obtain information to assess the parameters associated with spiking phenomena. The staff's safety concerns associated with iodine spiking are primarily with respect to changes in coolant activity which may indicate a significant degradation of fuel cladding. The immediate notification and reporting requirements of 10 CFR 50.72 and 50.73 will provide the NRC with adequate notification of and information on an increase in coolant activity which is indicative of significant fuel degradation. Therefore, the staff has concluded that the notification and reporting requirements of the Commission's regulations in 10 CFR 50.72 and 10 CFR 50.73 in conjunction with the augmentation of the plant's annual Report as proposed by the licensee in accordance with the staff's Generic Letter 85–19 are sufficient to provide adequate information to the Commission. Accordingly, the Special Reports now specifically required by TS 3.4.5 may be eliminated in lieu of the other reporting requirements as discussed above.

Generic Letter No. 85–19 also stated that the staff had determined that the existing requirement to shutdown a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period could be eliminated. The Generic Letter indicated that (a) on the basis of the improved ouality of nuclear fuel which results in normal coolant iodine activity being well belnw the limit, (b) the likelihood of appropriate actions being taken long before accumulating 800 hours above the normal coolant iodine activity limit, and (c) the requirement of 10 CFR 50.72 (b)(1)(ii) for prompt notification of NRC in the event of fuel cladding failures which exceed expected values, this 800 hour TS limit is no longer considered necessary since proper fuel management by licensees and existing reporting requirements should preclude ever approaching the limit. Accordingly, in the application dated August 19, 1986, the licensee also requested that Limerick TS Section 3.4.5 and BASES Section 3/4.4.5 be amended to delete the 800-hour limit.

The shutdown requirements of Technical Specification 3.4.5 are based on the consideration (TS BASES Section 3/4.4.5) that the specific activity level of coolant should be limited to a relatively low level during plant operation so that, should a main steam line failure occur outside the containment, the dose rate from activity in the released coolant will not result in doses exceeding a small fraction of the dose guidelines of 10 CFR Part 100. Iodine spiking is a temporary increase in coolant iodine concentration associated with reactors having leaking fuel rods. These temporary increases in iodine concentrations have been observed to occur following changes in thermal power. An iodine spike is characterized by a rapid increase in coolant iodine concentration followed by a return to prespike concentrations.

During the course of the operating license review, the staff performed an analysis of the radiological consequences of main steam line failure outside the containment as discussed in Section 15 of the Safety Evaluation Report. The analysis was performed following the guidelines and criteria specified in Standard Review Plan (SRP) Section 15.6.4. An iodine concentration corresponding to the equilibrium value (0.2 micro curies per gram (micro Ci/gm)) for continued full power operation was used in the analysis. This is the same equilibrium value stated in the licensee's Technical Specification. To account for the effect of potential iodine spiking (per Regulatory Guide 1.5) the equilibrium value was increased by a factor of 20 (to 4 micro Ci/gm) in the analysis. Other conservative assumptions used in the safety analysis include no plateout of iodine from the released coolant, no radioactive decay of Iodine 131 in transit and pessimistic meteorological conditions. Results of the analysis show that the doses will not exceed a small fraction of the dose guideline values of 10 CFR Part 100 for the equilibrium value and will not exceed the dose guideline values of 10 CFR Part 100 for the maximum value permitted, consistent with the criteria set forth in the Standard Review Plan.

Technical Specification 3.4.5 is intended to assure that the plant will operate within the values assumed in the safety analysis. The current TS imposes requirements for plant shutdown within 12 hours if the following activity level of the primary coolant is indicated:

(a) Greater than 0.2 micro Ci/gm dose equivalent I–131, but less than 4 micro Ci/gm for 48 hours continuous operation (to allow for iodine spiking by permitting temporary excursions); or,

(b) Greater than 4 micro Ci/gm dose equivalent I–131 at any time; or,

(c) Greater than 0.2 micro Ci/gm dose equivalent I–131, but less than 4 micro Ci/gm for a cumulative 800-hour operation in any consecutive 12-month period.

In addition, Technical Specification 3.4.5 requires that, with the specific activity of the primary coolant greater than 0.2 micro Ci/gm dose equivalent I–131, the operator shall perform the sampling and analysis of the coolant activity level at least once everv 4 hours until the activity level has returned to within the 0.2 micro Ci/gm limit.

Review of these requirements indicated that Items a. and b. in conjunction with the surveillance requirements provide reasonable assurance of operation within the bounds of the safety analyses. This is based on the following considerations: (1) Item b. requires shutdown any time an activity level of 4 micro Ci/gm is exceeded. This value of 4 micro Ci/gm is the upper limit value used in the staff analysis which indicated that doses would not exceed the guideline values in 10 CFR Part 100. (2) Item a. requires shutdown under conditions which indicate that significant fuel degradation may be occurring; and (3) the surveillance requirements require sampling every 4 hours once the activity level exceeds 0.2 micro Ci/gm, thus assuring that an activity level which exceeds 4 micro Ci/gm will be detected within 4 hours and shutdown will then be required. Therefore, Items a. and b. require plant shutdown once significant fuel degradation is indicated and Item c. would only allow the plant to operate for a cumulative 800-hour period if the activity level remains between 0.2 to 4 micro Ci/gm for many successive periods of operation. Each of these periods which exceeded 48 hours would be followed by a shutdown, as noted in a. above, making such operation highly impractical. However, if the activity level is restored to a level below 0.2 micro Ci/gm within 48 hours, this indicates no significant fuel degradation. Thus, it is unlikely that 800 hours of operation above 0.2 micro Ci/gm without violating the requirements of item a. or item b. would occur, and the

cumulative 800-hour limit necessitates a record-keeping requirement for fuel conditions which is not significant to safety. Moreover, none of the conservative assumptions used in the staff's dose assessment will be degraded by the deletion of the 800-hour limit. Therefore, based on the above considerations, the staff has concluded that the current TS 800-hour operating limit is unnecessary and can be eliminated.

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.

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The change in the reporting requirements is administrative in nature. Although the reporting requirement for iodine spiking events is being reduced from a short term report to an item which is to be included in the Annual Report, the immediate notification and reporting requirements of 10 CFR 50.72 and 10 CFR 50.73 will provide adequate information or an increase in coolant activity which may be indicative of significant fuel degradation. The change in reporting requirements does not affect any plant equipment, or operational procedures or conditions for operation which could impact the probability or consequences of an accident.

The elimination of the cumulative 800-hour operating time limit in a 12-month period is based on consideration of improvements in the quality of nuclear fuel which have resulted in the normal coolant iodine activity being well below the limit and the high likelihood of appropriate actions being taken in response to the requirements for plant shutdown and increased surveillance, as discussed above, long before accumulating 800 hours within the specified limits. This change does not increase the current limits on specific activity and, therefore, does not increase the radiological consequences of any accident in which reactor coolant is postulated to be released to the environment.

Therefore, this TS limit is no longer considered necessary on the basis that proper fuel management by licensees and existing reporting requirements should preclude ever approaching the limit. Further, the removal of the 800-hour limit does not involve any change in the design of plant equipment or reactor operator practices that could impact the probability or consequences of an accident and does not involve degradation of any of the conservative assumptions used in staff's previously performed dose assessment analysis. For these reasons, the NRC staff has determined that the proposed amendment does not significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The administrative changes in reporting requirements do not vary or affect any plant operating condition or parameter. With respect to the 800-hour operating limit on the cumulative time of operation with iodine concentration between specified limits, the design of the plant is unchanged, the inputs, assumptions and results for the previously performed safety analyses are unchanged, and no new paths are introduced that could lead to a new or different kind of accident. For these reasons, the staff has concluded that the proposed amendment does not create the possibility of a new or different kind of accident.

Standard 3—Involve a Significant Reduction in Margin of Safety

The administrative changes in reporting requirements do not vary or affect any plant operating condition or parameter, do not change any of the design bases of the plant and thus do not involve a significant reduction in the margin of safety of any plant parameter.

The change to eliminate the cumulative 800-hour per year limit on iodine concentrations within specified limits will not significantly reduce the protection from degraded fuel conditions because the remaining limitations on operations in the TS and the reporting requirements of 10 CFR 50.72 and 10 CFR 50.73 provide assurance that appropriate actions would be initiated long before accumulating 800-hours operation with iodine concentrations within the specified limits. There is no change in the design of the plant and the inputs, assumptions and results for previously performed and accepted safety analyses are unchanged. For these reasons, the staff has concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the above discussion the staff proposes to determine that the application for amendment involves no significant hazard consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: January 9, 1987.

Description of amendment request: The amendment would revise the Technical Specifications (TS) to: (1) Modify the core physics, thermal and hydraulic limits to be consistent with the reanalyses associated with replacing about one-third of the core during the Cycle 7 core refueling outage, (2) incorporate a change in slope of the flow biased Average Power Range Monitor (APRM) scram and rod block setpoints from 0.66 to 0.58 W, (3) correct five typographical errors, (4) clarify a definition of Average Planar Linear Heat Generation Rate (APLHGR) and (5) clarify several notes in the TSs. There will also be modifications in the bases for several sections of the TSs, but since the bases (as opposed to the Limiting Conditions for Operation and the Surveillance Requirements) are not part of the TSs, these changes are not addressed in this notice; the changes to the bases are discussed in Philadelphia Electric Company's (PECo) submittal.

Basis for proposed no significant hazards consideration determination: The licensee evaluated the proposed changes associated with the reload in accordance with the standards provided in 10 CFR 50.92(c) and determined that:

(1) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes are clearly bounded by the analyses provided in the FSAR. All abnormal operational transients analyzed in the FSAR have been examined for effects caused by Reload 7 and the limiting abnormal operational

transients have been re-evaluated in detail. The 8X8 fuel assemblies to be installed in the core are not significantly different than the 8X8 fuel assemblies they are replacing. The NRC staff has previously approved the General Electric (GE) fuel assemblies. The NRC staff has also approved the analytical methods which the licensee and GE used to evaluate the effects of the replacement fuel on thermal-hydraulic limits and transients.

(2) The proposed revisions do not create the possibility of a new or different kind of accident from any previously analyzed because operation with Reload 7 merely changes slightly the assumptions (initial conditions or final conditions) utilized in existing analyses and does not create any new accident mode.

(3) The proposed revisions do not involve a significant reduction in a margin of safety. The results of the safety evaluation show that the current Technical Specifications, with the exception of the MCPR and MAPLHGR operating limits, are adequate to preclude the violation of any Safety Limits for Reload 7 operation with a comparable margin of safety. Accordingly, the MCPR and MAPLHGR operating limits are revised to assure the margin of safety is maintained as demonstrated in the "Supplemental Reload Submittal for Peach Bottom Unit 2 Reload 7" which provides the thermal, hydraulic and accident analyses for the new core arrangement.

The licensee also evaluated the proposed changes in the TSs to modify the slope of the flow biased APRM setpoints in accordance with the standards provided in 10 CFR 50.92(c) and concluded that:

(1) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes are clearly bounded by the analyses provided in the FSAR. All abnormal operational transients analyzed in the FSAR have been examined for effects caused by the slope change and have been found to be bounding.

(2) The proposed revisions do not create the possibility of a new or different kind of accident from any previously analyzed in that operation with the slope change merely changes slightly the assumptions (initial conditions or final conditions) utilized in existing analyses and does not create any new accident mode.

(3) The proposed revisions do not involve a significant reduction in a margin of safety. The results of the safety evaluations discussed in General Electric Company Document NEDC-31298, ("General Electric Boiling Water Reactor Extended Load Line Limit Analysis for Peach Bottom 2, Cycle 7 and Peach Bottom 3, Cycle 7, dated May 1986") provided with the submittal show that the current Technical Specifications are adequate to preclude the violation of any Safety Limits with a comparable margin of safety for operation with the slope change. Furthermore, the safety evaluations discussed in the "Supplemental Reload Licensing Submittal for Peach Bottom Unit 2, Reload 7," confirm that the changes to the Technical Specifications proposed for Cycle 8 operation are adequate to preclude the violation of any Safety Limits for operation with the slope change.

The staff has reviewed the licensee's determinations and find them acceptable.

In the guidance provided by the Commission (51 FR 7751) of amendments not likely to involve significant hazards considerations are ones that involve (i) "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The other changes to the TSs are encompassed by this example (e.g., correcting typographical errors). The changes do not modify or effect any safety limits, limiting conditions for operation or surveillance requirements. The clarifications are administrative in nature and have no safety significance.

Based on the above, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for Licensee: Troy B. Conner, Jr. 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 29, 1985, as revised January 9, 1987.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Section 3.7.1.4 to reflect an increase in the minimum contained water volume required in the condensate storage tank. The current TS requirement specifies a minimum volume of 196,000 gallons. The proposed TS requirement would specify a minimum volume of 239,000 gallons. This increased volume accounts for the unusable volume in the bottom of the tank (27,700 gallons) and instrument error (14,400 gallons).

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 (ii) A change which constitutes an additional limitation, restriction or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement.

The licensee's proposed minimum water volume requirement for the condensate storage tank accounts for instruments error and unusable volume, and thus provides greater assurance that the minimum amount of water (196,000 gallons) as assumed in the safety analysis, is available for plant cooldown. The increase in the minimum water volume requirement is an additional operational restriction since the plant would reach its Limiting Condition for Operation sooner, thereby requiring corrective actions to be initiated sooner.

The staff has reviewed the licensee's no significant hazards analysis and concludes that the proposed change is within the scope of the Commission's cited example. Thus, the staff proposes to determine that the requested change does not involve a significant hazards 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.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 17, 1986, as supplemented January 14, 1987.

Description of amendment request: This amendment proposes to revise Trojan Technical Specifications (TS) Section 4.6.3.1.2 to permit testing of containment isolation valves during any MODE of operation, rather than only MODES 5 and 6 as specified in the current Technical Specifications.

TS Section 4.6.3.1.2 requires that each containment isolation valve specified in TS Table 3.6–1 be demonstrated operable during COLD SHUTDOWN or REFUELING at least once every 18 months. This operability test verifies that the valve actuates to the appropriate position upon receipt of a test signal. This requirement limits the operational flexibility of the plant for those valves capable of being tested during power operation.

The proposed revision would delete the phrase "during COLD SHUTDOWN or REFUELING" from surveillance requirement 4.6.3.1.2. This revision would allow the containment isolation valves to be tested and demonstrated operable where such testing is feasible during power operation.

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 licensee has evaluated the proposed amendment against the standards of 10 CFP 50.92, and has determined the following:

Table 3.6–1 of the TS identifies those valves which are testable during operation. In addition, Updated Final Safety Analysis Report (UFSAR) Section 7.3.2.1.5 describes the online testing capability of the Engineered Safety Features Actuation System. As discussed in the FSAR, ". . . the operator in the main control room assures that Plant conditions will permit operation of the equipment that will be actuated. . ." The online testing capability, which is part of the existing design basis, in combination with operator control of actual testing, provides assurance that this testing is adequately controlled. Testing of containment isolation valves in MODES other than 5 and 6, i.e., online testing, has also been considered in the safety analysis with regard to the single-failure criteria. As discussed in UFSAR Section 6.2.4.3, the containment isolation design is based on the concept of two barriers. The two barriers ensure that a single failure of a containment isolation valve to close can be accommodated because a second barrier is available. The failure of an isolation valve to open during testing is accommodated either by:

(1) The availability of a redundant train, or (2) the provision that the valve is not tested on line because its failure to open may adversely affect the normal operation of the plant as indicated in Table 3.6–1. As such this change does not involve a significant increase in the probability or consequences of an accident.

Stroke testing of containment isolation valves is not relevant to accident creation since the containment isolation valves are designed to mitigate the consequences of an accident after it has occurred. Valves which have both a containment isolation function and a process function are tested only in MODES which do not adversely affect the functioning of the system, as discussed above. In addition, the effects of online testing has been considered in the safety analysis. As such, the proposed change would not create a new or different kind of accident from any accident previously evaluated.

Since the requirement to perform stroke testing is not being relaxed, and since the acceptance criteria for testing remains unchanged, the proposed change would not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested change does not involve a no significant hazards 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: April 18, 1986, as supplemented February 6, 1987.

Description of amendment request: This notice describes a supplement to an application dated April 18, 1986 which was noticed on June 4, 1986 (51 FR 20372). This change revises Figure 3.10–2 to reflect the proposed F_Q limit of 2.20. This figure was omitted from the April 18, 1986 application. The previous notice described the change in F_Q in detail.

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.

A discussion of these standards as they relate to this amendment follows (these are the same findings as in the notice dated June 4, 1986).

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change seeks to increase F_Q limit to 2.20. The revised limit will not increase the probability of an accident previously analyzed as this limit is an operational restriction to limit the consequences of the accident.

The analyses results are within the safety limits provided by 10 CFR 50.46.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Increasing the F_Q limit to 2.20 will not introduce the possibility of an accident of a different type than previously analyzed.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

In issuing Amendment 48 to the Indian Point 3 Technical Specifications, dated January 13, 1984, the NRC in their safety evaluation report reviewed and approved the ECCS reanalysis assuming a F_Q of 2.14, which results in a PCT of 1995 °F. The proposed change increasing the F_Q limit of 2.20 will result in a PCT of 2039 °F. The presence of OFA fuel in the core will result in a PCT of 2049 °F.

The analysis results are within the safety limits specified in 10 CFR 50.46.

Based on the above, the staff proposes to determine that the proposed changes do 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.

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 10, 1986.

Description of amendment request: South Carolina Electric & Gas Company (SCE&G) requests a Technical Specification revision to lower the maximum allowable Heat Flux Hot Channel Factor, F_Q, from 2.32 to 2.25 beginning with Cycle 4. This revision is in support of an ongoing effort to provide safety analyses to support steam generator tube plugging levels in excess of 6%.

Basis for proposed no significant hazards consideration determination: Since commercial operation of the Virgil C. Summer Nuclear Station (VCSNS) in 1984, a number of steam generator tubes have been plugged. The majority of the tube problems which resulted in eventual tube plugging has been attributed to primary water stress corrosion cracking. Steam generator tube plugging affects operation and is an important assumption within the plant's safety analysis. From a safety analysis standpoint, the large break loss of cooling accident (LOCA) analyses are limiting and are currently valid for tube plugging levels less than or equal to 6%. At this level, only 83 additional SG tubes can be plugged in SG–B and still enable the VCSNS to remain within the bounds of the plant licensing basis.

Within the LOCA analyses, the additional peak clad temperature margin created by the F_Q reduction will be used to offset the increase in peak clad temperature due to a higher SG tube plugging level.

Upon approval of this Technical Specification change, SCE&G will be in a position to support, in a timely manner, an increase in the allowable SG tube plugging level should it be required to support VCSNS operation. Should higher SG tube plugging levels not be required, these Technical Specification changes are in the conservative direction and impose a more restrictive plant surveillance requirement than has already been established.

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 safety analysis report is not increased. No physical plant change, is being made, therefore, the probability of accidents previously evaluated will not be increased. Maximum F_Q times power versus core height, is limiting for F_Q sensitive accidents. Therefore, reducing the F_Q limit from 2.32 to 2.25 provides added assurance that the F_Q sensitive accident consequences will be less limiting than those currently in the FSAR under current conditions. This added margin can be used to offset other plant changes such as additional SG tube plugging to assure that even if more tubes are plugged, the plant can still be operated in conformance with 10 CFR 50.46.

(2) The possibility for an accident or malfunction of a different type than any previously evaluated in the safety analysis report is not created. No physical plant change is being made; therefore, no additional possibility of a new or different kind of accident from any accident previously evaluated has been created.

(3) The margin of safety as defined in the basis for any Technical Specification is not reduced. The F_Q reduction imposes a more limiting surveillance criteria. Currently, all safety limits/criteria are met assuming a F_Q to less than or equal to 2.32. Therefore, by limiting F_Q to less than or equal to 2.25, one assures that F_Q sensitive accident consequences will be less limiting than those in the FSAR. The margin of safety is thus increased with no other plant change. This increased margin could be used to offset other penalties, such as higher levels of SG tube plugging.

The staff has reviewed the licensee's determination and finds it acceptable. Accordingly, the Commission proposes to determine that this change does not involve signficant 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 8, 1987.

Description of amendment request: The amendment would change the trip setpoint and the allowable value listed in Technical Specification Table 2.2–1, "Reactor Trip System Instrumentation Trip Setpoints" for the intermediate range compensated ion chamber detectors from current (AMPS) to the equivalent percent indication. The Bases would also be changed to reflect percent indication and to provide further clarification of the purpose of the P–6 setpoint. These changes would meet the guidelines of Regulatory Guide 1.97 Revision 3 requirements for Post Accident Neutron Monitoring Instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7751) of actions likely to involve no significant hazards considerations. One of the examples relates to administrative changes to Technical Specifications such as a change to achieve consistency throughout Technical Specifications, correction of an error, or a change in nomenclature. The amendment involved here is similar in that it changes values to equivalent units of measure and adds a clarifying statement in the bases. 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: January 21, 1987.

Description of amendment request: The proposed amendment would change the Technical Specifications by deleting the requirements for chlorine detection systems in the control rooms.

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 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 deletion of the chlorine detection system is based on the licensee's assertion that the system is not needed to meet the NRC requirements for toxic and hazardous gasses detection in the control room. The plant is more than five miles from the nearest major highway and railroads, and the licensee no longer stores chlorine on site in excess of the amounts which, by NRC standards, would require the detection system.

Therefore, the change to delete the system is consistent with NRC requirements and would not significantly increase the probabilities or consequences of any accident previously evaluated. The removal of the system would not affect or change plant operation and thus, would not create the possibility of a new or different kind of accident from any previously evaluated. The amounts of chlorine on site have been reduced to a level where any release would not affect control room operation. Therefore, there is no significant reduction in a margin of safety.

Based on the above considerations, the staff has made a proposed determination that the application for amendment involves no 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.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 3, 1987.

Description of amendment request: The proposed change revises Technical Specification Table 3.3–9, Remote Shutdown Monitoring Instrumentation. The shown measurement range of the pressurizer level is changed from 0–525 inch to 0–100 percent, and the shown measurement rance of the auxiliary feedwater flow rate is changed from 0–880 gpm to 0–440 gpm. The required number of minimum channels operable is clarified by changing the description given for the reactor coolant temperature-hot leg from 1 to 1/loop and the description given for the auxiliary feedwater flow rate from 1 to 1/steam generator.

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. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendments only clarify Table 3.3–9 and do not alter the operation of the plant. The pressurizer level measurement range shown in the table is revised to establish consistency with the units shown on the pressurizer level gauge. The auxiliary feedwater flow measurement range shown in the table is revised to establish consistency with the auxiliary feedwater flow range to each of the steam generators. The two changes under the "Minimum Channels Operable" column are editorial and explicitly state previously accepted interpretations.

The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendments are basically editorial and are requested for clarification purposes. The plant design is not affected.

The proposed amendments do not involve a significant reduction in a margin of safety. The proposed amendments can only enhance safety since they reduce the probability of misinterpretation or confusion.

Accordingly, the Commission proposes to determine that the above changes involve no 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: February 19, 1987.

Description of amendment request: The proposed amendment request deletes Technical Specifications 3/4.3.3.7, 3/4.7.10.1, 3/4.7.10.2, 3/4.7.10.3, 3/4.7.10.4, 3/4.7.11, 6.3.3.e, and the corresponding section 3/4 Bases, and revises Technical Specifications 6.5.1.6, 6.5.1.7, and 6.8.1 and license conditions 2.C.(5) (c), (d) and (e).

1. Technical Specification 3/4.3.3.7, Fire Detection Instrumentation, is deleted. The requirements of this specification have been moved in their entirety to plant operating procedures. This change is administrative in nature in that no requirements are being altered. Provisions for review of future changes to the requirements are dictated by the changes to Technical Specifications 6.5.1.6, 6.5.1.7, and 6.8.1 as described below.

2. Technical Specification 3/4.7.10.1, Fire Suppression Water System, is deleted. All of the requirements of this specification, with the sole exception of the plant shutdown and mode change restriction requirements upon determination of inoperability of the system dictated by action b, have been moved to plant operating procedures. With the above exception, the changes are purely administrative in nature since no requirements are being altered.

3. Technical Specifications 3/4.7.10.2, Spray and/or Sprinkler Systems, 3/4.7.10.3, Halon Systems, 3/4.7.10.4, Fire Hose Stations and 3/4.7.11, Fire Barrier Penetrations, are deleted. The requirements of these specifications have been moved in their entirety to plant operating procedures.

4. Technical Specifications 6.2.2.e, Site Fire Brigade Requirements, is deleted. The requirement of this specification has been moved in its entirety to plant operating procedures.

5. Technical Specification 6.5.1.6, On-Site Review Committee (ORC) Responsibilities, is being revised to provide specific reference to the requirement to review the plant Fire Protection Program and its revisions. This change reinforces the importance of the Fire Protection Program on plant safety and assures a multi-discipline review by the ORC of proposed changes to those requirements that are removed from the Technical Specifications.

6. Technical Specification 6.8.1, Written Procedure Requirements, is revised to include the Fire Protection Program implementation. This change reinforces the importance of the Fire Protection Program on plant safety and is consistent with the requirements established for similar programs, such as the security plan.

7. License conditions 2.C.(5)(c), (d), and (e) dealing with changes to the Fire Protection Program, are revised in accordance with the guidance provided in section F of Generic Letter 86–10, Implementation of Fire Protection Requirements. The changes provided in Generic Letter 86–10 establish requirements for control of the Fire Protection Program.

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:

1. Technical Specification 3/4.3.3.7, Fire Detection Instrumentation is deleted, and the requirements contained therein have been transferred to the FSAR and plant operating procedures.

(a) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. No changes to the requirements have been made. This change simply removes the fire detection instrumentation requirements from the Technical Specifications and places them into plant procedures and the FSAR without altering them. Review of the Fire Protection Program and its revisions will be the responsibility of the On-Site Review Committee (ORC) just as it has always been the responsibility of this group to review changes to fire protection requirements when they were part of the Technical Specifications.

(b) This change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not alter the requirements; it just moves them from the Technical Specifications to the FSAR. Plant procedures will continue to provide the specific instructions for implementing the LCO, action, and surveillance requirements. There has been no reduction in commitments and, as incorporated into the plant procedures, this change meets the renuirements of the existing Technical Specifications.

(c) This change does not involve a significant reduction in the margin of safety. No change is being proposed for the requirements themselves. Technical Specification 3/4.3.3.7 is being deleted, and the requirements contained therein are being incorporated into the FSAR. Plant procedures will continue to provide the specific instructions necessary for the implementation of the requirements, just as when the requirements resided in the Technical Specifications. Fire Protection Program commitments, reporting requirements, and amendments will by this process be transferred from the jurisdiction of 10 CFR 50.73 and 10 CFR 50.90 to 10 CFR 50.59 and 10 CFR 50.71(e).

2. Technical Specification 3/4.7.10.1, Fire Suppression Water System is deleted. All of the requirements contained therein, with the exception of the plant shutdown and mode change restriction requirements dictated by action b, have been transferred to the FSAR and plant operating procedures.

(a) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. In the accident analysis it is assumed that a design basis accident does not occur simultaneously with a fire, and the fire hazards analysis does not rely solely on automatic fire suppression systems. In addition, backup manual fire suppression capabilities are available. Other than the deletion of the plant shutdown and mode change restrictions dictated by action b, no changes to requirements have been made. This change for the most part simply removes the fire suppression water system requirements from the Technical Specifications and places them into the plant procedures and the FSAR without altering them. Review of the Fire Protection Program and its revisions will be the responsibility of the ORC just as it has always been the responsibility of this group to review changes to fire protection requirements when they were part of the Technical Specifications.

(b) This change does not create the possibility of a new or different kind of accident from any previously evaluated since, in the accident analysis, it is not assumed that a design basis accident occurs simultaneously with a fire and the fire hazards analysis does not rely solely on automatic fire suppression systems.

Plant procedures will require establishment of a backup fire suppression system within 24 hours. In order to ensure that actions are taken if the backup fire suppression water system is not available, plant procedures will require actions designed to minimize the risk of fire. Provisions for the review of future changes to the requirements are dictated by the changes to Technical Specifications 6.5.1.6, 6.5.1.7, and 6.8.1 as described below.

The inoperability of the fire suppression water system will effectively cause loss of operability of spray and sprinkler systems and fire hose stations. The critical spray and sprinkler systems and fire hose stations have their own action requirements to ensure that fire protection is maintained. These actions consist of establishing a fire watch for early detection and the use of portable extinguishers and a fire brigade as a backup fire suppression system. These action requirements will be maintained in the plant procedures. The loss of the fire suppression water system will cause the inoperability of only the spray and sprinkler systems and fire hose stations, and therefore their required actions, in addition to those actions retained in the plant procedures from Specification 3/4.7.10.1, which includes all the Technical Specification actions except the plant shutdown and mode change restrictions, should be sufficient.

(c) This change does not involve a significant reduction in the margin of safety since fires are not assumed to occur simultaneously with a design basis accident. In addition, several means of fire detection and fire protection are still operable, since they are not affected by the loss of water suppression system. Fire detection instrumentation is available allowing detection of a fire and response by plant personnel using operable fire fighting capabilities. Plant fire barriers providing fire isolation of safety-related equipment from non-safety-related equipment and between trains of safety-related equipment are still operable. Also, halon fire suppression systems protect certain vital electrical equipment.

Plant procedures will continue to provide the specific instructions necessary for the implementation of all of the requirements from Specification 3/4.7.10.1, with the exception of action b, plant shutdown and mode change restrictions upon complete loss of fire suppression system capability, which will be compensated for by actions designed to minimize the risk of fire.

Fire Protection Program commitments, reporting requirements, and amendments will by this process be transferred from the jurisdiction of 10 CFR 50.73 and 10 CFR 50.90 to 10 CFR 50.59 and 10 CFR 50.71(e).

In summary, loss of the normal fire suppression water system does not affect the probability of having an accident. If the backup suppression system is not available, additional compensatory actions will be taken as discussed above and, therefore, shutdown of the unit is not warranted. Additionally, unit power level or changes in operating mode will not affect the remaining suppression or backup suppression capability to handle a fire; therefore, the application of Technical Specification 3.0.4 is not warranted.

3. Technical Specifications 3/4.7.10.2, Spray and/or Sprinkler Systems, 3/4.7.10.3, Halon Systems, 3/4.7.10.4, Fire Hose Stations, and 3/4.7.11, Fire Barrier Penetrations, are deleted, and the requirements contained therein have been transferred to the plant operating procedures.

(a) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. No changes to the requirements have been made. This change simply removes the spray and/or sprinkler system, halon system, fire hose station, and fire barrier penetration requirements from the Technical Specifications and places them into plant procedures and the FSAR without altering them. Review of the Fire Protection Program

and its revisions will be the responsibility of the On-Site Review Committee just as it has always been the responsibility of this group to review changes to fire protection requirements when they were part of the Technical Specifications.

(b) This change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not alter the requirements; it just moves them from the Technical Specifications to the FSAR. Plant procedures will continue to provide the specific instructions for implementing the LCO, action, and surveillance requirements. There has been no reduction in commitments and, as incorporated into the plant procedures, this change meets the requirements of the existing Technical Specifications.

(c) This change does not involve a significant reduction in the margin of safety. No change is being proposed for the requirements themselves. Technical Specifications 3/4.7.10.2, 3/4.7.10.3, 3/4.7.10.4, and 3/4.7.11 are being deleted and the requirements contained therein are being incorporated into the FSAR. Plant procedures will continue to provide the specific instructions necessary for the implementation of the requirements, just as when the requirements resided in the Technical Specifications. Fire Protection Program commitments, reporting requirements, and amendments will by this process be transferred from the jurisdiction of 10 CFR 50.73 and 10 CFR 50.90 to 10 CFR 50.59 and 10 CFR 50.71(e).

4. Technical Specification 6.2.2.e, Site Fire Brigade Requirements, is deleted, and the requirements contained therein have been transferred to the plant operating procedures.

(a) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. No changes to the requirements have been made. This change simply removes the site fire brigade requirements from the Technical Specifications and places them into plant procedures and the FSAR without altering them. Review of the Fire Protection Program and its revisions will be the responsibility of the On-Site Review Committee just as it has always been the responsibility of this group to review changes to fire protection requirements when they were part of the Technical Specifications.

(b) This change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not alter the requirements; it just moves them from the Technical Specifications to the FSAR. Plant procedures will continue to provide the specific instructions for implementing the Technical Specifications administrative requirements. There has been no reduction in commitments and, as incorporated into the plant procedures, this change meets the requirements of the existing Technical Specifications.

(c) This change does not involve a significant reduction in the margin of safety. No change is being proposed for the requirements themselves. Technical Specification 6.2.2.e is being deleted, and the requirements contained therein are being incorporated into the FSAR or plant procedures. Plant procedures will continue to provide the specific instructions necessary for the implementation of the requirements, just as when the requirements resided in the Technical Specifications. Fire Protection Program commitments, reporting requirements, and amendments will by this process be transferred from the jurisdiction of 10 CFR 50.73 and 10 CFR 50.90 to 10 CFR 50.59 and 10 CFR 50.71(e).

5. Technical Specification 6.5.1.6, On-Site Review Committee Responsibilities, is being revised to provide specific reference to the ORC's requirements to review the plant Fire Protection Program and its revisions.

(a) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change does not involve a reduction in requirements. The ORC has always been responsible for reviewing proposed changes to the Technical Specifications and is now responsible for reviewing changes to the Fire Protection Program, which has been created from the former Technical Specifications and other requirements.

(b) This change does not create the possibility of a new or different kind of accident from any previously evaluated. There has been no change in requirements as a result of this Technical Specification revision. In fact, the addition to Specification 6.5.1.6 is an addition to the previously identified ORC responsibilities in that previously the OPC did not have a specific Technical Specification requirement to review the Fire Protection Program.

(c) This change does not involve a significant reduction in the margin of safety. The change to ORC responsibilities as delineated in section 6.5.1.6 involves an increase in requirements. The former Technical Specifications are a subset of the entire Fire Protection Program, and the ORC is now responsible for reviewing the entire program, whereas formerly the ORC responsibilities for review in this area included only the Technical Specifications. Their responsibility for procedural review remains unchanged.

6. Technical Specification 6.8.1, Written Procedure Requirements, is revised to include the Fire Protection Program implementation.

(a) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The addition of the Fire Protection Program to the list of required written procedures constitutes an additional control not presently included in the Technical Specifications.

(b) This change does not create the possibility of a new or different kind of accident from any previously evaluated. No requirements have been reduced by the addition of Specification 6.8.1.i; instead, the change creates an additional requirement.

(c) This change does not involve a significant reduction in the margin of safety. The addition of the Fire Protection Program to the list of required written procedures constitutes an additional control not presently included in the Technical Specifications.

7. License conditions 2.C.(5) (c), (d), and (e) dealing with changes to the Fire Protection Program, are revised in accordance with the guidance provided in section F of Generic Letter 86–10, Implementation of Fire Protection Requirements.

(a) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change in license conditions from those previously incorporated into the license to the one presented in Generic Letter 86–10 does not result in any loss of control of the change process.

Previously, changes to the Fire Protection Program that decreased the level of fire protection in the plant could only be made with prior Commission approval utilizing the license amendment process (10 CFR 50.90). The new license condition also requires prior Commission approval but utilizes the 10 CFR 50.59 process.

The old license condition also required that the licensee maintain an auditable record of all changes made to the Fire Protection Program that do not require prior Commission approval. The new license condition does not specifically levy this requirement; but, since the Fire Protection Program and the former Tech Specs are now incorporated into the FSAR, their changes fall under 10 CFR 50.59, and Section 10 CFR 50.59(b) contains the same record-keeping requirement.

Finally, the old license condition required an annual report to the Commission on all changes to the Fire Protection Progam made without prior approval. The same annual reporting requirement is levied by 10 CFR 50.59(b) and 10 CFR 50.71(e).

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 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 16, 1987.

Description of amendment request: By letter dated January 16, 1987, the licensee, Vermont Yankee Nuclear Power Corporation, submitted a proposed license amendment for NRC review and approval which would revise the Vermont Yankee Technical Specifications with respect to requirements pertaining to the Standby Liquid Control System (SLCS). These changes would:

(1) Clarify what tests are specifically required to demonstrate SLCS operability.

(2) Require liquid poison tank boron concentration determination within 24 hours of dilution, boron addition, or of solution temperature drop.

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 7751). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change which constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement. As described above, the change requiring boron concentration determination within 24 hours constitutes an additional limitation and control not presently included in the Technical Specifications for Vermont Yankee, and is similar to example (ii).

Another of the Commission's examples (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. Proposed changes described in item (1) fall within the envelope of example (i) since the changes would clarify requirements by adding specificity without changing the intention of the existing Technical Specifications, and therefore are similar to example (i).

Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

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: December 22, 1986.

Description of Amendment Request: The proposed changes would amend the NA–1&2 Technical Specifications (TS) by increasing the boron concentration in the refueling water storage tank (RWST), the casing cooling tank (CCT) and the accumulators. The fuel cycles currently being designed for NA–1&2 require higher boron concentrations than previous cycles in order to meet shutdown requirements because of the excess reactivity required to achieve an eighteen month fuel cycle at the recently uprated NA–1&2 power level. Therefore, the licensee performed a safety analysis to justify increasing the boron concentration in the RWST and CCT from the current NA–1&2 TS limit of 2000–2100 parts per million (ppm) to 2300–2440 ppm. Additionally, the safety injection accumulator boron concentration would be increased from 1900–2100 ppm to 2200–2400 ppm.

Several NA–1&2 TSs need to be changed to incorporate the proposed increased boron concentration limits. These include TS 3.1.2.7, 3.1.2.8, 3.5.1, 3.5.5, 3.6.2.2, 3.9.1, B3/4.1.2, B3/4.5.5, and B3/4.9.1.

The boron concentration limits would be changed from 2000–2100 ppm to 2300–2400 ppm in T.S. 3.1.2.7, 3.1.2.8, 3.5.5, 3.6.2.2. These TS present the limiting conditions for operation of the RWST and the CCT during different modes of operation. Similarly, the boron concentration limits would be changed from 1900–2100 ppm to 2200–2400 ppm for the accumulators. The accumulator boron concentration change is the only change to TS 3.5.1. The references to uncertainties in TS 3.9.1 will be moved to the Bases to be more consistent with the format of the Westinghouse Standard Technical Specifications which appropriately apply to NA–1&2. Additionally, the lower limit boron concentration would be changed from 2000 ppm to 2300 ppm in TS 3.9.1. TS B3/4.1.2 would be modified to provide revised RWST volume requirements associated with shutdown from full power to 200 °F and for shutdown from 200 °F to 140 °F at the 2300 ppm boron concentration. An editorial change in the second paragraph of this section would also be made to reflect a shutdown margin requirement of 1.77% delta k/k as opposed to 1.60% delta k/k. This conservative correction is necessary to achieve consistency with the safety analysis and with other applicable LCOs and surveillance requirements. TS B3/4.5.5 would be revised to achieve consistency with the safety analysis regarding the pH of the quench and recirculation sprays and to achieve consistency between NA–1&2. TS B3/4.9.1 would be expanded to include the discussion of the uncertainties associated with reactivity and boron that are currently specified in T.S. 3.9.1.

Each of the NA–1&2 Chapter 15 transients specified in the Updated Final Safety Analysis Report (UFSAR) were evaluated for the effects of the increased boron concentration. Only the non-Loss of Coolant Accident (LOCA) boron dilution transient was found to have a more potentially severe result due to increased boron concentration. The other non-LOCA transients either were not impacted or were made less severe from the proposed increase in boron concentration. For the boron dilution transient, the presently specified NA–1&2 TS 3.1.1.3.2 precludes the possibility of an unplanned boron dilution by specifying that the primary grade water flow control valve be locked closed during operations in Modes 3, 4, 5 and 6 except during planned boron dilution or makeup activities. The current Standard Review Plan (SRP) acceptance criteria for the boron dilution transient are met through this presently specified NA–1&2 TS 3.1.1.3.2. Only the boron dilution transient during refueling and startup was determined to be more severe at the proposed boron concentation. The dilution transient during refueling is most limiting since the primary coolant volume is smallest at that time. An analysis for the proposed boron concentration during refueling and based on the maximum flow rate available shows that the operator would have 37 minutes to take corrective action in the event of excessive dilution during planned activities. The 37 minutes available for operator action is only very slightly less than the 39 minute operator action time specified in the NA–1&2 Final Safety Analysis Report (FSAR) in Section 15.2.4 for an uncontrolled boron dilution transient. Thus the operator would have sufficient time to terminate the boron dilution event before shutdown margin is lost and the consequences are not siqnificantly increased by the proposed boron concentration.

The effect of the proposed increase in boron concentration on the LOCA transient was analyzed for both the

large and small break LOCA scenarios. Included in this analysis was the effect of the higher boron concentration on the initial or blowdown phase of the large break-LOCA (LBLOCA), the Refill/Reflood portion of the injection phase of the LBLOCA, the recirculation phase of the LBLOCA, and the small break-LOCA (SBLOCA) transients which cause safety injection.

The blowdown phase of the LBLOCA is characterized by rapid depressurization which causes significant voiding in the reactor coolant system. In accordance with Appendix K, the docketed and approved NA–1&2 LBLOCA analysis does not assume control rod insertion, and heat generation in the core is reduced to decay heat levels by void reactivity. Therefore, for the blowdown phase of the LBLOCA, the core is shutdown due to void reactivity and is not affected by the proposed increased boron concentration.

The Refill/Reflood portion of the docketed NA–1&2 LBLOCA analysis shows that the peak clad temperature is reached before the time at which boron becomes significant in maintaining core shutdown. Therefore, the proposed increase in boron concentration has no effect on the docketed calculational results for the Refill/Reflood portion of the LBLOCA, and would in fact, if accounted for in the docketed analysis, provide additional conservatism.

For the recirculation phase of the LBLOCA, the boron concentration of the recirculation water is determined during the design process and verified during the reload safety analysis process to be sufficient to maintain the core subcritical with all rods out at cold zero power. In this manner, General Design Criteria (GDC) 26 is met and subcriticality maintained. Thus, the increased boron concentration does not impact the design constraint to maintain subcriticality at cold zero power with all rods out. Therefore, the recirculation phase of the LBLOCA transient is unaffected by the higher proposed boron concentration.

The SBLOCA analysis falls into the category of those transients which cause safety injection actuation. The control rods are assumed to insert and cause a trip. Safety injection is actuated at the appropriate pressure and would provide increased shutdown capability with a higher boron concentration. As above, the core is designed to maintain subcriticality at cold zero power even without the control rods inserted and the presence of the increased boron in no way alters this design limit.

Following a LOCA, borated water is injected into the vessel from the RWST and accumulators during the injection phase of the transient. The boron concentration in the core gradually increases because the boron does not vaporize along with the water. The flow path of the recirculation water must be periodically alternated between hot leg and cold leg injection to sweep the core of the higher boron concentration water. Because of the proposed bnron concentration increase the licensee determined that the recirculation switchover from hot leg and cold leg injection must occur sooner to avoid boron precipitation in the vessel.

At a concentration of 2400 ppm the switchover must occur at ten hours as opposed to the eighteen hour limit currently specified in the NA emergency procedures. Therefore, the applicable NA–1&2 emergency procedures will be changed to specify a switchover time of ten hours instead of the presently specified eighteen hour limit.

Limits are placed on the containment spray pH because of material considerations and the need to reduce the evolution of iodine from the liquid. The pH for recirculation spray (containment sump water) is limited to a value of 7 units in order to avoid stress corrosion cracking. Similarly, the pH of the quench spray system (RWST and CAT) is limited to a pH range of 8.5 to 11.0.

Increasing the boron concentration makes the solution more acidic and therefore only the minimum spray pH was reanalyzed. The maximum pH remains within the limits set by the NA–1&2 TS B3/4.5.5. The minimum quench spray pH was found to increase slightly in spite of the increased boron concentration due to a past TS change involving NaOH concentrations. The minimum quench spray pH increased from 8.7 to 8.8 based on a conservative analysis. The recirculation spray pH was analyzed and found to decrease from 7.9 to 7.7 based on a conservative analysis. Thus, for both analyses, the pH values changed only slightly and remained within the limits specified in the SRP (Section 6.1.1).

Other design constraints were also evaluated and shown to be met. Boron precipitation in the RWST/CCT/Accumulator was analyzed and found not to occur below concentrations of about 2.2 weight percent (approximately 3850 ppm) at temperatures above 32 °F. The environmental qualification for the majority of the electrical equipment in containment was performed at boron concentrations higher than 2400 ppm. In those instances where the concentration used for qualification was below 2400 ppm, it was determined that no degradation of the equipment would occur at the slightly higher concentration because the long-term post accident sump pH becomes more neutral as a function of time and therefore less corrosive.

Since the RWST boron concentration is being changed, the volume requirements needed to achieve the shutdown conditions specified in the NA–1&2 TS B3/4.1.2 were calculated. The required reactivity was determined in a conservative fashion by adding all of the following components: reactivity effects due to changes in moderator and fuel temperatures, xenon reactivity, and shutdown margin. The conservatism applied in this process was the use of the reactivity associated with peak xenon instead of equilibrium xenon. A mixing model was used to determine the volume of borated water from the RWST needed to achieve the required boron concentration in the vessel. After completing the above conservative calculations, the results were compared to a best estimate calculation of the needed borated water volume and the presently specified NA–1&2 TS volumes were found to be conservative by a factor of 1.7.

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 Part 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.

Based on all of the above, the proposed changes do not involve a significant hazards consideration because operation of NA–1&2 in accordance with these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because appropriate design constraints were analyzed for changes to TS 3.1.2.7, 3.1.2.8, 3.5.1, 3.5.5, 3.6.2.2, 3.9.1 and none were found to be more limiting than currently documented in the UFSAR. Subcriticality is maintained following a LOCA due to a combination of void formation, control rod insertion and soluble boron. The cold zero power boron concentration is determined such

that General Design Criterion (GDC) 26 is met. Boron dilution transients are effectively precluded by the TS requirement to lock the primary grade water flow control valve. The most limiting boron dilution event for the proposed boron concentration allows 37 minutes for corrective operator action to terminate the event before shutdown margin is lost. This 37 minutes is only slightly less than the 39 minutes specified in Section 15.2.4 of the NA–1&2 FSAR for corrective operator action and provides the operator with sufficient time to terminate the event. Thus, the consequences of the most limiting boron dilution transient are not significantly increased at the higher proposed boron concentration. Boron precipitation does not occur for low concentration solutions at temperatures above 32 °F, which is below the minimum RWST temperature permitted in TS 3.1.2.8. The electrical equipment subject to chemical spray qualification is not adversely affected by the higher boron concentration because the resulting solution pH is more neutral and therefore less corrosive. Finally, the minimum sump pH was calculated to be 7.7 units which is significantly above the SRP (Section 6.1.1) limit of ph=7.0. The changes to TS 3.9.1 and Bases sections B3/4.1.2, B3/4.5.5 and B3/4.9.1 are purely administrative in nature. They are necessary to achieve consistency with the safety analysis, with other TSs and with the format of the Westinghouse Standard Technical Specifications, which appropriately apply to NA–1&2.

2. Create the possibility of a new or different kind of accident from any accident previously identified because the proposed changes to TS 3.1.2.7, 3.1.2.8, 3.5.1, 3.5.5, 3.6.2.2, 3.9.1, B3/4.1.2, B3/4.5.5, and B3/4.9.1 do not involve any alterations to the physical plant which would introduce any new or unique operational modes or accident precursors. Procedural changes are limited to setpoint values or timing requirements.

3. Involve a significant reduction in a margin of safety because an inadvertent boron dilution is precluded by lockout of the primary grade water flow control valve. The requirements of GDC 26 are met with the higher boron concentration. The reactivity and boron concentration uncertainties are unchanged at 1.0 percent delta k/k and 50 ppm, respectively, as assumed in the safety analysis and NA–1&2 TS bases. Finally the refueling K_{eff} remains unchanged at 0.95. Therefore the margin of safety is unchanged by the proposed increase in the boron concentration.

Therefore, the proposed changes meet the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed changes involve no significant hazards considerations, and that operation of the facility in accordance with the proposed changes would not involve a 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 request: November 18, 1986, and January 7, 1987.

Description of amendment request: This proposed amendment, if approved, would revise the WNP–2 Technical Specifications by modifying Table 3.6.3–1, Primary Containment Isolation Valves, to include a new valve, TIP–V–15. TIP–V–15, an ASME solenoid valve, would replace TIP–V–6, an ASME check valve, outside containment and TIP–V–6 would be moved inside containment to allow purge gas to he supplied from outside the containment without altering the nitrogen purge function of the Traversing Incore Probe (TIP) System. This requested change is in response to the recognition of the misclassification of the nitrogen purge line as an instrument line. When discovered, the TIP purge system was removed from service, and a blind flange installed to insure containment integrity. Upon implementation of this proposed change, the TIP nitrogen purge line penetration will be returned to service. The licensee concludes the proposed modifications meet the requirements of General Design Criteria (GDC) 54 and 56.

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 modification will bring the TIP nitrogen purge line into conformance with the containment isolation design criteria that were the bases for granting the operating license; or (2) create the possibility of a new or different kind of accident than previously evaluated because the TIP purge system, after the proposed changes are made, will be in conformance with the design criteria against which the plant was previously evaluated; or (3) involve a significant reduction in a margin of safety because the design change makes the system configuration consistent with the configuration that was analysed, thus the margin of safety is unchanged.

Based on the above considerations, the Commission 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.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: January 16, 1987.

Description of amendment request: The amendment corrects typographical errors, clarifies the requirements of existing specifications, and adopts requirements from NRC Generic Letter 83–37, dated November 1, 1983, entitled "NUREG–0737 Technical Specifications" in regard to the containment hydrogen monitors.

Basis for proposed no significant hazards consideration determination: The proposed changes, other than the hydrogen monitor change, make minor corrections and clarifications to existing Technical Specifications. They do not add or remove any requirements to the existing Technical Specifications. Therefore, these proposed changes

maintain the intent of the existing Technical Specifications. Since the intent of the Technical Specifications (TS) remains unchanged, these changes are administrative. The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751) of actions likely to involve no significant hazards consideration. An example of an action involving no significant hazards consideration is a change that relates to "(i) A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The containment hydrogen monitors currently have a TS requiring the plant to be in the hot shutdown condition if one of the two channels of the system cannot be restored to an operable status within 84 hours. The change would permit the plant to operate with a single channel inoperable for up to thirty days. The hydrogen monitors are not safety-related components. The monitors are useful in a post-accident scenario to provide plant operators a read-out of hydrogen concentration in the unlikely event of a core melt. Such information is also available through other post-accident monitoring programs. The change may result in some increase in the consequences of a previously analyzed accident; however, the change meets the criteria of our GL 83–37 and therefore does not constitute a significant increase in the consequences of previously evaluated accidents.

Since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration (SHC) exists, or were determined not to constitute a SHC the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker Esquire, Foley and Lardner, P.O. Box 2193 Orlando, Florida 31082.

NRC Project Directorate: George E. Lear.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: January 22, 1987.

Description of amendment request: The proposed changes to Technical Specification (TS) Section 3/4 4.10 modify the requirements for integrity testing of steam generator tubes. These modifications will: (1) Provide flexibility in the sampling size specifications, (2) provide flexibility in sample selection criteria to reflect plant-specific testing experience, (3) provide cold-leg test criteria and (4) make editorial changes. In particular, the proposed TS changes would provide a defined criteria for large sample size inspections and would revise the definition of a tube inspection by removing the limitation for a hot leg entry point. Thus, an optimized test program could be used for each steam generator considering the past performance history.

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 an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The intent of the proposed changes to the steam generator inspection program is to enhance the program by using plant specific experience. Since past tests have shown that defects are about equally divided between the cold leg and hot leg, the change to the definition of tube inspection to allow cold-leg tests as valid inspections should improve the effectiveness of the test program in finding defects.

The current sampling criteria provide for a minimum sample size and Action Statements which generate additional larger sample criteria upon discovery of defects. However, when these criteria are applied to larger sample sizes the applicability of the action statements has required interpretation. The proposed change would allow combination of the minimum and subsequent sample sets for evaluation against the Action Requirements. Thus, the proposed changes regarding sample sizing and selection criteria would explicitly provide for action requirements when a larger sample than the minimum sample size is tested. This option would encourage larger sample sizes and thus reduce uncertainty.

The purpose of the steam generator inspection program is to monitor tube degradation such that degraded tubes can be identified and plugged before they fail. The changes to the testing program should enhance its effectiveness in locating defects. Therefore, these changes will not increase the probability or consequences of any accident previously evaluated.

The proposed changes relate to interpretation of testing requirements for steam generator tubes. No physical changes to the plant or its operating conditions are made. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes would enhance the capability of the inspection program to detect degraded tubes. Therefore, they would not decrease the margin of safety. On this basis, the staff proposes to determine that operation of the facility in accordance with the proposed changes would not result in a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: January 29, 1987.

Description of amendment request: The proposed change would modify the Technical Specification requirements on the minimum number of operable neutron detector thimbles from twelve, with at least two per quadrant to nine, with at least one per quadrant. The measurement uncertainty would be increased from 6.8 to 8% when fewer than twelve detectors are operable. The incore neutron detector system has 22 thimbles. However, only 13 are presently operable; a minimum of twelve are required by the TS. Thus, should additional detectors fail, the TS requirement may not be met.

The incore detection system is used for core power distribution measurements. These measurements are used to determine the peak linear heat generation rate, (LHGR), which helps establish operating limits such that safety analysis assumptions are satisfied. Sufficient coverage of detectors is needed such that the core power distribution is properly monitored. A factor is applied to the measurement to account for uncertainty. With the proposed changes, each

quadrant of the core would still have coverage, and a larger uncertainty factor, and thus a more stringent limit on LHGR, would be applied. These proposed changes requested for startup of the next operating cycle (June 1987) are identical to those granted by the Commission for the balance of cycle 18 operation in Amendment 100 to the license issued December 1, 1986.

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's application states:

> This change is requested in order to provide flexibility in plant operation with sufficient data gathering capability to ensure operation within licensed limits. As such, this proposed change would not:
>
> Involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely increases the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles. Therefore, the change cannot increase the probability or consequences of an accident, as the core will continue to be adequately monitored.
>
> Create the possibility of a new or different kind of accident from any previously analyzed. This modification only increases the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles. Therefore, it does not create the possibility of a new or different kind of accident since it does not modify plant operation or components.
>
> Involve a significant reduction in a margin of safety. This modification of increasing the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles will add sufficient additional margin to the power distribution measurements such that this change does not impact the safety margins which currently exist. Thus, this change does not involve a significant reduction in a margin of safety.

The staff has reviewed this discussion and is in agreement with it. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

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.

Commonwealth Edison Company, Docket No. 50–237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois

Date of amendment request: December 10, 1.,86, as supplemented January 28, 1987.

Description of amendment request: The licensee's initial application to support Cycle 11 operation was originally noticed in the **Federal Register** on January 28, 1987 (52 FR 2876). The January 28, 1987 supplement provides additional changes to modify the MAPLHGR curve for reconstituted GE fuel assembly LY 5458 and to incorporate minor labeling changes to specify fuel vendors as well as pagination changes resulting from the MAPLHGR curve change.

Date of publication of individual notice in **Federal Register:** February 6, 1987 (52 FR 3894).

Expiration date of individual notice: March 5, 1987.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

NRR Acting Project Director: Rajender Auluck.

Gulf States Utilities Company, Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 29, 1986 as supplemented on February 19, 1987.

Brief description of amendment request: The proposed amendment to the River Bend Station operating license would change the requirements to perform channel calibrations of the recirculation flow transmitters for two functions of the Average Power Range Monitor (APRM) and one function of the Reactor Coolant System Recirculation Flow from once per six months to once per 18 months.

These changes would be implemented through amending Technical Specification 3.3.1, Reactor Protection System Instrumentation, Table 4.3.1.1–1, Reactor Protection System Instrumentation Surveillance Requirements, Item 2.b, Average Power Range Monitor (APRM) Flow Biased Simulated Thermal Power—High, and Technical Specification 3.3.6, Control Rod Block Instrumentation, Table 4.3.6–1, Control Rod Block Instrumentation 4.3.1.1–1, Reactor Protection System Instrumentation Surveillance Surveillance Requirements, Item 2.a. APRM Flow Biased Neutron Flux-Upscale and Item 6.a, Reactor Coolant System Recirculation Flow-Upscale. The Technical Specifications presently have requirements to perform a channel calibration of these functions at least once per SA (semiannually, 6 months, 186 days). This change request permits the recirculation flow transmitters for these three (3) functions to be calibrated on an 18 month basis in accordance with the licensee's application for amendment dated August 29, 1986 as supplemented on February 19, 1987.

Date of publication of individual notice in **Federal Register:** February 25, 1987 (52 FR 5732).

Expiration date of individual notice: March 27, 1987.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

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.

Baltimore Gas & Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: July 31, 1986 (partial response) as supplemented by January 21, 1987.

Brief description of amendment: The amendment changed the full closure time for main steam isolation valve (MSIV) operability to "less than 5.2 seconds" as an integral part of MSIV modification at Calvert Cliffs.

Date of issuance: February 25, 1987.

Efffective date: February 25, 1987.

Amendment No.: 126.

Facility Operating License No. DPR–53. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45191 at 45193).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: September 5, 1986.

Brief description of amendment: The amendment revises the Technical Specifications to allow the control materials in the reactor control rod blades to be either the presently used boron carbide powder (B_4C) compacted to approximately 70% of theoretical density or a hybrid combination of boron carbide powder and solid hafnium.

Date of issuance: February 27, 1987.

Effective date: 30 days after the date of issuance.

Amendment No.: 98.

Facility Operating License No. DPR–35. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 3, 1986 (51 FR 43678).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 27, 1984 as supplemented July 22, 1986.

Brief description of amendments: The amendments revise the Technical Specifications to change the containment pressure trip setpoints and the main steam isolation valves surveillance requirements.

Date of issuance: February 20, 1987.

Effective date: February 20, 1987.

Amendment Nos.: 101 and 98.

Facility Operating license Nos. DPR–29 and DPR–30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7982). Since the initial notice, the licensee supplemented the application with a submittal dated July 27, 1986. This submittal corrected a number of administrative/typographical errors which did not affect the initial no significant hazards consideration determination nor the substance of the amendment. Therefore, renoticing of the application was not warranted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504 17th Street, Moline, Illinois 61265.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: December 5, 1986, as supplemented January 20 and February 4, 1987.

Brief description of amendment: The amendment revises a portion of Section 5.1 of the Technical Specifications to reflect the use of new hybrid control rods, manufactured by NUCOM, Incorporated, in the Cycle 22 core. The staff has denied that portion of the application requesting changes to Table 1 and 2 of Section 5.2 which specifies the reactor operating parameters for Cycle 22 Reload 1–2 fuel. A separate Notice of Denial of Amendment and Opportunity for Hearing has been forwarded to the Office of the Federal Register for publication.

Date of issuance: February 17, 1987.

Effective date: February 17, 1987.

Amendment No. 88.

Facility Operating License No. DPR–6. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 1987 (52 FR 1551).

The licensee's January 20 and February 4, 1987 submittals provided clarifying information at the request of NPC staff. These submittals did not significantly change the initial application nor the no significant hazards considerations determination as originally noticed. Therefore, renoticing was not warranted.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Detroit Edison Company, Docket No. 50–341, Fermi-2. Monroe County, Michigan

Date of application for amendment: October 24, 1986.

Brief description of amendment: This amendment revises the Fermi-2 Technical Specification 4.7.2.e.2 to eliminate the radwaste and turbine building exhaust radiation monitor signals surveillance requirements. These signals are two of several that are used to place the control room Heating,

Ventilation, and Air Conditioning (HVAC) system in an emergency mode when the monitors indicate high radiation. These monitors have been found to be unnecessarily redundant in the protection of the Fermi-2 control room operators against potential design basis releases of airborne radioactivity.

Date of Issuance: March 2, 1987.

Amendment No.: 7.

Effective date: March 2, 1987.

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41850).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 29, 1986.

Brief description of amendments: The amendments modify Technical Specification 5.3.1 to delete the maximum fuel rod weight limit of 1,619 grams of uranium from the Design Features Section.

Date of issuance: February 18, 1987.

Effective date: February 18, 1987.

Amendment Nos.: 22 and 12.

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30566).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 18, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: August 13, as superseded on August 20, 1986.

Brief description of amendments: These amendments revised the Station's common Technical Specifications (TSs) to maintain consistency between an exemption to Appendix J and to the TSs. The licensee has been granted an exemption to 10 CFR Part 50, Appendix J, Paragraph III.A.3, to use the mass-plot method for calculating containment leakage. These amendments revised the TSs to allow the use of the mass-plot method and to be consistent with the exemption to Appendix J.

Date of issuance: February 24, 1987.

Effective date: February 24, 1987.

Amendments Nos.: 154, 154, 151.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30591).

Since the date of the initial notice, the licensee submitted a letter dated August 20, 1986, which superseded the original application. This information did not revise the proposed TSs, therefore, the Commission's staff concluded that renoticing was not necessary.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 1987.

No significant hazards consideration comments received: Yes. By letter dated September 11, 1986, Wisconsin Public Service Corporation gave comments on the staff's proposed no significant hazards consideration determination. No other comments were received on this amendment request.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 28, 1985, as supplemented October 15, 1986, and November 4, 1986.

Brief description of amendment: This amendment reduces the frequency of diesel generator fast starts from ambient conditions as recommended in Generic Letter (GL) 84–15.

Date of issuance: February 25, 1987.

Effective date: February 25, 1987.

Amendment No.: 96.

Facility Operating License No. DPR-72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30572).

Since the date of the initial notice, the licensee submitted supplements to the application. These did not change the substance of the original application and therefore did not require renoticing.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: December 18, 1986.

Brief description of amendment: The amendment lowered the maximum allowable power level for linear heat rate monitoring using the excore detector system from 88 percent to 85 percent when the peripheral axial shape index is between 0.02 and 0.08.

Date of Issuance: February 19, 1987.

Effective Date: February 19, 1987.

Amendment No.: 77.

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 1987 (52 FR 1549 at 1552).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: August 19, 1986.

Brief description of amendment: The amendment revises the dummy load profiles which may be used for surveillance testing of station batteries.

Date of issuance: February 25, 1987.

Effective date: February 25, 1987.

Amendment No.: 74.

Facility Operating License No. NPF-5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 5, 1986 (51 FR 40279).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

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 application for amendments: January 9, 1987 as supplemented January 13, 1987.

Brief description of amendments: The amendments revise the Technical Specifications by deleting the expiration date of the provision that the auxiliary building crane main hoist be deenergized and the load blocks unloaded whenever the crane is moved over the spent fuel assemblies in the spent fuel pool. A separate licensing action will consider the removal of the entire provision upon the NRC approval of the load block analysis submitted by the January 9, 1987 letter.

Date of issuance: February 28, 1987.

Effective date: February 28, 1987.

Amendment Nos.: 101 and 87.

Facility Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2883).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of applications for amendment: June 24, July 15 and August 29, 1986 as supplemented by letters dated October 3, November 3 and November 12, 1986. The November 3 and November 12 letters were merely explanatory and were not substantive changes.

Brief description of amendment: The amendment revised the Technical Specifications by bypassing the non-safety related high steam generator level trip; adding the Reactor Vessel Level Monitoring System; and changing the location of the seismic monitors inside containment.

Date of issuance: February 18, 1987.

Effective date: February 18, 1987.

Amendment No.: 14.

Facility Operating License No.: NPF–38: Amendment revised the Technical Specifications.

Dates of initial notices in **Federal Register:** August 27, 1986 (51 FR 30576), September 24, 1986 (51 FR 33954), and October 8, 1986 (51 FR 360921).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of applications for amendment: August 29 and September 12, 1986, as supplemented by letters dated September 29 and November 6, 1986. The September 29 and November 6 letters were explanatory in nature and did not make any substantive changes.

Brief description of amendment: The amendment revised the Technical Specifications by adding new fire detectors in the control room and revising the requirements for fire detectors in the annulus.

Date of issuance: February 19, 1987.

Effective date: February 19, 1987.

Amendment No.: 15.

Facility Operating License No.: NPF–38. Amendment revised the Technical Specifications.

Dates of initial notices in **Federal Register:** September 24, 1986 (51 FP 33954), and October 8, 1986 (51 FR 36095).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: November 20, 1986.

Brief description of amendment: The amendment modifies Technical Specifications (TS) 3.12.C.3 and 4.12.C.a and Table 3.12.2. In August 1986, Northeast Nuclear Energy Company completed installation of an automatic total flooding Halon 1301 fire suppression system inside the cable vault room at Millstone Unit No. 1. The new system ensures that a fire will be detected and extinguished before damage to redundant safe shutdown equipment occurs.

Date of issuance: February 20, 1987.

Effective date: February 20, 1987.

Amendment No. 2.

Facility Operating License No. DPR–21. This amendment revised the technical specifications.

Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47083).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Philadelphia Electric Company. Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: November 17, 1986 as amended on December 22, 1986 and as supplemented on January 2 and January 29, 1987.

Brief description of amendment: This amendment changes Technical Specifications to allow plant operation with partial feedwater heating and with increased reactor core cooling water flow rates up to 105% of rated flow and deletes License Condition 2.C(13) which prohibited operation with partial feedwater heating for the purpose of extending the normal fuel cycle. This amendment does not authorize an increase in the licensed power level of 3293 MWt. Technical Specification changes include changes to the Minimum Critical Power Ratio limits, the control rod block instrumentation setpoints and the reactor coolant system surveillance requirements.

Date of issuance: February 17, 1987.

Effective date: February 17, 1987.

Amendment No.: 3.

Facility Operating License No. NPF–39: This amendment revised the Technical Specifications and the License.

Date of initial notice in **Federal Register:** January 8, 1987 (52 FR 714).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Dates of application for amendment: June 4, 1986, as supplemented October 27, 1986, and partially superseded by application dated December 19, 1986.

Brief description of amendment: This amendment incorporates the requirements for the licensee's Steam Line Rupture Detection/Isolation System at the Fort St. Vrain Nuclear Generating Station.

Date of issuance: February 26, 1987.

Effective date: February 26, 1987.

Amendment No.: 50.

Facility Operating License No. DPR–34: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27288) and January 14, 1987 (52 FR 1556). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 3, 1986.

Brief description of amendments: The amendments would allow for a reduction in the number of fuel rods per assembly in cases where leaking rods can be identified and replaced with Zircaloy-4 rods or stainless steel rods or vacancies.

Date of issuance: February 26, 1987.

Effective date: February 26, 1987.

Amendment Nos.: 76 and 50.

Facility Operating Licenses Nos. DPR–70 and DPR–75: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 1987.

No significant hazards consideration comments received:

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

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 applications for amendment: October 22, 1986, as corrected November 13, 1986, and January 22, 1986 (partial response).

Brief description of amendment: This amendment revised the reporting and advising relationship of the Company Nuclear Review Board, revised certain sections to be consistent with the B&W Standard Technical Specifications, revised the composition of the Station Review Board, and reflects current organizational structure, responsibilities, and titles. The amendment involves TS Sections 6.1.1, 6.2.2, 6.2.3, 6.3.1, 6.4.1. 6.5.1, 6.5.2, 6.6.1, 6.7.1, 6.8.2, and 6.8.3, and Figures 6.2–1 and 6.2–2.

Date of issuance: February 18, 1987.

Effective date: February 18. 1987.

Amendment No.: 98.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** November 19, 1986 (51 FP 41870) and July 2, 1986 (51 FR 24265). Since the date of the initial notice, the licensee supplemented the October 22, 1986, application by letter dated November 13, 1986. This supplement corrected a clerical error and did not warrant renoticing.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 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.

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: December 5, 1985.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) for Company Nuclear Review Board (CNRB) membership by delineating the educational and technical experience required for qualification. The amendment also made a minor editorial revision.

Date of issuance: February 19, 1987.

Effective date: February 19, 1987.

Amendment No.: 99.

Facility Operating License No. NPF–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24265).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 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.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: October 20, 1986, as modified December 18, 1986.

Brief description of amendment: The amendment modifies the Technical Specifications regarding the maximum nominal enrichment of reload fuel. The balance of the changes requested in the application will be addressed as requested in a December 18, 1986 letter.

Date of issuance: February 17, 1987.

Effective date: February 17, 1987.

Amendment No.: 103.

Facility Operating License No. DPR–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 1987 (52 FR 1559).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

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 tn this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated. For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, 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 April 13, 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.

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) through (v) and 2.714(d).

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: February 4, 1987.

Brief description of amendment: This amendment revises the Big Rock Point Technical Specifications by adding a table of uncertainty factors associated with the analysis of the core thermal-hydraulic parameters and by providing associated footnotes delineating the manner in which these uncertainty values are to be used in establishing conformance with associated thermal-hydraulic limits.

Date of issuance: February 19, 1987.

Effective date: February 19, 1987.

Amendment No. 89.

Facility Operating License No. DPR–6. This amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of Michigan, and final no significant hazards considerations determination are contained in a Safety Evaluation dated February 19, 1987.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

NRC Acting Project Director: Rajender Auluck.

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of Application for amendment: January 20, 1987.

Brief description of amendment: The amendment changes the Technical Specifications to permit the control room HVAC system air flow rate to be increased from 62,500 ±10% cfm to 64,000 ±10% cfm.

Date of Issuance: February 20, 1987.

Effective Date: February 20, 1987.

Amendment No.: 1.

Facility Operating License No. NPF–55: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of Illinois, and final no significant hazards considerations determination are contained in a Safety Evaluation dated February 20, 1987.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

Local Public Document Room Location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

NRC Project Director: Walter P. Butler.

Dated at Bethesda, Maryland, this 6th day of March 1987.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87–5200 Filed 3–11–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

The Consumers Power Company (CPC) is the holder of Facility Operating License No. DPR–6 which authorizes the operation of the Big Rock Point Plant (the facility), located in Charlevoix County, Michigan. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.71(e)(3)(ii) of 10 CFR Part 50 requires that those plants initially subject to the NRC's Systematic Evaluation Program (SEP) must file a complete updated Final Hazards Summary Report (FHSR) within 24 months after receipt of notification that the SEP has been completed. By letter dated August 27, 1984, the staff informed CPC that the SEP had been completed for the Big Rock Point Plant and that, pursuant to 10 CFR 50.71(e)(3), CPC was required to file an updated FHSR as outlined in section 5.3.25.1 of the Final Integrated Plant Safety Assessment Report (IPSAR), NUREG–0828, dated May 1984.

By letter dated October 31, 1984, CPC submitted a description of the program which was proposed to provide a workable substitute to updating the Big Rock Point Plant FHSR. That method involved creating a permanent computerized database of pertinent docketed correspondence and keyword/keyphrase list that would be used to search the database. A hard copy report which would show the keywords/keyphrases, the date, topic, and the locations within CPC of the letter that contained the keyword/keyphrase, would then be generated. The database, keyword/keyphrase list, and the hard copy report would be updated on an annual basis. NRC staff responded by letter dated December 4, 1984 and stated that although the details for implementing this system were not yet clear, the staff believed that the system being developed would be an acceptable alternative to an updated FHSR. CPC's conclusion that the method described was acceptable to the NRC was confirmed during a subsequent conference call between members of the NRC staff and CPC personnel. Thus, based on the results of the conference call, the preceding letters, and the finding contained in section 5.3.25.1 of the IPSAR, CPC proceeded with a good faith effort for the development and implementation of the cross alternative indexing program that had been described to the NRC.

As noted above, CPC identified an alternative to the requirements of 10 CFR 50.71(e) that, originally, was thought to be acceptable to both CPC and the NRC. Based on CPC's understanding that a system to index pertinent docketed correspondence was an acceptable alternative to an updated FHSR, CPC initiated and completed a good faith effort to develop and implement the system. However, NRC staff has recently identified concerns with the proposed system. These concerns were identified and discussed with CPC about the same time as the Final Updated FHSR was due, and summarized by letter dated December 3, 1986. As a result of these discussions,

CPC committed to provide an updated FHSR, which would address the remaining NRC concerns, by December 31, 1988. Therefore, in order to provide sufficient time for the completion of the updated FHSR, since there were only a few days left to complete an updated FHSR, CPC has requested an exemption to the schedular requirements of 10 CFR 50.71(e)(3)(ii).

In light of the original understanding by both CPC and the NRC concerning the acceptability of the proposed substitute for the Big Rock Point Plant updated FHSR and the ultimately different NRC staff final position that the alternative would not be acceptable, thus leaving essentially no time for CPC to complete an updated FHSR, special circumstances exist which make compliance with the regulations result in undue hardship that is significantly in excess of those incurred by others similarly situated within the meaning of 10 CFR 50.12(a)(2)(iii). This exemption will have no significant effect on plant safety. For the foregoing reasons, an exemption to 10 CFR 50.71(e)(3)(ii) should be granted such that the required submittal date for the Big Rock Point Plant updated FHSR need not be met by CPC. During a telephone conference with CPC on November 30, 1986, the schedule for submittal of an updated FHSR was established as December 31, 1988. This date is documented in CPC's letter dated December 3, 1986. Therefore, an exemption until December 31, 1988 is being granted by the staff for the submittal of an updated FHSR for the Big Rock Point Plant.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(iii), are present justifying the exemption. Specifically, due to misunderstanding between CPC and the NRC staff as to the details of an acceptable alternative to an updated FHSR, CPC was unable to submit an acceptable alternative on time and now would be required to provide an updated FHSR in a very short period of time. This would result in undue hardship significantly in excess of that incurred by others similarly situated since other facilities have had periods of approximately two years. Therefore, the final completion date for the FHSR update shall be December 31, 1988. Accordingly, the Commission hereby grants an exemption from the requirements of 10 CFR 50.71(e)(3)(ii) such that the submittal date for the Big Rock Point Plant updated FHSR need not be met.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (February 27, 1987, 52 FR 6085).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 3rd day of March, 1987.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 87-5352 Filed 3-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Florida Power and Light Co. (St. Lucie Plant, Unit No. 1); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR-67 that authorize the operation of the St. Lucie Plant, Unit No. 1 (the facility) at a steady-state power level not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in St. Lucie County, Florida. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

10 CFR 50.48, "Fire protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," set forth certain specific fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.G of Appendix R required fire protection of safe shutdown capability for structures, systems and components important to safe shutdown. Section III.J of Appendix R requires emergency lighting with at least an 8-hour battery power supply for all plant areas needed for operation of safe shutdown equipment and in access and egress routes thereto associated with this equipment.

III

The licensee requested exemptions from specific requirements of Appendix R to 10 CFR Part 50, sections III.G and III.J, in their applications dated December 14, 1983, November 28 and December 31, 1984, and February 21, 1985.

In a letter dated January 30, 1987, the licensee provided information to the "special circumstances" finding required by revised 10 CFR 50.12(a) (See 50 FR 50764). The licensee stated that the fire protection features at St. Lucie Unit 1 accomplish the underlying purpose of the rule. To require installation of additional suppression systems, detection systems, and fire barriers would result in the expenditure of engineering and construction resources as well as the associated capital costs. The costs to be incurred are those costs associated with:

- Engineering and installation of additional piping, sprinkler heads, and supporting structures and associated surveillances.
- Engineering and installation of fire barriers, supports, support protection, and ongoing maintenance.
- Engineering and installation of replacements for existing mechanical and electrical containment penetrations.
- Engineering and installation of additional fire detection systems and the associated surveillance.
- Increased congestion in a number of plant locations complicating future plant modifications/operations.

The licensee stated that application of the regulations in these particular circumstances is not necessary to meet the underlying purpose of the rule. The staff concludes that "special circumstances" exist for the licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

The NRC staff evaluation of the requested exemptions is contained in section IV, below.

IV

Fire Areas A, B, C, E, F, H-H, I-I, and J

Exemptions were requested from section III.G.2.a of Appendix R to the extent that exterior wall penetrations of these areas have not been provided with 3-hour fire rated barriers. The licensee, by Revision 3 to the fire hazards analysis dated November 28, 1984, requested eight exemptions (identified as A_1, B_1, C_1, E_2, F_1, H-H_1, I-I_1 and J_1) from installing 3-hour fire rated doors, HVAC duct dampers, and penetration seals in exterior walls of these fire areas. Because none of the exterior wall penetrations separate redundant safe shutdown systems and no fire hazards are located near the exterior walls, the

subject exemption requests are not required by Appendix R criteria. Based on the above evaluation, it is concluded that exemption requests A_1, B_1, C_1, E_2, F_1, H–H_1, I–I_1 and J_1 are not necessary.

Fire Area K (Reaction Containment Building)

Exemption Requested

An exemption was requested from section III.G.2.d of Appendix R to the extent that cables for safe shutdown equipment and associated nonsafety circuits of redundant trains in containment are not separated by 20 feet of horizontal distance with no intervening combustibles or fire hazards.

Discussion

This exemption request for Fire Area K was previously submitted to the NRC in the form of an exemption from either the "20 feet of separation" or "separation by a noncombustible radiant energy heat shield." This exemption was granted by a letter dated February 21, 1985. The revised exemption request, which is the subject of this evaluation, now incorporates the additional parameter of "no intervening combustibles" in the 20 feet of separation space.

The reactor containment building is separated from other plant areas by 3-hour fire rated barriers. The containment is one fire area with a large volume and a high ceiling. There are four floor levels inside the containment at the 18-, 23-, 45-, and 62-foot elevations. Normal access to the containment is controlled and limited.

Our previous evaluation of this exemption and its approval was based, in part, on the following:

—All nonqualified IEEE Std 383 cables are covered with a fire retardant mastic.

—Separation of redundant cables was by more than 7 feet horizontally and 25 feet vertically.

—Because of limited access and small amounts of combustibles, a fire of sufficient magnitude to damage redundant cables or associated circuits is unlikely.

—The containment volume and high ceiling would cause a small fire's energy to readily dissipate and not threaten redundant cables simultaneously.

Evaluation

The fire protection in the containment fire area does not comply with the technical requirements of section III.G.2.d of Appendix R because 20 feet of separation free of intervening combustibles have not been provided between safe shutdown equipment cables and associated nonsafety circuits of redundant trains.

Reaffirming our previous evaluation of the containment fire area and its redundant cables, it is concluded that because of the small amount of combustibles, a potential fire would be of limited magnitude and extent. The products of combustion from such a fire would be dissipated up into the higher elevations of the containment structure and away from the vulnerable shutdown components. Therefore, we conclude that one shutdown division would remain free of fire damage.

Conclusion

Based on the above evaluation, it is concluded that exemption request K_1 for Fire Area K (containment) from section III.G.2.d of Appendix R is acceptable because the removal of the combustibles in the separation space between redundant cables and associated circuits would not significantly increase the level of fire protection. Therefore, the exemption is granted.

Steel Conduit Structural Supports

Exemptions Requested

Exemptions were requested from section III.G.2.a of Appendix R to the extent that it requires fire resistant materials for covering all structural supports for steel conduits that are provided with a fire rated barrier or wrap.

Discussion

The requested exemptions apply to the following areas:

—Fire Area A
—Fire Area B
—Fire Area C
—Fire Area E
—Fire Area N
—Fire Area O

The exemptions are identified by the licensee as A_3, B_2, C_4, E_4, N_4 and O_5. Each of the above areas contains early warning fire detection either on an area-side or spot location basis. The fuel load is low. The licensee has made provisions for confining any flow of combustible liquids. In these areas, the redundant shutdown equipment cables are either separated or are in steel conduits protected by a fire-rated wrap. Fire extinguishers and hose stations are available to the areas affected.

Evaluation

The technical requirements of Section III.G.2.a are not met in the above-referenced areas because conduit supports have not been protected against fire damage.

Our principal concern is that a fire could produce elevated room temperatures sufficient to cause the supports to fail, resulting in damage to the protected conduit and loss of shutdown capability.

The affected areas have no automatic fire suppression capability. A fire, if one should occur, would have to be extinguished by the plant fire brigade. From the time a fire occur, through the arrival of the brigade, a significant time lapse may occur. We normally expect that it will take at least one-half hour before a fire would be considered under control and up to an hour before near-ambient conditions are restored. If a fire were to produce elevated room temperature in accordance with the standard fire test of ASTM E–119, steel failure could be expected after about 10 minutes. Because it is not possible to consistently predict the nature of fire in any plant area and because of the inherent time delays associated with fire brigade response, it is very important to have complete passive fire protection for one train of shutdown components in an area without an automatic fire suppression system. Without protection for the conduit supports, safe shutdown cannot be reasonably assured.

Conclusion

Based on our evaluation, we conclude that the licensee's existing fire protection for the above-referenced areas does not achieve an equivalent level of safety to that attained by complete conformance with section III.G.2. Therefore, the licensee's request for exemption in these areas is denied.

Containment Electrical Penetrations

Exemptions Requested

Exemptions A_4, C_6, and K_3 were requested from section III.G.2.a of Appendix R to the extent that 3-hour fire rated electrical penetration seals are not provided in the containment structure.

Discussion

The licensee has identified the electrical penetration assemblies as not being fire rated. The electrical penetration consists of a primary and secondary seal. The primary seal is located within the 3⅝-inch steel containment shell and the secondary seal is located within the 36-inch concrete containment wall. A 48-inch-wide annulus exists between the two seals. Both seals are constructed of substantial steel materials consisting of 1½-inch-thick by 20-inch-diameter ASTM Grade A–36 plates, 80 ASME SA 106 Grade B sleeves, 80 ASME SA 234 pipe cap, and fillet welds. The seals are

completely closed and tested for airtightness. The entire length of the seal is about 7 feet. As the cables pass through the annulus, they are covered completely by a 12-inch steel sleeve. The wall thickness coupled with the seal construction is deemed to provide equivalent protection to a standard 3-hour fire rated penetration seal.

The electrical penetration areas for trains A and B are constructed of concrete and have high ceilings. Each area has a fire detection system. There is no fire loading on the floor and cables are in covered metal cable trays or conduits. It is expected that a fire would be small and of short duration. The electrical penetration rooms are separated from each other by a concrete fire wall. The containment side of these penetrations is a high radiation area and personnel access is limited, thus minimizing the probability of introducing transient combustibles. The cables entering the containment side are immediately separated and a radiant energy shield is provided between redundant safety-related cable trays. The containment volume is large (2.5 million cubic feet) and allows for free dissipation of heat and smoke. Therefore, a fire (which would be small) would not be able to affect a seal. The annulus area has a negligible fire load.

Evaluation

The fire protection in the containment structure does not comply with section III.G.2.a of Appendix R because 3-hour fire rated electrical penetration seals are not provided.

Because of the materials of construction, airtightness, and seal arrangement, it is concluded that the electrical penetration seals provided by the licensee are equal to or better than a standard 3-hour fire rated seal. Further, both sides of the subject electrical penetrations have a low fire loading and/or are under the protection of fire detection systems. The containment side has a large volume that allows heat to dissipate away from the seals. It is concluded that should a fire occur, it would be small, of short duration, and easily extinguished by automatic system or the fire brigade.

Conclusion

Based on the above evaluation, it is concluded that the existing electrical penetrations provided for these areas are equivalent to a 3-hour fire rated barrier and/or are sufficient to withstand the expected fire severity with considerable conservatism. Therefore, the exemption is granted.

Containment Mechanical Penetrations

Exemptions Requested

Exemptions E_6, J_5, K_4 were requested from section III.G.2.a of Appendix R to the extent that 3-hour fire rated mechanical penetration seals are not provided in the containment structure.

Discussion

The mechanical penetration assemblies are similar to those for electrical penetration in that they pass through a 36-inch concrete containment wall, a 4-foot-wide annulus, and a 3⅝-inch steel containment shell. The penetrations are welded air-tight and are constructed of heavy steel components similar to the electrical penetrations.

Evaluation

The fire protection in the containment does not comply with section III.G.2.a of Appendix R because 3-hour fire rated mechanical penetration seals are not provided.

Because of the materials of construction, airtightness, and seal arrangements, it is concluded that the mechanical seals provided by the licensee are equal to or better than a standard 3-hour fire rated seal. Further, as in the case for the electrical penetration seals, both sides of the mechanical seal penetrations have a low fire loading and/or fire detection systems. The containment side has a large volume that allows heat to dissipate away from the seals. It is concluded that should a fire occur, it would be small, of short duration, and easily extinguished by the fire brigade.

Conclusion

Basedon the above evaluation, it is concluded that the existing mechanical penetration seals provided for the containment penetrations are equivalent to a 3-hour fire rated barrier and are sufficient to withstand the expected fire severity with considerable conservatism. Therefore, the exemption is granted.

Containment Purge Valves (Fire Areas E and K)

Exemptions Requested

Exemptions E_6 and K_5 were requested from section III.G.2.a of Appendix R to the extent that fire rated dampers are not provided for 3-hour fire rated barriers.

The licensee has stated in the submittal that containment purge valves are not fire rated. For these fire areas, the purge HVAC system is constructed of piping and valves instead of the usual ducts and dampers. The pipes have a wall thickness of about 0.375 inch compared with the 0.0312-inch thickness of a 3-hour fire rated damper. This pipe wall thickness far exceeds the fire damper in material size and, therefore, would have greater fire endurance.

Each 48-inch purge line pipe has three remote manually operated butterfly valves. The 2-inch bypass line pipes each have two remote manually operated butterfly valves. All of these valves are required by Technical Specifications to be shut, except when in the refueling or shutdown mode. The valves for each pipe are in separate fire areas; thus, a single fire would not affect all valves on any one pipe. Should a valve fail, the failure mode is to the closed (safe) position. Cable routing for these valves is such that a single fire would not cause the spurious opening of all redundant valves.

All of the affected areas have a negligible fire loading. Ionization smoke detectors are provided, but not on an area-wide basis. Fire extinguishers and hose stations are available for use in the area.

Evaluation

Because of the low fire loading, a fire would be of limited magnitude and short duration. The existing piping and valves would provide an adequate fire barrier and are deemed to be equal to a standard 3-hour fire damper. Redundant safe shutdown cables and equipment would not be in jeopardy. Based on the evaluation, it is concluded that the existing purge HVAC piping and valves serve as an adequate fire barrier and are equivalent to a 3-hour rated fire damper and/or are sufficient to withstand the expected fire severity with considerable conservatism.

Conclusion

Based on the above evaluation, it is concluded that the existing containment purge valves provided for the containment HVAC penetrations are equivalent to a 3-hour fire rated damper and/or are sufficient to withstand the expected fire severity. Therefore, the exemption is granted.

Reactor Containment Building

Exemption Requested

An exemption was requested from Section III.J of Appendix R to the extent that 8-hour battery powered emergency lights in the containment structure were not provided.

Discussion

The purpose of providing 8-hour battery powered emergency lights is to

ensure that minimal required lighting is available for the performance of manual actions necessary for safe shutdown after a fire. Usually, manual actions are required for valve alignment, repairs, and pump control operations. The licensee stated that the only operator actions in the containment would be to operate valves for cold shutdown. Operation of these valves is not required for hot shutdown.

Normal and emergency lighting exists inside the containment. Also, in the event of a loss of offsite power, the normal lighting system can be energized manually from an onsite source. The licensee has also provided four dedicated portable emergency lighting units for use by the operators. These units are located outside of the containment.

Evaluation

Emergency lighting for fire protection purposes for the containment structure does not comply with the technical requirements of Section III.J because of the lack of 8-hour battery powered emergency lights.

Since the only manual actions required inside the containment are for the operation of valves for cold shutdown and not hot shutdown, sufficient time is available for the licensee to take appropriate action to reenergize the normal containment lighting or to assemble portable lighting units prior to containment entry. Also, because of the high containment atmospheric temperatures, battery powered lights would be in an environment hostile to battery life and thus would degrade their reliability.

Conclusion

Based on the above evaluation, it is concluded that the installation of 8-hour battery powered emergency lighting units inside the containment would not significantly improve the level of fire protection for this fire area. Therefore, the exemption is granted.

Summary

Based on our evaluation, we conclude that because the existing fire protection and/or proposed fire protection modifications provide a level of safety equivalent to the technical requirements of sections III.G and III.J of Appendix R, the following exemptions are granted:

1. Reactor containment building (Fire Area K) to the extent that containment cables are not provided with 20 feet of separation with no intervening combustibles.

2. Electrical penetrations in the containment to the extent that they are not provided with fire rated seals.

3. Mechanical penetrations in the containment to the extent that they are not provided with fire rated seals.

4. Containment purge values to the extent that they are not 3-hour fire rated.

5. Reactor containment building to the extent that 8-hour battery powered emergency lights are not provided.

Based on our evaluation, we conclude that the existing level of fire protection for steel conduit supports does not provide an equivalent level of safety to that achieved by compliance with Section III.G of Appendix R. Therefore, the licensee's request for exemption from the requirement to protect the supports is denied.

The exemptions requested for penetrations in exterior walls are not needed.

V

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a) that (1) these exemptions as described in section IV are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) special circumstances are present for these exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption requests identified in section IV above.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of these Exemptions will not result in any significant impact on the environment (51 FR 39926).

Dated at Bethesda, Maryland, this 5th day of March 1987.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87-5353 Filed 3-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-289 and 50-320]

General Public Utilities Nuclear Corp.; Three Mile Island Nuclear Stations Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition filed under 10 CFR 2.206 by Mr. Randy King on behalf of the Three Mile Island Public Interest Resource Center and others (TMI-PIRC or Petitioners) regarding the Three Mile Island Nuclear Station Units 1 and 2 (TMI 1 and 2). The Petitioners requested that the Commission immediately halt all work at TMI 1 and 2 except that for maintenance necessary for safety. TMI-PIRC based its request on the allegations of Richard D. Parks concerning implementation of the quality assurance program and related areas of the Three Mile Island Nuclear Station Unit 2.

The staff has considered the Petitioner's allegations and has determined that they do not provide an adequate basis for the relief requested. The reasons are fully set out in a "Director's Decision Under 10 CFR 2.206" (DD-87-03) which is available for public inspection at the Commission's Public Document Room located at 1717 H Street NW., Washington, DC 20555, and at the local public document room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, PA 17126.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 6th day of March 1987.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-5354 Filed 3-11-87; 8:45AM]

BILILNG CODE 7590-01-M

[Docket No. 40-8822]

Finding of no Significant Impact; Termination of Materials License No. SMC-1420, Omaha Public Power District; Fort Calhoun Station

The U.S. Nuclear Regulatory Commission (the Commission) is considering the termination of Materials License No. SMC-1420. The site was used for storage of natural uranium hexafluoride.

Environmental Assessment

Identification of the Proposed Action

The proposed action would be to release the storage area for unrestricted use and to terminate the license.

The Need for the Proposed Action

The storage area should be released for unrestricted use because it is no longer used for storage, and there is no residual radioactive contamination, therefore, the area no longer needs to be under license.

Environmental Impacts of the Proposed Action

Based on the radiation survey report provided by the applicant and NRC's confirmatory survey results, the storage area does not contain any residual contamination. All material has been shipped offsite. The storge area can be used in any manner without adversely impacting the environment or any potential user. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action

The storage area could be maintained under license, however, the area does not have any residual radioactive contamination, therefore, maintaining it under license does not provide an environmental advantage.

Agencies and Persons Consulted

The Commission's staff reviewed the applicant's request of June 18, 1986, and the NRC confirmatory survey results and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the termination of Materials License No. SMC–1420. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 427–4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Silver Spring, Maryland, this 6th day of March 1987.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS

[FR Doc. 87–5355 Filed 3–11–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Intent To Conduct a Cost Comparison Study Under OMB Circular A–76; Text Storage and Distribution Center, Denver, CO

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with OMB Circular No. A–876, the Office of Personnel Management plans to conduct a cost comparison study of the Test Storage and Distribution Center in Denver, Colorado. The study will begin in March 1987. This notice is not an invitation for sealed bids or a request for proposals. When bids/proposals are desired, appropriate advertisement will be placed in the *Commerce Business Daily*.

FOR FURTHER INFORMATION CONTACT: Peter M. Durant, A–76 and Efficiency Review Manager, Office of Personnel Management, Rm. 2H28, 1900 E Street NW., Washington, DC 20415, (202) 653–5559.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–5309 Filed 3–11–87; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–8248]

Issuer Delisting; Application To Withdraw From Listing and Registration; Mayflower Group, Inc. (7⅞% Convertible Debentures Due 2006 of Mayflower Group, Inc.)

March 6, 1987.

Mayflower Group, Inc. ("Mayflower"), through its successor, Mayflower Transit, Inc. ("Transit"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration includes the following:

On December 19, 1986, Mayflower Group, Inc., an Indiana corporation ("Mayflower") and the original issuer of the Debentures, was merged with and into MG Acquiring Corporation, an Indiana corporation ("Acquiring"), an indirect wholly-owned subsidiary of MG Holdings, Inc., an Indiana corporation which has since been renamed Mayflower Group, Inc. ("New Mayflower"). Acquiring was merged with and into Transit. Transit is therefore the legal successor to Mayflower the original registrant of the Debentures. In connection with this merger all issued and outstanding Common Shares, without par value, of Mayflower were converted into the right to receive $31.50 per share in cash. Pursuant to the Indenture between Mayflower and Merchants National Bank & Trust Company of Indianapolis, as Trustee, dated as of March 15, 1986, the First Supplemental Indenture was executed in connection with this merger on December 19, 1986. This First Supplemental Indenture provided that Acquiring would be substituted for Mayflower under the Indenture and that each such Debenture would be convertible only into the right to receive an amount of cash equal to the cash receivable upon the merger by the holder of Common Shares of Mayflower into which such Debentures could have been converted immediately prior to the merger.

In connection with the reorganization of New Mayflower and its subsidiaries, Acquiring was merged with and into Transit (then named MG Transit, Inc.) on December 30, 1986. Transit is a direct, wholly-owned subsidiary of New Mayflower. The second supplemental indenture was executed in connection with this merger on December 30, 1986. It provides for the substitution of Transit for Acquiring under the indenture and also provides that both Transit and New Mayflower assume the obligations to pay principal and interest on the Debentures as required under the Debentures. Thus, Transit has become the issuer of the Debentures but shares payment obligations jointly with New Mayflower.

As of January 9, 1987, the approximate number of record holders, amount outstanding and conversion price of the Debentures were as follows:

No. of record holders	Amount outstanding	Conversion price
26	$11,888,000	$969.23

Since the Debentures are held of record by only 26 persons and their conversion price has become fixed at $969.23, the Debentures are not likely to be the subject of any significant trading activity.

The Board of Directors of Transit, as successor to Mayflower, has determined that, since (a) the number of record holders of the Debentures is so small, and (b) they are no longer convertible into any equity security, but only into cash and (c) the trading market therein is limited, the expense of the preparation and filing of periodic reports under the Exchange Act, including the cost of preparing audited financial statements of Transit, is disproportionate to any benefit to the holders of the Debentures. Transit believes that the preparation of such periodic reports would place demands upon its management that are unnecessary under the circumstances.

Any interested person may, on or before March 27, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5264 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 5, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Computer Task Group, Inc., Common Stock, $.01 Par Value (File No. 7-9776)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz.

Secretary.

[FR Doc. 87-5272 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24160; File No. SR-MSRB-86-15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), submitted on December 31, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G-8(a)(xi) concerning the recordkeeping of suitability information obtained pursuant to MSRB rule G-19(b).

Rule G-19 provides that before making a recommendation to a customer, a municipal securities professional must determine that the securities are a suitable investment for that customer. The suitability determination must be based on information furnished by the customer relating to his or her financial background, tax status, and investment objectives, and any other similar information. Although rule G-8(a)(xi) requires municipal securities professionals to make and update records containing account information for non-institutional customers, the rule has not required dealers to document the suitability information obtained pursuant to rule G-19(b). The proposed rule change would require municipal securities dealers to record and maintain this suitability information, and any other information used or considered to be reasonable and necessary by such dealers in making recommendations to customers. The MSRB determined that this suitability recordkeeping requirement would be valuable to dealers in making recommendations and would assist municipal securities principals and regulatory examiners in reviewing transactions for compliance with rule G-19.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23955 (52 FR 1267, January 12, 1987). Two comments were received by the Commission regarding the proposal: one from the Office of the Comptroller of the Currency ("OCC"), and one from Alex. Brown & Sons, Inc. ("Alex. Brown").[1]

Alex. Brown opposes adoption of the amendment for several reasons. Because it believes that no similar rule is required for general securities accounts, it claimed that the amendment would require a separate recordkeeping system or modification of current account records and thus, that the proposed requirement would be unduly burdensome and costly. Alex. Brown also stated that the information to be recorded could become obsolete and useless, and that a dealer would not necessarily be protected should the suitability of a recommendation subsequently be questioned. Finally, Alex. Brown noted that it had not observed abuses warranting the imposition of new requirements.

OCC is the appropriate regulatory authority for national bank municipal security dealers, and, as such is responsible for ensuring compliance by those banks with the MSRB rules. The OCC stated that the amendment to rule G-8 would enable its staff to enforce the customer protection principles of MSRB rules G-19 and G-27.[2] Specifically, the OCC believes that a municipal securities principal cannot fulfill reasonably his or her responsibilities for reviewing customer accounts if he or she does not have access to customer account records that reflect information obtained by sales representatives in response to suitability inquiries.[3] For this reason,

[1] *See* Letter from Owen Carney, Director, Investment Securities Division, OCC, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1987 ("OCC letter"); and letter from Charles S. Garland, Jr., Alex. Brown & Sons, Inc., to Jonathan G. Katz, Secretary, SEC, dated February 17, 1987. The MSRB also received 16 comment letters in response to the draft amendment published for comment by the MSRB in September 1986. Most of the commentators opposed the draft amendment. The MSRB's filing with the Commission and the OCC comment letter summarized and responded to the commentators' objections. Copies of the adverse comment letters are in File No. SR-MSRB-86-15.

[2] Rule G-27 concerns the obligation of a broker, dealer, and municipal securities dealer to supervise the activities of its associated persons in connection with the municipal securities business.

[3] It bears noting that it was originally the recommendation of the OCC that prompted the MSRB's determination to publish for comment the draft amendment.

OCC already encourages national bank municipal securities dealers to maintain the records that will be required by the amendment and criticizes a bank that does not maintain such records. Further, when the OCC encounters irregularities or abuses that it feels could have been detected or prevented by a written record containing suitability inquiry information and such a recordkeeping system is not in place, the OCC recommends an enforcement action against supervisory principals for failure to supervise.

The OCC noted that there were a number of objections submitted to the MSRB regarding the proposed rule change. Specifically, the OCC acknowledged commentators' complaints that corporate securities dealers are not subject to a similar rule, but emphasized that given the nature of the municipal securities market and rules governing dealer behavior, additional responsibilities are not unwarranted. Because municipal securities investors generally seek tax exempt income and often are risk averse, the OCC said it would not be unreasonable to require documentation of an investor's tax status and investment objectives.[4]

The OCC also disagreed with commentators' arguments that the costs of maintaining customer suitability records would outweigh the benefits. The OCC stated that the required documented information would have to be sought anyway from the customer by the sales representative before the municipal securities transaction could be recommended. Rebutting commentators' claims that checklists are ineffective because of the subjectivity of customer suitability information, the OCC stated that a number of national bank dealers already use checklists as the most effective method of fulfilling supervisory responibilities, finding them an efficient and meaningful way to collect the data.[5]

The OCC noted that some commentators believed the rule amendment unnecessary because investors who feel that they have been harmed by recommendations could file a complaint. The OCC said, however, that investors unsophisticated enough to become victims of a salesperson's unsuitable recommendations also may be too unsophisticated to voice complaints effectively.

Finally, some commentators suggested that the additional information called for in the proposal could lead to so-called "second guessing" by the regulators. The OCC responded that in its examinations it already was essential for the OCC to review dealers' suitability determinations, but that better documentation actually could result in more effective review.[6]

The Commission believe that the proposed rule change may improve compliance with the suitability requirements applicable to municipal securities brokers and dealers by providing a framework to ensure that these requirements are followed within an individual firm and by enhancing the ability of regulatory examiners to conduct effective oversight of compliance with rule G–19. The Commission also does not believe the proposal imposes substantial burdens. The requirements can be satisfied by the addition of a checklist to existing customer records. Indeed, many dealers already maintain records that satisfy the proposal.[7] With respect to commentators' arguments that the information would become stale, rule G–19 currently requires a dealer to make a suitability requirement each time it recommends a transaction to a customer. Moreover, MSRB rule G–8 already requires that such written records as are maintained must be kept current.[8] Therefore, any municipal securities dealer already is required to maintain current information sufficient to reach a proper suitability determination. Finally, the Commission believes that rather than leading to so-called "second guessing" based solely upon the documenation required by the proposal, the proposal provides a valuable tool for more effective oversight. Accodingly, the Commission finds that the burdens imposed by the proposal are minimals, and are outweighed by the potential benefits of improved compliance with the MSRB's suitability requirements.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Dated: March 5, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5270 Filed 3–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24184; File No. SR–NASD–87–12]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Extended Hearings

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 20, 1987, the National Association of Securities Dealers, Inc. ("NASD" or "Corporation")

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[4] The MSRB also suggested that, although the corporate securities industry is not subject to formal suitability recordkeeping requirements, that industry has a longstanding practice of documenting suitability information, citing the New York Stock Exchange's *Patterns of Supervision, A Guide to the Supervision and Management of Registered Representatives and Customer Accounts*, p. 41 (January 1982). *See* MSRB filing at 4.

[5] The MSRB also argued that the recordkeeping requirement would not be burdensome, because it could be complied with through checlists on existing customer account cards, and would even provide protection to dealers if the suitability of a recommendation were subsequently questioned. The MSRB also indicated that the proposal would not impose any additional burden concerning updating suitability records other than requiring the documentation of material changes in information previously recorded because rule G–8 already requires written records be kept current, including any records of suitability determiantions. *See* MSRB filing at 4.

[6] In this connection, the MSRB also stated that the proposed rule change is intended only to give examiners a "starting point" from which to review compliance with rule G–19, and that none of the many dealers who already maintain suitability records has been cited for violating rule G–19 based solely on the information contained on customer account records. *See* MSRB filing at 4.

[7] *See* Letter from Tricia L. Nazar, Complinace Officer, Trading Products Group/Municipal Bond Department, The First National Bank of Chicago, to Angela Desmond, General Counsel, MSRB, dated October 28, 1986; and letter from Valentina R. Stum, Senior Counsel, Merrill Lynch Capital Markets, to Angela Desmond, General Counsel, MSRB, dated November 12, 1986. Both letters are contained in File No. SR–MSRB–86–15.

[8] In this connection, the Commission acknowledges that there are no formal suitability recordkeeping for corporate securities, although as a matter of practice some firms may keep such records. *See supra* note 4. We note, however, that the New York Stock Exchange's Rule 405 requires members to "use due diligence to learn the essential facts relative to every customer . . ." The Commission can identify no way that members can effectively demonstrate compliance with this requirement without maintaining records similar to those proposed by the MSRB.

Moreover, the Commission believes that recordkeeping requirements do not have to be identical for all self-regulatory organizations so long as any particular recordkeeping requirement is justified in terms of its benefits and burdens. In this regard, the Commission agrees with OCC that, because municipal securities investors generally seek tax exempt income and often are risk averse, it is reasonable to requrire specific documentation of an investor's tax status and investment objectives, particulary at a time when increasing numbers of new types of municipal securities are being introduced.

filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes to Article X, section 6 of the By-Laws of the NASD and Article I, section 2, Article II, sections 4 and 6, and Article III, section 2 of the NASD's Code of Procedure authorize the constitution of, and compensation for, specially designated hearing panels ("Extended Hearing Committees") for disciplinary actions anticipated to involve extensive proceedings.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Although the NASD anticipates that most disciplinary hearings will continue to be no more than two days in length, it believes it prudent to provide for the possibility that future disciplinary proceedings may require more extensive hearings. While lengthy hearings may be necessary to ensure a full and fair presentation, they may also create difficulties for individuals who are active in the industry and the NASD, and who must attend to their businesses as well. The proposed amendments to the Code of Procedure would authorize the NASD to constitute hearing panels from among former members of District Committees, the Market Surveillance Committee, and the Board of Governors, including persons who are no longer active in the securities industry, in the case of disciplinary hearings anticipated to extend over several days or involve voluminous or complex evidentiary matters. The chairpersons of such bodies would retain the discretion to appoint current members to such committees and, pursuant to the proposed amendment to Article X, section 6 of the NASD By-Laws, would be authorized to compensate members of extended hearing panels at the rate then in effect for arbitrators under the NASD's Code of Arbitration Procedure. Because serving on an extended hearing panel can be expected to involve substantial time and effort, the NASD believes that it is appropriate to provide compensation as well as reimbursement of expenses.

For the reasons stated above, the amendments are consistent with and in furtherance of section 15A(b)(8) of the Act which requires that the rules of the Corporation provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

Nine comments were received in response to the original proposals, which restricted eligibility to serve on extended hearing panels to former Committee and Board members who were no longer active in the securities industry. Each of the nine commentators favored the establishment of specially constituted panels to hear disciplinary matters expected to require extended hearings and approved of the proposal to include recent retirees on such panels.

Commentators were invited to address the appropriateness of including current Committee and Board members on extended hearing panels; one commentator expressly favored this approach and two others suggested that former Committee or Board members who remained active or semiactive in the industry be deemed eligible as well.

In response to the comments, the NASD revised the proposed Code of Procedure amendments to permit the appointment of current members and/or former members still active in the securities industry to extended hearing committees.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–87–12 and should be submitted by April 12, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5263 Filed 3–1–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24176; File No. SR–NASD–87–13]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Trading Halts in the Over-the-Counter Market

Purusant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on February 19, 1987, the National

Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed amendment to Schedule D of the NASD By-Laws is to provide authority for the NASD to halt over-the-counter trading in NASDAQ securities and listed securities pending the dissemination of material news by an issuer. The purpose of the proposed new Rule of Fair Practice is to prohibit NASD members and their associated persons from effecting, directly or indirectly, any over-the-counter transaction in a security as to which a trading halt is in effect.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV, below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to allow the NASD to halt trading in appropriate instances to allow public investors an opportunity to evaluate material information and consider it in making investment decisions. The proposal is necessary because the NASD's current quotation halts procedures have become increasingly ineffective to halt trading.

The proposed amendments are consistent with section 15A(b)(6) of the Security Exchange Act of 1934 which provides that the rules of a registererd securities association shall be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative practices, and in general, to protect public investors and the public interest. The NASD's authority to impose trading halts also arises form section 15A(h)(3), which provides that a registered securities association may summarily "limit or prohibit any person with respect to access to services offered by the association if, . . . in the case of a person who is not a member, the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association".

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendments will create any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NASD solicited comment on the proposed amendments in NASD Notice to Members 86–13 (February 27, 1986). Eighteen comment letters from NASDAQ issuers and NASD members were submitted in response to the notice. Copies of the Notice to Members and the comment letters are available for inspection and copying at the Commission and the principal office of the NASD.

With two exceptions, the commentators supported the proposed amendments. Questions raised by those in favor of the proposed amendment included (a) what is "material" news? and (b) how will the NASD enforce the prohibition against trading during a trading halt? With respect to the first question, "material" news is information that might reasonably be expected to affect the value of an issuer's securities or influence investors' decisions. The interpretation of "materiality" under the proposed amendment would not differ from the interpretation currently in effect for quotation halts. Examples of "material" events are included in the "Notification to NASD of News Releases" contained in Part II of Schedule D of the NASD By-Laws (CCH) ¶1754. With respect to the second question, members' compliance with trading halts will be determined through inspection of firm books and records.

One commentator who supported the proposed amendments made the additional comment that an NASD trading halt would not eliminate trading in all markets during a trading halt. The commentator stated that is supports a "hiatus in *all* trading of a security when there is material news pending that has caused a self-regulatory organization to conclude that a halt in trading to permit investors to evaluate such information upon its announcement would be appropriate." The firm noted that the proposed amendments would eliminate over-the-counter trading during an NASD-imposed trading halt as well as third markets trading in listed securities during a joint exchange/NASD trading halt, but would not necessarily eliminate trading in listed securities on a regional exchange during a trading halt imposed jointly by a primary exchange and the NASD. The commentator suggested that an SEC rule may be necessary to resolve that problem.

Another commentator supporting the proposed amendments raised the question whether a trading halt in the over-the-counter market would prohibit an NASD member from trading in a market in which a trading halt is not in effect. In response to this comment, the proposed amendments would not prohibit a member from effecting transactions in a market in which a trading halt is not currently in effect.

Two commentators opposed the proposed amendments. One stated that the proposed amendments will produce "discontinuous pricing" of securities and questioned the NASD's wisdom in proposing trading halt authority at a time when the New York Stock Exchange is considering shortening the length of trading halts.

The other commentator opposed the proposed amendments on both legal and policy grounds. First, the commentator argued that the NASD is without legal authority to initiate trading halts, relying on *SEC v. Sloan*, 436 U.S. 103 (1978). In *Sloan*, the Supreme Court held that the Commission's suspension of a security for several consecutive ten-day periods over two years exceeded its authority under section 12(k) of the Securities Exchange Act of 1934. Section 12(k) permits the SEC to summarily suspend trading in a security for a period of ten days if the protection of investors and the public interest so requires. Recognizing that "the power to summarily suspend trading in a security even for 10 days, without any notice, opportunity to be heard or findings based upon a record, is an awesome power with a potentially devastating impact on the issuer, its shareholders and other investors," *id.* at 112, the Supreme Court ruled that the clear language of section 12(k) limits the Commission, based on a single set of circumstances, to a ten-day summary suspension.

The commentator alleged that the proposed NASD amendments contain no

limitations on the duration of trading halts or other due process protections and that, as a result, the SEC's approval of the proposed amendments would indirectly permit the NASD to do what the Commission itself was prohibited from doing in *Sloan*.

Secondly, the commentator opposed the proposed amendments on the policy ground that it will not prevent institutions from buying and selling among themselves and will drive firms to foreign markets. The firm argued that, from a regulatory standpoint, it is preferable for transactions that occur during a trading halt on an exchange or during a NASDAQ quotations halt to be recorded on a firm's books and records rather than to force such transactions into a marketplace, presumably a foreign marketplace, in which such records are not maintained or are otherwise unavailable.

In response to the question of the NASD's statutory authority to initiate trading halts, the NASD maintains that its authority arises from section 15A(b)(6) of the Securities Exchange Act of 1934, which provides that the rules of a registered securities association are designed to "prevent fraudulent and manipulative practices, to promote just and equitable principles, . . . to remove impediments to and perfect the mechanism of a free and open market . . . and, in general, to protect investors and the public interest." Consistent with this statutory directive, over-the-counter trading halts initiated by the NASD to permit the dissemination of material news will benefit public customers by providing them with an opportunity to evaluate material information and consider it in making investment decisions.

The NASD does not believe that the *Sloan* case is dispositive of its authority to impose trading halts. *Sloan* dealt with the Commission's exercise of its summary suspension powers under the specific provisions of section 12(k). Under section 12(k), the Commission may, if in its opinion the public interest and the protection of investors so require, suspend trading in a security for a period not exceeding ten days. In *Sloan*, the Supreme Court found that, by summarily suspending a security for several consecutive ten-day periods based on a single set of circumstances, the Commission exceeded its powers under section 12(k). The court held that the ten-day limit on summary action reflected Congress' conscious decision that the Commission's authority to suspend trading in a security, without notice or opportunity for hearing, should not exceed ten days.

Congress imposed no such time limit, however, in section 15A(h)(3), which provides additional authority for the NASD's imposition of trading halts. Section 15A(h)(3), enacted as a result of the Securities Acts Amendments of 1975, provides for summary action by a registered securities association to "limit or prohibit any person with respect to access to services of the association . . . in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association." At the time that section 15A(h)(3) was enacted, the NASD's authority to summarily deny access to "services of the [registered securities] association" was confined to quotations halts. By imposing a quotations halt in a NASDAQ security, the NASD effectively denied the affected NASDAQ issuer access to NASD services, i.e., the display of quotations through the NASDAQ System.

Congress clearly recognized, however, the legitimate interests of the NASD in halting the dissemination of quotations of the securities of a NASDAQ issuer to permit the dissemination of material information and to provide public customers an opportunity to evaluate such information in making investment decisions. Moreover, the NASD's request for Commission approval to impose trading halts is entirely consistent with and in furtherance of this objective. In fact, it is because quotations halts have become increasingly ineffective in halting trading to provide investors the opportunity to evaluate material information in making their investment decisions that the NASD is requesting the Commission's approval of the proposed rule change.

Instead of a time limit, Congress included additional protections for any person aggrieved by summary action under section 15A(h)(3). The category of aggrieved persons would presumably include not only NASDAQ issuers, but NASD members and investors. Section 15A(h)(3) provides that any person aggrieved by summary action of a registered securities association shall promptly be afforded an opportunity for hearing. A person aggrieved by the NASD's imposition of a trading halt would therefore seek redress under the NASD Code of Procedure. Pursuant to Article IX of the NASD Code of Procedure, an application by a person aggrieved by the operations of the NASDAQ System shall be considered by a panel designated by the NASD Board of Governors. The decision of the hearing panel may be appealed to the NASD Board of Governors, the Commission and the Court of Appeals. As an additional protection, section 15A(h)(3) authorizes the Commission to stay any summary action, on its own motion or upon application by any person aggrieved thereby, it the Commission determines summarily or after notice and opportunity for hearing that such stay is consistent with the public interest and the protection of investors.

Therefore, the fact that the proposed amendments do not contain a specified limit on the length of a trading halt does not invalidate them. The additional protections afforded aggrieved persons under section 15A(h)(3), that is, the right to a prompt hearing, the right of appeal and the Commission's authority to summarily stay the NASD's action, more than offset the absence of a specified time limit in the NASD's proposed amendments.

Second, unlike the Commission's power under section 12(k) to summarily suspend trading where in its opinion the protection of investors and the public interest so requires, the NASD's authority to impose a trading halt will be limited to those situations in which a NASDAQ issuer or an issuer on a national securities exchange is disseminating material news. Third, the NASD's decision to impose a trading halt for material news may not, in practical terms, constitute "summary" action. Based on the NASD's experience with quotations halts, it is anticipated that most trading halts for material news will be initiated at the issuer's request and will be imposed after consultation with the issuer. Instances in which a quotations halt has been imposed against an issuer's wishes have been extremely rare. Finally, based on its experience with quotations halts, the NASD anticipates that trading halts will be extremely brief in duration. Quotations halts have typically lasted little longer than one hour in the past, and that timeframe has recently been reduced to approximately thirty minutes.

With respect to the possibility that the proposed amendments will cause transactions to be executed offshore, the NASD believes that this possibility is outweighed by the benefit to public customers in being provided an opportunity to evaluate material information in making investment decisions.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 2, 1987.

For the Commission, by the Division of Market Rgulation, pursuant to delegated authority.

Dated: March 4, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5265 Filed 3-11-87; 8:45 am]

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[Release No. 34-24183; File No. SR-NYSE-87-2]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Extension of the Effectiveness of the "Procedures for Competing Specialist" From February 1, 1987 to April 1, 1987

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1987 the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change would extend the effectiveness of the Exchange's "Procedures for Competing Specialists", as described in File No. SR-NYSE-77-6 and Amendment No. 1 thereto, until June 1, 1987.[1] The procedures provide Exhange members with a clear statement of the qualifications required to become a competing specialist and the procedures to be followed. The procedures are also designed to guide the Exchange's Market Performance Committee in its consideration and approval of such applications to compete.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] These procedures were initially approved by the Commission for a six month period in Securities Exchange Act Release No. 23202, May 5, 1986, 51 FR 17424. The period of effectiveness for the procedures was extended by the Commission until February 1, 1987 in Securities Exchange Act Release No. 23869, December 9, 1986, 51 FR 45417.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(1) Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's "Procedures for Competing Specialists" to April 1, 1987.

As described in more detail in File No. SR-NYSE-77-6, and Amendment No. 1 thereto, the "Procedures for Competing Specialists" reflect the Exchange's endorsement of a system of competition between Exchange specialists by reaffirming the ability of Exchange members to register and act as specialists in stocks which are also assigned to other specialist.

The Commission, in Securities Exchange Act Release No. 23202, May 5, 1986 approved the "Procedures for Competing Specialists" for a six-month period [2] and requested that the Exchange respond to nine requests relating to the application of specified Exchange rules and policies to competing specialists situations. The Commission also anticipated that rules and procedures other than those specified may require amendments as the Exchange monitors the activities of competing specialists during the six-month period of effectiveness.

The Exchange intends to request permanent approval of the "Procedures for Competing Specialists", and to respond to the Commission's nine specific requests for information concerning the application of specified Exchange rules and policies as to competing specialist situations prior to June 1, 1987.[3]

The Exchange requests this extension of the effectiveness of the Exchange's "Procedures for Competing Specialists" for two reasons:

(1) To finalize its response to the Commission's specific request for information based on experience gained monitoring the activities of competing specialists; and

(2) To evaluate the adequacy of certain guidelines, particularly Procedure number 11, in light of the experience gained as a result of the voluntary withdrawal of specialist

[2] *See* note 1, *supra*

[3] The original filing requested an extension until April 1, 1987. The NYSE later requested that this extension be changed until June 1, 1987 to accommodate review of their filing for permanent approval, which is expected to be submitted to the Commission shortly. Telephone conversation with Santo Farmularo, NYSE, and Howard Kramer, SEC, dated March 4, 1987.

organizations from a competitive situation.

(2) Basis Under the Act for Proposed Rule Change

The procedures and policies as to competing specialist situations will facilitate and enable the implementation of a system of competing specialists; and they are, therefore, based on section 11(b) of the Securities Exchange Act of 1934 which provides for Exchange rules to permit members to be registered as specialists; and section 11A(a)(1)(C)(ii) which states the Congress finds that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The procedures and policies as to competing specialist situations will facilitate the implementation of a system of competing specialists on the Exchange Floor; thus, they do not impose any burden on competition but rather provide for increased competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE-87-2 and should be submitted by [insert date 21 days from date of publication].

IV. Findings and Order Granting Accelerated Approval

As noted above, the Commission previously approved the effectiveness of the NYSE's "Procedures for Competing Specialists" for a six month period.[4] Subsequently, the Commission approved an extension of the competing specialists program [5] until February 1, 1986 to allow the NYSE to gain additional experience monitoring the activities of competing specialists in order to facilitate the Exchange's review of the effectiveness of these procedures and the impact of other NYSE rules and procedures as they apply to competing specialists.

The NYSE has proposed that an additional extension now be approved to enable the Exchange to finalize its responses to questions originally posed by the Commission regarding the effectiveness of the NYSE's procedures for competing specialists. This extension would also allow the Exchange to evaluate its procedures in light of the voluntary withdrawal of specialist organizations from a competitive situation.

The Commission believes it is appropriate to extend, until April 1, 1987, the period of effectiveness of the procedures for competing specialists. As discussed above, this should permit the Exchange to complete its responses to questions posed by the Commission and evaluate procedures for the voluntary withdrawal of specialists from a competitive situation. For these reasons the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[4] *See* note 1, *supra.*

[5] *Id.*

Dated: March 5, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5262 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24182; File No. SR-NYSE-86-24]

Self-Regulatory Organizations, Proposed Rule Changes by New York Stock Exchange, Inc. Relating to the Adoption of Rule 635 (Board of Arbitration), Rule 636 (Panel of Arbitrators) and Rule 637 (Director of Arbitration), Changes to Rule 630 (Schedule of Fees) and Rule 632 (Schedule for Member Controversies) and the Adoption of New Rule 638 (Exchange of Documents)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. section 78s(b)(1), notice is hereby given that on August 22, 1986 and January 7, 1987 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change would reposition certain provisions concerning arbitration that are now part of the NYSE Constitution and designate them as Rules 635, 636, and 637. No significant substantive changes would be made to these provisions as they currently exist under the Constitution.[2] The proposed amendments to Rule 630 alter the fee schedule for arbitrations between non-members and members, and the proposed amendments to rule 632 raises

[1] The NYSE filed Amendment No. 1 to its proposed rule change on January 7, 1987.

[2] Proposed Rule 635 would authorize the Chairman of the Board of Directors ("Chairman") to appoint present or former Exchange members and officers of member corporations of the Exchange to a Board of Arbitration. Proposed Rule 636 would authorize the Chairman to appoint retirees of the securities business to one of two panels of arbitrators. Proposed Rule 637 would authorize the Chairman to appoint a Director of Arbitration without the approval of the Exchange Board of Directors. Formerly, under Article VIII section 3 of the Exchange Constitution, such appointment by the Chairman required the approval of the Exchange Board of Directors.

the fee schedule for arbitration[3] between members. The proposed adoption of new Rule 638 would require parties to an arbitration to exchange documents in their possession which they intend to introduce to the arbitrators. This exchange must occur at least 10 days prior to the hearing date. The arbitrators can exclude from the arbitration any document not so exchanged.[4]

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(A) Prupose of the Proposed Rule Changes Are to:

• Reposition certain provisions relative to arbitration that had previously been part of the Constitution. The proposed Rules are derived, with only minor changes, from Article VIII, sections 3 and 4.

• Permit the Exchange to charge arbitration facility users a greater proportion of the costs of arbitration while maintaining an affordable fee schedule for the public. In some non-member disputes where the amount in controversy is over $10,000, there would be a fee increase. It should be noted that even with the fee increase, the arbitration service for non-member cases is a highly subsidized activity.

A paralled increase for member disputes will make them cost efficient and self-supporting.

• Save arbitrator time and avoid the problems associated with the introduction of unexpected evidence by requiring the parties to exchange documentary evidence before a hearing. This will lead to a more efficient and expeditious hearing by avoiding the pitfalls of time-consuming, formal discovery proceedings.

Proposed new Rule 638 is an experimental rule. If approved, it would require that parties to an arbitration proceeding exchange the documents to be introduced to the arbitrators at least ten days prior to the scheduled hearing date.[5] Arbitrator time will be saved both in terms of session hours saved and adjournments avoided. For example, when documents are introduced at a hearing, parties may need to recess to read the documents which can cause session delays. Parties have also requested adjournments at the hearing because they were not able to anticipate the contents of an opposing party's exhibits and hence could not effectively address the documents. If the parties are compelled to exchange relevant documents prior to the commencement of a hearing, the arbitration process will be improved.

The length of this experiment will be one year. At the end of this period the New York Stock Exchange will be able to evaluate the success of new Rule 638 through the use of objective and subjective criteria. The objective criteria will consist first of statistics enumerating the average number of sessions per matter for closed matters. This number can be compared with past years showing, objectively, whether or not the number of sessions per matter has leveled off or even decreased since the institution of new Rule 638. Second, the number of adjournments per matter, on a per year basis can be compared with past years' statistics. Again, a leveling off or decrease would indicate the success of new Rule 638. Subjectively, our criteria will consist of arbitrator feedback. The arbitrators are in the position to fairly state whether or not the actual session time has decreased and whether or not the arbitration process as a whole became more efficient.

(b) Statutory Basis for the Proposed Rule Changes

The proposed changes are consistent with section 6(b)(5) of the Act in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have an impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to the file number in the caption above and should be submitted by April 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5269 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[3] In its filing, the NYSE included copies of its revised fee schedule. Copies of the fee schedule are available from the Commission at the address noted in section IV below and from the NYSE.

[4] As discussed in more detail below, Amendment No. 1 indicates that the portion of the proposal concerning the exchange of documents will be implemented for a one year period.

[5] We note that under the rule the arbitrator may exclude any document not so exchanged.

[Release No. 34-24171; File No. SR-OCC-86-27]

Self-Regulatory Organization; Order Approving Proposed Rule Change by Options Clearing Corp.

The Options Clearing Corporation ("OCC"), on December 31, 1986, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") concerning the pledge of non-equity options under OCC's options pledge program. As described in greater detail below and in OCC's filing, the proposed rule change authorizes OCC to offer its non-equity options pledge program to all clearing members on a permanent basis [1] and permits clearing members to exercise or sell pledge non-equity options. The Commission published a notice of this proposed rule change in the **Federal Register**,[2] and no comments were received. This order approves the proposal.

I. Background

The proposal amends OCC Rule 614, which governs pledges of option positions and which previously applied only to equity options.[3] The proposal follows a pilot program that OCC introduced in March 1986.[4] The pilot permitted a limited number of clearing members to pledge non-equity options, but the pilot prohibited clearing members from selling or exercising pledged non-equity options.

II. Description

A. Rights of Parties

OCC is expanding its Rule 614 to permit the sale or exercise of pledged non-equity options and to cover the rights and obligations of pledgees, clearing members and OCC. First, under the rule, OCC must deliver to pledgees and clearing members, on the business day following the exercise or sale of a pledged option ("Report Day"), a written report stating which pledged options have been exercised or sold. Second, any clearing member with an overpledged position [5] must pay an "Overpledged Value Amount" to OCC, prior to 9:00 a.m. (Central Time) on Report Day. The Overpledged Value Amount consists of a cash deposit equal to the current market value of the exercised or sold pledged option contract.[6] OCC rules authorize OCC to withdraw the Overpledged Value Amount from the clearing member's bank account.[7] As promptly as practicable after it receives the Overpledged Value Amount from the clearing member, OCC must deposit such amount in the pledgee's deposit account.[8] Upon OCC's deposit of the Overpledged Value Amount into the pledgee's deposit account, the pledgee has no further right to either the pledged options that gave rise to the overpledged option position or to the proceeds thereof.

B. Failure to Receive Deposit

If OCC fails to receive the Overpledged Value Amount from the clearing member on the Report Day, OCC must take certain actions to protect the pledgee. Under OCC Rule 614(i)(1), the sales or exercises are reallocated pursuant to subparagraph (f)(2) of Rule 614. Rule 614(f)(2) generally requires: (1) Reallocation of the sales and exercises to the Primary Account and then to the Pledge Accounts on a proportional basis, and (2) establishment of a short position in the Primary Account for any remaining sales after the long positions have been closed out. Under subparagraph (2), OCC is required: (1) To suspend the defaulting clearing member as promptly as practicable, and (2) deposit the proceeds of each pledged option that had been sold into the pledgee's deposit account.

Rule 614(i)(3) deals with pledged options that have been exercised. In event of a clearing member's failure to pay the cash deposit, OCC notifies the clearing member to whom the exercised option has been assigned (*i.e.*, the clearing member on the other side of the default): (1) To close out the option contract through buy-in or sell-out procedures and (2) to pay over any profit to OCC. OCC deposits that settlement amount into the pledgee's deposit account. If that settlement amount is less than the full amount due, the deficiency must be paid to the assigned clearing member from the following sources: (1) The funds obtained from the Primary Account until such funds are exhausted, and (2) the liquidating settlement account.[9]

The new text of subparagraph (3) defines "Assigned Clearing Member" (for purposes of that subparagraph) in terms of the assignee's duties with respect to: (1) Pledged equity options or Treasury securities, and (2) pledged foreign currency options. For pledged equity options or Treasury securities, the close-out obligations on option contracts assigned on the previous day are delegated to the clearing member obligated to deliver to or receive from the exercising clearing member (*i.e.*, the defaulting clearing member). For pledged foreign currency options, close-out obligations are delegated to the clearing member that is obligated to deliver to or receive from OCC, on the settlement date of the pledged option, the foreign currency underlying the pledged option. Because of OCC netting rules that apply in settling exercises of Treasury securities options and foreign currency options [10] and OCC's system of post-netting allocation (which instructs a clearing member to effect settlement with another clearing member), the clearing member that ultimately is obligated to settle with an exercising clearing member is not necessarily the Assigned Clearing Member pursuant to subparagraph (3).

Rule 614(i)(4), which is entirely new, applies only to pledged index options. It provides that if a clearing member fails to make the required cash deposit after exercising a pledged index option, OCC promptly will deposit the amount due into the pledgee's deposit account.[11]

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[1] On October 31, 1986, OCC filed a similar proposal that provided the non-equity options pledge program with temporary effectiveness through February 28, 1987, at which time the program would terminate. *See* Securities Exchange Act Rel. No. 23960 (January 7, 1987), 52 FR 3187 (File No. SR-OCC-86-24). The instant proposal would allow the non-equity options pledge program to become permanent.

[2] Securities Exchange Act Rel. No. 24049 (February 3, 1987), 52 FR 4451.

[3] OCC began its Option Pledge Program for equity options in March 1983 with the adoption of OCC Rule 614. *See* Securities Exchange Act Rel. No. 19956 (July 19, 1983), 48 FR 33956 (File No. SR-OCC-82-25).

[4] *See* Securities Exchange Act Rel. No. 23097 (April 2, 1986), 51 FR 12254 (File No. SR-OCC-86-3).

[5] The term "overpledged position" means a pledged option position that has been exercised or sold.

[6] The "Overpledged Value Amount" is the product of: (1) The unit of trading for the series of options of the pledged option, and (2) the current highest asked price on the premium for that option series at or about the close of trading on the preceding business day. Additionally, OCC may fix a different value in accordance with OCC Rule 601.

[7] *See* OCC Rule 614(a).

[8] The "Pledgee's Deposit Account" or "collateral account" is an account with a clearing bank designated by the Pledgee for accepting cash deposits. *See* OCC Rule 614(a).

[9] Upon the suspension of a clearing member, OCC must convert to cash all margins deposited with the OCC by that clearing member in all accounts. Such funds then are placed by OCC in a special account known as a "Liquidating Settlement Account." *See* OCC Rule 1104.

OCC's ultimate source of funds to make good losses resulting from the failure of a clearing member to perform its obligations under an assigned option contract is OCC's Clearing Fund. *See* OCC's By-Laws, Art. VIII, Sect. 1.

[10] *See* OCC Rules 1406 and 1605.

[11] In the case of index options, the need for buy-in and sell-out provisions is eliminated by the absence of an underlying asset to deliver or receive.

Rule 614(i)(5), which also is entirely new, applies to pledged Treasury securities options and pledged foreign currency options that net against other settlement obligations thereby relieving the exercising clearing member of the need to deliver or receive the underlying security or currency.[12] In this case, where a clearing member fails to make its required deposit, OCC will deposit into the pledgee's deposit account an amount equal to the in-the-money value of the pledged option as of the close of trading on the exercise date.[13]

Finally, the rule change: (1) Deletes Interpretation .01 (the provision that established the pilot program) from Rule 614; and (2) revises Rule 1807 to recognize the possibility that, in the event of a clearing member's insolvency, a pledgee (rather that the clearing member itself) might be entitled to receive the exercise settlement amount from the exercised index options.

III. OCC's Rationale

OCC believes that the proposal is consistent with the Act and, in particular, with section 17A of the Act. OCC states in its filing that the proposal should further the public interest by facilitating the financing of positions in non-equity options and thereby contribute to the depth and liquidity of markets for those products.

IV. Discussion

The Commission believes that OCC's non-equity pledge program provides significant benefits to OCC clearing members and to pledge banks. As discussed below, the proposal enables OCC clearing members to sell or exercise pledged non-equity options and protects pledgees by crediting them with substitute collateral. Thus, the Commission believes OCC's proposal is consistent with section 17A of the Act and, in particular, is designed adequately to assure the safeguarding of funds and securities in OCC's custody or control.

Because the proposal enables the sale or exercise of pledged non-equity option positions, OCC clearing members need not obtain prior release of pledged positions nor make specific arrangements to provide substitute collateral to pledgees. As a result, OCC clearing members can simplify inventory management procedures and reduce financing costs because, assuming the clearing member pays its daily OCC settlement obligation, OCC automatically credits pledgees with the Overpledged Value Amount.

The proposal is designed to protect pledgees by assuring adequate collateral substitution following sale or exercise of pledged positions, consistent with OCC's obligation to safeguard securities and funds. OCC credits pledgees on the morning after the exercise or sale of pledged non-equity option positions with Overpledged Value Amounts that correspond to the value of the previously pledged positions. If for any reason a clearing member defaults on its payment obligation to OCC and, as a result, OCC cannot deposit the Overpledged Value Amount, OCC would be required to take specific actions to protect the pledgee (as outlined above) and, in essence, credit the pledgee with the proceeds from the sale or exercise of previously pledged positions.

V. Conclusion

For the reasons discussed above, the Commission finds that OCC's proposed rule change is consistent with the purposes and requirements of Section 17A of the Act.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–86–27) be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 4, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5268 Filed 3–11–87; 8:45 am]

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[12] With these options, as with index options, there is no obligation to be bought in or sold out.

[13] The amounts to be deposited in the deposit accounts are amounts that OCC would have paid to the clearing member in any event if the exercise had settled in due course, either as a return of margin (on equity options or currency options) or in settlement of the exercises (with foreign currency options).

[Release No. 24164; File No. SR–PSE–87–04]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Inc. Relating to the Registration With the Exchange of Current Addresses and Subsequent Changes Thereof

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on February 5, 1987, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated proposes a new rule which would require that members and member firms notify the Exchange of any change to their respective addresses where notices may be served within sixty (60) days of such change.

(Italics indicate new language.)

Rule IX

Sec. 1 through Sec. 11. No Change.

Notification of Changes of Address.

Sec. 12. Members and member firms must submit to the Exchange any changes to their address where notices may be served within sixty (60) calendar days of such change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Article VIII, section 1(g) of the Exchange's Constitution provides that members and member firms shall register with the Exchange addresses and subsequent changes thereof where notices may be served. The proposed rule change establishes a time period when the member and member firms shall file such changes of address. The purpose of the rule is to ensure that the Exchange has on file an accurate address where important and sometimes disciplinary related correspondence may be sent.

The Exchange believes that its requirement of a current address is necessary to ensure that it may meet appropriate investigatory and disciplinary obligations imposed by Section 6 of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by April 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5267 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24172; File No. SR-PSE-86-28]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On December 10, 1986, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 there-under,[2] a proposed rule change to specify the amount of time an options member of the PSE must have staffing available for after-hours trade reconciliation.

The proposed rule change was noticed in Securities Exchange Act Release No. 23984 (January 12, 1987), 52 FR 2168 (January 20, 1987). No comments were received on the proposed rule change.

The Exchange is amending PSE Rule VI, section 23 and Options Floor Procedure Advice G-3 to define the amount of time that its options members must have staffing available for the purpose of after-hours trade reconciliation. Currently, the Exchange requires that its members have staff available for one hour after reconciliation reports are distributed at the close of trading. The new requirement is tiered and dependent upon the number of transactions which occur on the day in question. The proposal requires the following amount of time, based on the total number of PSE options transactions that day, that members must have staff available after reconciliation reports are distributed: (1) 15 minutes for 0—6,000 transactions; (2) 30 minutes for 6,100—8,000 transactions, and (3) one hour for 8,001 or more transactions.

In its rule filing, the PSE states that the amount of after-hours time needed for trade comparison has been greatly reduced with the implementation of electronic display terminals, which permit intra-day reconciliation. The PSE Options Advisory Subcommittee analyzed the time needed for trade comparison during different activity levels, and concluded that the time levels outlined above would meet the needs of the Exchange.

The Commission believes that the proposed rule change will reduce the costs associated with after-hours staffing for PSE members. In addition, the proposed staffing requirements should continue to ensure that sufficient staff is available for after-hours trade reconciliation. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[3] and the rules and regulations thereunder.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: March 4, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5271 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24181; File No. SR-MSE-87-1]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc., Relating to the Suspension of the Application of Article XXX, Rule 1.01(I)(6)(c)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on February 5, 1987 the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has determined to suspend the application of Article XXX, Rule 1.01(I)(60(c) (Mandatory Posting Rule) for the six months periods ending June 30, 1986 and December 31, 1986.

It is anticipated that revised evaluation criteria for mandatory posting will be adopted and submitted

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2)(1982).

[5] 17 CFR 200.30-3(a)(12)(1985).

for approval to the Commission within the next few months. In the event the revised evaluation criteria are approved by the Commission by June 30, 1987, the Exchange intends not to post for the six month period ending June 30, 1987.[1] However, in the event that revised evaluation criteria are not approved and implemented within this time frame, postings pursuant to the current Mandatory Posting Rule will resume for the six month period ending June 30, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Mandatory Posting Rule requires the Exchange to post semi-annually for application any security for which the Exchange's market share (determined as a percentage of number of trades reported to the tape) is less than the third largest and is also less than the Exchange's average market share for all specialist assigned issues for the previous six month period. If a co-specialist's stock is posted pursuant to this Rule and he/she chooses to reapply for it, he/she is entitled to a hearing before the Committee on Specialist Assignment and Evaluation ("CSAE") pursuant to Article XVII, Rule 3 on the evaluation of his/her performance in the posted issue.

The first posting pursuant to the Rule was made in January 1986 for the six month period ending December 31, 1985. Since that time, CSAE representatives have met with Floor member representatives to review current evaluation criteria and consider revisions to such criteria. Because substantial progress has been made by this group to revise evaluation criteria, the CSAE has decided to suspend the application of the Mandatory Posting Rule for the six month periods ending June 30, 1986 and December 31, 1986.

The CSAE anticipates that revised criteria will be available to review specialist performance for the six months ending June 30, 1987. In the event the revised evaluation criteria are approved by the Commission by June 30, 1987, the Exchange intends not to post for the six month period ending June 30, 1987. However, in the event that revised criteria have not been implemented by this date it is anticipated that postings will resume under the current Mandatory Posting Rule.

The proposed rule change is consistent with section 6 of the Act in that it will encourage the dissemination of more competitive markets by the MSE, thereby promoting just and equitable principles of trade and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited and received from floor members.[2] In addition, CSAE representatives and Exchange Staff have been meeting on an ongoing basis with floor member representatives to receive input on revising specialist evaluation criteria.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by April 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 5, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5266 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[1] The MSE indicated this in a conversation concerning the proposal between J. Craig Long, Vice President and Secretary, the MSE, and Howard Kramer, Assistant Director, Division of Market Regulation on February 18, 1987.

[2] The MSE has indicated that although written comments were solicited from floor members, it received only oral comments regarding the proposed rule change. These oral comments were communicated to the CSAE and other exchange officials.

[Rel. No. IC-15604; 812-6594]

Bankers Security Life Insurance Society et al.

March 5, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant(s): Bankers Security Life Insurance Society ("Bankers Security"), Bankers Security Variable Annuity Funds M, P and Q ("Separate Accounts P and Q"), and Oppenheimer Fund Management, Inc. ("OFMI").

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

Summary of Application: Applicants seek an order to permit payment to Bankers Security from the assets of Separate Accounts P and Q of the mortality and expense risk charges under certain variable annuity contracts (the "Contracts").

Filing Date: The application was filed on January 13, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 30, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and ths issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Bankers Security and Separate Accounts P and Q, 4601 Fairfax Drive, Arlington, Virginia 22203; OFMI, 2 Broadway, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Clifford E. Kirsch, Staff Attorney, (202) 272–3032 or Lewis B. Reich, Special Counsel, (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Bankers Security is a stock life insurance company organized under the laws of the State of New York in 1917 under the name The Morris Plan Insurance Society and it adopted its present name in 1946. Separate Accounts P and Q were established in December, 1981 and September, 1982, respectively, under the provisions of the New York Insurance Law and are registered as a unit investment trust under the 1940 Act. OFMI, the principal underwriter of the Contracts, is a registered broker/dealer under the Securities Exchange Act of 1934.

2. Each sub-account established within Separate Accounts P and Q presently invests exclusively in the shares of one of the portfolios of the mutual fund Oppenheimer Variable Account Funds: Oppenheimer Money Fund, Oppenheimer Capital Appreciation Fund, Oppenheimer High Income Fund and Oppenheimer Multiple Strategies Fund (hereinafter collectively referred to as the "Funds").

3. The Contracts provide for the accumulation of values on a variable basis. Payment of annuity benefits will be on a fixed basis, a variable basis, or a combination, as selected by the owner of a Contract ("Contractowner").

4. The Contracts are currently intended to be used in connection with individual retirement plans that qualify for Federal tax benefits available under sections 401, 403(a), 403(b), 408 and 457 of the Internal Revenue Code ("Qualified Plans"). They may also be issued for deferred compensation and other individual retirement plans that do not qualify under those Code Sections ("Non-Qualified Plans"). Net purchase payments are allocated to Separate Accounts P for Non-Qualified Plans and to Separate Accounts Q for Qualified Plans.

5. The Contracts provide that for the life of those Contracts a mortality and expense risk charge will be deducted by Bankers Security in an amount equal on an annual basis to 1.25% of the daily asset value of the sub-accounts of each Separate Account. Of such charges, approximately 1.00% is for assuming the mortality risk and 0.25% is for assuming the expense risk. The application states that the mortality and expense risk charges are to compensate Bankers Security for the risk it assumes that the Annuitants under the Contracts as a class may live longer than expected (necessitating a greater number of annuity payments) and that its expenses may be higher than the deductions for such expenses. The rate imposed for the mortality and expense risk charges is contractual and may not be changed by Bankers Security. The application, through incorporation by reference of the registration statement for the Contracts, states that Bankers Security assumes a mortality risk by virtue of annuity rates incorporated in the Contracts which cannot be changed.

6. Applicants represent that they have reviewed the level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees, and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants further represent that the maximum charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission upon request a memorandum outlining the methodology underlying this representation.

7. Applicants do not believe that the sales load imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts, and state that any "shortfall" may be made up from the general account assets which include, *inter alia*, amounts derived from risk charges. Bankers Security has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit Separate Accounts P and Q and the Contractowners. Bankers Security will keep and make available to the Commission upon request a memorandum setting forth the basis for this representation.

8. Applicants further represent that Separate Accounts P and Q will only invest in underlying fund(s) which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b–1 under the Act to finance distribution expenses. Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of these charges.

Applicant's Conditions

Applicant agrees that if the requested order is granted such order will be expressly conditioned on Applicant's compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5332 Filed 3–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24331]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Consolidated Natural Gas Co.

March 5, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the

application(s) and/or declaration(s) should submit their views in writing by March 30, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declarations, as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70–7366)

Notice of Amendment of Certificate of Incorporation and Order Authorizing Proxy Solicitation

Consolidated Natural Gas Company ("Consolidated") Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration pursuant to section 6(a)(2), 7(e) and 12 of the Act and Rules 62 and 65 thereunder.

Consolidated, a Delaware corporation, proposes to amend its Certificate of Incorporation to limit the personal liability of its directors for monetary damages, as permitted by section 102(b)(f) of the General Corporation Law of Delaware, as amended.

Approval of the amendment requires the affirmative vote of the holders of a majority of Consolidated's outstanding common stock. Consolidated therefore proposes to solicit proxies for approval of the measure at the annual meeting of stockholders to be held on May 19, 1987. Consolidated has filed a draft of descriptive material to be included in the proxy statement and requests that the effectiveness of its declaration with respect to the solicitation of proxies be accelerated as provided in Rule 62.

It appearing to the Commission that Consolidated's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, pursuant to Rule 62, and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5333 Filed 3–11–87; 8:45AM]

BILILNG CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 9, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

PHLCORP, Inc. (New), Common Stock, $1.00 Par Value (File No. 7–9777)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 30, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5331 Filed 3–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15609; File No. 812–6586]

Shearson Lehman Asset Allocation Fund L.P.; Application for Exemption

March 6, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicant: Shearson Lehman Asset Allocation Fund L.P.

Relevant Sections of Act: Exemption requested under section 6(c) of the Act from the provisions of section 17(f) of the Act.

Summary of Application: Applicants seek an order pursuant to section 6(c) of the Act exempting it from the provisions of section 17(f) of the Act to the extent necessary to permit Applicant to maintain variation margin with futures commission merchants ("FCMs") in excess of the amounts required to maintain Applicant's futures or options positions under the conditions described herein and in the application.

Filing Date: January 2, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, an order disposing of the application will be issued. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on March 30, 1987. Requests must be in writing, setting forth the nature of your interest, the reasons for the request, and the issues contested. Applicants should be served with a copy of the request, either personally or by mail, and the request should also be sent to the Secretary of the SEC, along with the proof of service (by affidavit or, in the case of an attorney-at-law, by certificate). Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Attorney, (202) 272–3026 or H.R. Hallock, Jr., Special Counsel (202) 272–3030, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end, non-diversified, management investment company that was organized as a limited partnership under the laws of the State of Delaware on October 29, 1986. Applicant's investment objective is to seek to maximize total return, consisting of capital appreciation and current income. Applicant will attempt to achieve its objective by investing in a

wide range of equity and debt securities of both domestic and foreign issuers, options, commodity interests and money market instruments, and by using certain sophisticated investment strategies and techniques. Applicant may trade in commodity futures contracts, commodity options, forward contracts, including currency forwards, and physical commodities. Applicant will not enter into domestic futures and options transactions for which the aggregate initial margin and premiums exceed ten percent of Applicant's assets, after taking into account unrealized profits and losses on those contracts.

2. Applicant's contemplated use of commodity futures contracts and commodity options will result in its being deemed a commodity pool, the operators of which are subject to regulation by the Commodity Futures Trading Commission (the "CFTC") under the Commodity Exchange Act. Applicant believes that on commencement of its operations it will be the only existing entity that is a registered investment company and a commodity pool managed by registered commodity pool operators.

3. Shearson Lehman Investment Strategy Advisors Inc., a newly-formed subsidiary of Shearson Lehman Brothers Inc. ("Shearson Lehman"), serves as Applicant's investment adviser and in that capacity determines the manner in which Applicant's assets will be allocated among investments and markets sectors. American Express Asset Management S.A., Bernstein-Macaulay, Inc., The Boston Company Advisors, Inc. ("Boston Advisors"), Lehman Management Co., Inc., Shearson Asset Management Inc. and Hayden Commodities Corp. ("HCC"), each of which is an affiliate of Shearson Lehman, serve as the Fund's sub-investments advisers (collectively, the "Sub-Advisers") and will be primarily responsible for the selection of Applicant's investment and the selection of brokers and dealers through which Applicant's portfolio transactions will be executed. HCC, which is registered with the CFTC as a commodity trading advisor and a commodity pool operator, and which is a member of the National Futures Association, will be generally responsible for transactions in commodity interests undertaken by Applicant. Boston Advisors, in addition to serving as a Sub-Adviser, acts as Applicant's administrator and Boston Safe Deposit and Trust Company, a subsidiary of Shearson Lehman, serves as Applicant's custodian. Shearson Lehman acts as the distributor of Applicant's shares representing partnership interests and may be selected as broker for Applicant's securities and commodities transactions.

4. Initial margin payments required in connection with Applicant's transactions in domestic commodity futures contracts and commodity options will be made into special segregated accounts (the "Accounts") with a bank acting as Applicant's subcustodian (the "Subcustodian"), in the name of FCMs and for the benefit of Applicant. A separate Account will be established for each FCM which acts as commodity broker for Applicant, and each such Account will be maintained apart from the general custodial account of Applicant. The amounts held in the Accounts will constitute performance bonds, to be returned to Applicant upon closing out the futures or options positions, assuming that all of Applicant's contractual obligations have been satisfied. An FCM will have access to such amounts only upon a representation to the Subcustodian that Applicant is in default on its obligations to the FCM and that all conditions precedent to the FCM's right of access to the Account have been satisfied. Subsequent "variation margin" payments due to an FCM, if any, will be made directly to the FCM by Applicant.

5. Upon entering into a commodity futures contract, Applicant must post with the FCM effecting the transaction an "initial margin" deposit, in an amount equal to a certain percentage of the face value of the contract. If for any day the net equity of Applicant's Account with the FCM falls below the required margin, Applicant must make a "variation margin" payment to increase the equity in the Account. Conversely, if Applicant's open futures contract positions with an FCM reflect a net gain for any day, the FCM is obligated to pay Applicant variation margin in the amount of that excess (unless part of that variation margin is retained by the FCM in order that the Account may continue to meet the minimum margin requirements). Similarly, if Applicant writes a commodity option, it must post and maintain margin on the underlying commodity contract. Were variation margin owed to Applicant by an FCM in connection with its futures or options contracts held by the FCM and not transferred to, and held by, Applicant's Subcustodian, Applicant could be deemed not to be in compliance with section 17(f) of the Act.

6. Although Applicant has a right to demand variation margin owed to it from an FCM in any amount on any day that there is an excess above the required initial margin, Applicant submits that it would be unnecessarily costly and unduly burdensome for both the Fund and its FCMs if the Fund were required to demand payment of *de minimis* amounts of variation margin. To demand an insubstantial portion of its assets, Applicant would have to incur transaction fees charged by its Subcustodian and additional operating expenses. Applicant believes that the ability to leave variation margin with its FCMs in the amounts and on the conditions described below would save Applicant, its partners and FCMs the expense of processing payments for small amounts of variation margin without increasing in any meaningful degree any risk to the security of its assets.

7. Applicant will enter into a separate agreement with its Subcustodian and each FCM, pursuant to which Applicant's margin deposits will be held by the Subcustodian, subject to the disposition by the FCM in accordance with CFTC rules and the rules of the applicable contract markets. Each agreement will provide that: (1) The Subcustodian will take instructions with respect to disposition of assets in that Account only from the FCM; (2) in directing any disposition of assets, the FCM must state that Applicant is in default (if the directed disposition is to the FCM), that all conditions precedent to its right to direct disposition have been satisfied, and that the disposition is for a proper purpose under, and in all other respects complies with, the terms of the agreement; (3) Applicant's assets that would otherwise be held by the FCM will be in the possession of the Subcustodian until released or sold or otherwise disposed of in accordance with or under the terms of the agreement; (4) those assets will not otherwise be pledged or encumbered by the FCM; (5) when requested by Applicant, the FCM will cause the Subcustodian to release any assets to which Applicant is entitled under the terms of the agreement; and (6) assets in the segregated Account will otherwise be used only to satisfy Applicant's obligations to the FCM under the terms of the agreement. Applicant will promptly cause any amounts no longer required as initial margin to be transferred to its general custodial account. Applicant will disclose in its prospectus the risk of loss of margin deposits due to the bankruptcy of an FCM, although the arrangements described above are designed to reduce that risk.

8. Applicant undertakes with respect to its futures contracts or commodity

options that it writes that any variation margin payable by an FCM to Applicant will be reflected as net gains, will be immediately shown as increased equity in Applicant's account with the FCM and will be credited immediately to Applicant's net asset value. Conversely, variation margin payments made to an FCM will be reflected as net losses.

9. Applicant further undertakes that it will monitor variation margin each day to enable it to demand promptly, on a daily basis, payment and transfer of amounts from an FCM to Applicant's Subcustodian that are not required to maintain Applicant's futures or options positions ("excess variation margin") whenever and to the extent the excess variation margin owed to Applicant by a given FCM exceeds $50,000 and to the extent necessary to maintain the aggregate amount of excess variation margin held by all of its FCMs at a level which will not exceed ⅛ of one percent of the net assets of Applicant. Applicant anticipates that excess variation margin will be returned to its Subcustodian one business day or less after the levels described above are reached.

10. Initial margin held by Applicant's Subcustodian and variation margin payments held by Applicant's FCM will continue to be regarded as assets of Applicant, unless and until such amounts are owed to the FCM. No FCM will be permitted to pledge or encumber amounts held by it or the Subcustodian for the benefit of Applicant. In the event of the insolvency of an FCM, amounts held by the FCM for the benefit of Applicant will be subject to Federal bankruptcy laws and the bankruptcy regulations of the CFTC, which provide for *pro rata* distribution to customers of the FCM of all customer property.

11. In view of the limitation that initial margin deposits and premiums on commodity futures and options may not exceed ten percent of Applicant's assets and the extensive regulations of the CFTC governing segregation of, and accounting for, customer funds by FCMs, as well as book and record keeping and disclosure by commodity pool operators, Applicant believes that the order requested is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5334 Filed 3-1-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-16399]

Application and Opportunity for Hearing; Smith Barney Capital Corp.

March 4, 1987.

Notice is hereby given that Smith Barney Capital Corp. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of First Interstate Bank of California ("First Interstate"), under three separate indentures dated as of January 1, 1987, which indentures have been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Interstate from acting as trustee under such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (b) (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities or certificates of interest or participation in any other securities of the obligor are outstanding. However, pursuant to clause (ii) of section 310(b) (1) of the Act, there may be excluded from the operation of section 310(b) (1) of the Act another indenture or indentures under which other securities of such obligor are outstanding, if they shall have sustained the burden or proving on application to the Commission and after opportunity for hearing thereon, that trusteeship under each of the indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the trustee from acting as such under any of the indentures.

The Applicant alleges that: (1) The Applicant, a Delaware corporation, is a direct, wholly owned, limited purpose finance subsidiary of Smith Barney Inc. The Applicant was incorporated for the limited purpose of issuing one or more series of bonds directly or through trusts established by it to facilitate the financing of long term mortgages on multifamily projects and health care facilities and will not engage in any other unrelated business or investment activities.

(2) The Applicant will issue GNMA-Collateralized Bonds, Construction Loan Notes and Permanent Loan Bonds. Each of the securities will be issued pursuant to a separate indenture; each of the securities will be secured by the pledge by the Applicant to a trustee of collateral which will serve as security only for those securities; and each of the securities will be payable from the collateral pledged to secure those securities and will rank equally with all other securities issued by the Applicant. Any default under an indenture for any of the securities will not cause a default under an indenture for any other of the securities.

(3) Pursuant to three separate Indentures, The Applicant proposes to issue and sell $73,000,000 aggregate principal amount of its GNMA-Collateralized Bonds, $116,500,000 aggregate principal amount of Permanent Loan Bonds (FHA-Insured Loans) and $116,500,000 Construction Loan Notes (FHA-Insured Advances). The Applicant contemplates that First Interstate will serve as trustee for each indenture. In addition, the Applicant contemplates that the securities will be registered under the Securities Act of 1933 and the indentures will be qualified under the Act.

(4) In the case of the GNMA-Collateralized Bonds, the collateral will consist primarily of mortgage-backed certificates guaranteed fully as to principal and interest by the Government National Mortgage Association ("GNMA"). Each GNMA Certificate will be backed by a permanent mortgage loan for a certain multifamily residential real estate project. Pending disbursement for the acquisition of GNMA Certificates, the GNMA-Collateralized Bonds will be secured by a guaranteed investment contract issued by an insurance company.

(5) In the case of the Construction Loan Notes, the collateral will consist primarily of construction mortgage loans which finance the construction of certain multifamily residential real estate projects and health care facilities. Payments of principal advances under the mortgage loans are insured by the Federal Housing Administration ("FHA").

(6) In the case of the Permanent Loan Bonds, to be issued by the Applicant simultaneously with the Construction Loan Notes, the collateral will consist of FHA-insured permanent mortgage loans which provide permanent financing for the multifamily residential real estate

projects and health care facilities, the construction of which was financed by the Construction Loan Notes. Pending the permanent financing of the Projects, the Permanent Loan Bonds will be secured by a guaranteed investment contract issued by an insurance company.

(7) As stated above, the collateral granted to First Interstate as trustee for the GNMA-Collaterized Bonds will serve as collateral security only for the GNMA-Collaterized Bonds and the only source of payment on the GNMA-Collaterized Bonds and the holders of other securities issued by the Applicant (including the Permanent Loan Bonds and the Construction Loan Notes) will not have recourse to the collateral granted to First Interstate as trustee for the GNMA-Collaterized Bonds.

(8) As stated above, the collateral to be granted to First Interstate as trustee for the Permanent Loan Bonds will serve as collateral security only for the Permanent Loan Bonds and the only source of payment on the Permanent Loan Bonds and the holders of other securities issued by the Applicant (including the GNMA-Collaterized Bonds and the Construction Loan Notes) will not have recourse to the collateral granted to First Interstate as trustee for the Permanent Loan Bonds.

(9) As stated above, the collateral to be granted to First Interstate as trustee for the Construction Loan Notes will serve as collateral security only for the Construction Loan Notes and the only source of payment on the Construction Loan Notes and the holders of other securities issued by the Applicant (including the GNMA-Collaterized Bonds and the Permanent Loan Bonds) will not have recourse to the collateral granted to First Interstate as trustee for the Construction Loan Notes.

(10) Such differences as exist between each of the indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Interstate from acting as trustee under any of the indentures. In fact, the Applicant believes no possibility for a conflict exists because each indenture is completely separate, provides for completely separate collateral and completely separate sources of payment and any default under one indenture will not cause a default under any other indenture.

The Applicant waives (a) notice of hearing, (b) hearing and (c) any and all rights to specify procedures under the Rules and Practice of the Commission with respect to the application.

For more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22–16399, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, DC.

Notice is further given that any interested persons may, not later than April 7, 1987, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87–5335 Filed 3–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24188; File No. SR–NSCC–87–3]

Proposed Rule Change by National Securities Clearing Corporation; Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules Concerning Securities Subject to a Reorganization

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 27, 1987, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would enable NSCC to process transactions in securities subject to a reorganization within the Continuous Net Settlement ("CNS") System. The text of the proposed rule change is available at the Office of the Assistant Secretary, NSCC, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, facilities do not exist to process most reorganizations within the CNS System; while some mergers and name changes are processed on an intermittent basis, most issues involved in reorganizations are exited from CNS by generating receive and deliver instructions to the long and short participants, respectively. This is an inefficient method of operation in that the benefits of netting of transactions for settlement are lost, physical delivery of securities certificates often is necessary, and it is costly both to NSCC and participants to process hard copy receive and deliver instructions.

It is particularly inefficient for NSCC to process transactions in issues undergoing a reorganization outside of NSC now that securities depositories process tender offers and other reorganizations within their automated systems. Indeed, in proposing a rule to require that securities depositories be available for processing transactions during a tender offer (a rule later adopted), the Commission specifically noted that the CNS System is unavailable during a tender offer and encouraged NSCC to redesign the system.[1]

In response to these needs, NSCC has developed a Reorganization Processing System ("System"). This System both will allow for the processing within CNS of transactions in the vast majority of securities subject to a reorganization, and will provide the participants with a long CNS position in securities subject to a tender offer protection for the terms of the offer. The System distinguishes

[1] Securities Exchange Act Release No. 19678 (April 5, 1983) at Note 30.

between "involuntary" reorganizations, such as mergers and liquidations, where the securities holder must participate, and "voluntary" reorganizations, such as tender and exchange offers, where there is a choice of whether or not to participate.

With respect to involuntary reorganizations, the day after the initial date of the reorganization, CNS positions in the subject security will be converted automatically into the equivalent positions of the new securities and/ or cash. Fractional shares will be credited and charged in cash, in the same manner that stock dividends are handled today.

With respect to voluntary reorganizations, NSCC will process most voluntary offerings unless there are operational problems in handling the offer. For example, for operational reasons NSCC initially intends only to process tender offers with eight day protection periods. In processing the offer, NSCC will establish a reorganization sub-account for each competing tender offer, up to a maximum of two tender offers; if there are more than two competing tender offers, the securities will be exited from CNS. Four days after the expiration date ("E+4") participants with long CNS position in a security subject to a tender offer can instruct NSCC to move their position to a sub-account. This constitutes a formal request for NSCC to provide protection for the terms of the tender offer. After the day cycle on E+5, NSCC will establish the sub-account and move into the sub-account a corresponding number of short positions, representing short participants with the oldest positions. On E+6, and each day thereafter, NSCC will mark each short position to the tender offer price.

Between E+5 and the end of the protection period, regular CNS allocations take place, with the long positions in the sub-account having the highest priority. Buy-ins by the long participant will not be permitted during the protection period. Upon completion of the tender offer, entries are made exchanging the long and short positions in the sub-accounts for the securities and/or cash under the terms of the tender offer.

NSCC will provide protection to the long participant up to the terms of the tender offer; if a long participant incurs, or anticipates incurring, greater liability (such as having to purchase shares in the cash market at a premium to make delivery), the long participant must notify NSCC. NSCC then will reverse the entries made which credited and debited the terms of the tender offer, and will issue, receive and deliver instructions to the long participant and corresponding short participants respectively. Immediately upon issuance of such instructions, the member due to receive the securities may take appropriate action to protect its position.

Because the proposed rule change will allow NSCC to increase its ability to process a greater number of transactions within the CNS system and will facilitate the immobilization of securities, it will promote the prompt and accurate clearance and settlement of securities transactions and it is consistent with the requirements of the Securities Exchange Act of 1934.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC developed the proposed System in consultation with the Reorganization Division of the Securities Industry Association, which favors the System. No formal comments on the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self regulatory organization. All submission should refer to the file number in the caption above and should be submitted by April 2, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 6, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5329 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24163; File No. SR-Amex-87-5]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval To Proposed Rule Change by American Stock Exchange, Inc. Relating to the Use of the General Securities Representative (Series 7) Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on February 10, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. hereby announces as a proposed rule change the use of the General Securities Representatives (Series 7) examination and its study outline to qualify persons seeking registration as general securities representatives.

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Exchange Rule 341, candidates associated with members and member organizations seeking registration as general securities representatives are required to successfully complete a training period and to pass a qualifying examination. The proposed rule change reflects the Exchange's current use and commitment to future use of the Series 7 examination and its study outline in qualifying such persons for full registration with the Exchange as specified under Exchange rules. The Series 7 examination, which was recently revised, is designed to test a candidate's knowledge of the securities business, including recent significant developments relating to the introduction of new securities products, including index options, interest rate options, and foreign currency options.

(2) Basis

The proposed rule change is consistent with Section 6 of the Act in general and in particular furthers the objectives of section 6(c)(3)(which authorizes a national securities exchange to examine and verify the qualifications of an applicant to become a member or associated with a member in accordance with procedures established by the rules of the exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were soliticed or received with respect to the proposed rule change.

III. Date of Effetiveness of the Proposed Rule Change and Timing for Commission Action

The Amex requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by April 2, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6, in that it establishes appropriate qualifications for persons seeking general securities representative registration.

The Commission finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof, in that, the Commission has, to date, approved proposed rule changes submitted by the National Association of Securities Dealers, Inc., the Philadelphia Stock Exchange, Inc., the New York Stock Exchange, Inc. and the Boston Stock Exchange Incorporated that permitted these exchanges to use the revised and updated Series 7 examination and its study outline to reflect recent trends and developments in the securities markets.[1] Accordingly, the Commission believes that the Amex should be permitted to continue to use the revised Series 7 examination and its study outline as a part of its training and qualification program.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby, is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: March 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5326 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[1] *See,* Securities Exchange Act Release Nos. 23325 (June 16, 1986), 51 FR 22874, 23685 (October 8, 1986) 51 FR 36621, 23954 (January 5, 1987) 52 FR 1270, and 24106 (February 17, 1987) 52 FR 5603.

[2] 17 CFR 200.30-3.

[Release No. 34-24185; File No. SR-CBOE-86-37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On December 30, 1986, the Chicago Board Options Exchange, Inc. ("CBOE"), pursuant to section 19(b)(l) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] submitted to the Securities and Exchange Commission ("Commission") a proposal to amend its rule relating to appointment of committee members.

The proposal was published for comment in Securities Exchange Act Release No. 24017 (January 20, 1987), 52 FR 3071. No comments were received on the proposed rule change.

The proposed rule change would alter CBOE's procedures relating to appointment of CBOE committee members. The amendment to CBOE Rule 2.1 would substitute the Chairman of the Board for the Chairman of the Executive Committee in the appointment and removal of members of a committee if the Chairman of the Executive Committee is, or has reason to believe he may become, a party to a proceeding of that committee.

The amendment will eliminate any potential conflict of interest or appearance of impropriety that might arise from allowing the Chairman of the Executive Committee to appoint or remove members of a committee that is to render a decision on a matter in which he is interested personally. The Commission therefore finds that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(l) (1984).

[2] 17 CFR 240. 19b-4 (1986).

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 6, 1987

Jonathan G. Katz

Secretary.

[FR Doc. 87-5327 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24162; File No. SR-MSE-87-4]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval To Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to the Use of the Series 7 Examination and Its Study Outline

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 28, 1987, the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated proposes as a rule change the use of the Series 7 examination and its study outline to qualify persons seeking registration as general securities representatives under Article VI, Rule 3, of the MSE Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed ruled change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change reflects the MSE's current use and commitment to future use pursuant to Article VI, Rule 3 of MSE's Rules of the Series 7 examination in qualifying persons seeking registration as general securities representatives.

The use of the Series 7 examination and its study outline for the above-stated purpose is consistent with section 6(c)(3) of the Securities Exchange Act of 1934 which authorizes a national securities exchange to "examine and verify the qualifications of an applicant" to become a member of associated with a member in accordance with procedures established by the rules of the exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments of the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSE requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal Office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by April 2, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, in that it establishes appropriate qualifications for persons seeking general securities representatives registration.

The Commission finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof, in that, the Commission has, to date, approved proposed rule changes submitted by the National Association of Securities Dealers, Inc., the Philadelphia Stock Exchange, Inc., the New York Stock Exchange, Inc. and the Boston Stock Exchange Incorporated that permitted these exchanges to use the revised and updated Series 7 examination and its study outline to reflect trends and developments in the securities markets.[1] Accordingly, the Commission believes that the MSE should be permitted to continue to use the revised Series 7 examination and its study outline as a part of its training and qualification program.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby, is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: March 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5328 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

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[3] 15 U.S.C. 78f (1984).

[4] 15 U.S.C. 78s (1984).

[1] *See* Securities Exchange Act Release Nos. 23325 (June 16, 1986) 51 FR 22874, 23685 (October 6, 1986) 51 FR 36621, 23954 (January 5, 1987) 52 FR 1270, and 24106 (February 17, 1987) 52 FR 5603.

[2] 17 CFR 200.30-3.

[Release No. 34-24167; File No. SR-PSE-87-03]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval To Proposed Rule Changes by the Pacific Stock Exchange, Incorporated; Relating to the Use of the General Securities Representatives (Series 7) Examination and its Study Outline and Use of the Uniform Application for Securities Industry Registration of Transfer (Form U-4)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1987, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated hereby announces as a proposed rule change the use of: (1) The Series 7 examination and its study outline in order to qualify persons seeking registration as general securities representatives, and (2) the use of Form U-4 for registration and oversight of PSE member firm personnel.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is being submitted for the purpose of allowing the PSE to use, and continue to use, the General Securities Representative (Series 7) examination and its study outline to qualify those persons seeking registration as general securities representatives. This will fit in with the Exchange's rules and its obligation as a self-regulatory organization to insure that persons associated with member organizations successfully complete a training course and examination to demonstrate an adequate knowledge of the securities business.

In addition, this rule change is also being submitted to allow the PSE to use, and continue to use, the Uniform Application for Securities Industry Registration or Transfer (Form U-4) as part of its procedue for registration and oversight of member firm personnel. The use of the U-4 form provides, along with NASD's Central Registration Depository (CRD) System, an efficient method of reviewing and tracking the continuous and frequent entry and movement of individuals in the securities industry as well as changes in their employment histories.

This use of the (1) Series 7 examination and its study outline, and (2) the U-4 form, for the described above purposes are consistent with Section 6(c)(3)(A) of the Act which authorizes a national securities excahnge to "examine and verify the qualifications of an applicant" to become a member or associated with a member in accordance with procedures established by the rules of the exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Excahnge Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by April 2, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, in that, it establishes appropriate qualifications for persons seeking general securities representative registration.

The Commission finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof, in that, the Commission has, to date, approved proposed rule changes submitted by the National Association of Securities Dealers, Inc., the Philadelphia Stock Exchange, Inc., the New York Stock Exchange, Inc., and the Boston Stock Exchange Incorporated exchanges to revise and update the Series 7 examination and its study outline to reflect recent trends and developments in the securities markets.[1] In addition, with regard to the Exchange's use of the Uniform Application for Securities Industry Registration of Transfer (Form U-4), the Commission believes that the Exchange's continued as of the Form U-4 will ensure that the Exchange continuously monitors the movement within the securities industry of those individuals associated with PSE member firms. Accordingly, the Commission believes that the PSE should be permitted to use the revised Series 7 examination and its study outline as a part of its training and qualification program and the uniform application for Securities Industry Registraton or Transfer as a part of its program of registration and oversight of member firm personnel.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the

[1] *See* Securities Exchange Act Release Nos. 23325 (June 16, 1986), 51 FR 22874, 23685 (October 6, 1986) FR 36621, and 23954 (January 5, 1987) 52 FR 1270, and 24106 (February 17, 1987)

proposed rule change referred to above be, and hereby, is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: March 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5330 Filed 3-11-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1004]

U.S. Ratification of 1980 United Nations Convention on Contracts for the International Sale of Goods: Official English Text; Correction

In notice document 87-1004 published on March 2, 1986, beginning on page 6262, the third sentence of paragraph one should be corrected to read: "The Convention will enter into force on January 1, 1988 between the United States and the following countries: Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, Yugoslavia and Zambia."

Dated: March 9, 1987.

Richard A. Putnam,

Federal Register Liaison.

[FR Doc. 87-5260 Filed 3-11-87; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 1006]

Certain Nonimmigrant Visas; Grenada

Public Notice 913 of August 22, 1984 authorized consular officers to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act valid for an indefinite period of time to otherwise eligible nationals of the countries listed in that Notice which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This Notice adds Grenada to the list contained in Public Notice 913 in order to conform with present reciprocal or more liberal treatment accorded United States nationals in a similar class.

This Notice amends Public Notice 913 of August 22, 1984 (49 FR 33392).

Dated: March 5, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87-5261 Filed 3-11-87; 8:45 am]

BILLING CODE 4710-06-M

[2] 17 CFR 200.30-3.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Outagamie County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise that an environmental impact statement will be prepared for a proposed highway improvement project in Outagamie County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Michael M. Moravec, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905; telephone (608) 264-5947.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT), is currently preparing an environmental impact statement for the construction of a bypass for US 45 around the city of New London. The project begins on US 45 three miles south of the city and rejoins US 45 two miles north of the city. New London is located in the northeastern corner of Winnebago County, Wisconsin. The proposed project would consist of a four-lane, controlled-access, divided highway and would serve to reduce heavy congestion in the central business district of New London and the accident potential along the present route.

Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including:

(1) *No-Build*—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use;

(2) *Upgrade the Existing Facility*—This alternative would improve the safety and traffic-handling capability of the existing route; and (3) *Construction on New Alignment*—This alternative would involve construction on new location at the outer fringe of the city.

Coordination and Scoping Process

Coordination activities have begun. Scoping meetings have been and will be held on an individual and/or group meeting basis. Agency coordination will be accomplished during these meetings. Questions and comments from individuals and agencies concerning this proposed action and the environmental impact statement should be directed to the FHWA at the address provided.

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

Issued on: March 6, 1987.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 87-5244 Filed 3-11-87; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP 86-11; Notice 1]

Firestone Tire and Rubber Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

Firestone Tire and Rubber Company, Akron, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles other than Passenger Cars*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Paragraph S6.5 (c), *Tire Markings*, of Standard No. 119, gives the requirements for tire size designation. The petitioner reported 56 tires manufactured from September 7, 1986, through September 17, 1986, that do not comply with FMVSS No. 119, section S6.5(c). Firestone marked the aforementioned tires correctly on the serial side with the following marking: 11-22.5 Tubeless Nylon Load Range F. However, the non-serial side contained two size designations:

11-22.5 Tubeless Nylon Load Range F (correct) and 1000-20 Nylon Load Range F (incorrect).

Firestone supports its petition for inconsequential noncompliance as follows:

1. All tires affected are marked on both sides with the correct size designation.

2. If a consumer, after reading the incorrect size (1000-20), mounted the tire on a 20 inch diameter rim, the bead of the tire would not

seat and would, in fact, slip over the outer lip of the rim at very low pressure.

3. The inability of the tire to be mounted on a 20 inch diameter rim would prohibit the tire from use on a vehicle as a 1000–20 size tire.

Interested persons are invited to submit written data, views and arguments on the petition of Firestone Trie and Rubber Company, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administraton, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 13, 1987.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: on March 6, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–5213 Filed 3–11–87; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. IP 87–1; Notice 1]

Nissan Motor Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Nissan Motor Corporation of Carson, California, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for any apparent noncompliance with 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Motor Vehicles other than Passenger Cars,* on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent an agency decision or other exercise of judgment concerning the merits of the petition.

Paragraphs S5.3.2 through S5.3.5 of Federal Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Motor Vehicles other than Passenger Cars,* give the label information requirements for vehicles manufactured on and after December 1, 1984. Each vehicle shall show the following:

S5.3.3. "The side designation of tires (not necessarily those on the vehicle) appropriate (as specified in S5.1.2) for the GAWR."

S5.3.4. "The size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for those tires."

S5.3.5. "Cold inflation pressure for those tires."

Pursuant to S5.3.2, this information shall appear either—

(a) After each GAWR listed on the certification required by 49 CFR 567.4, *Requirements for Manufacturers of Motor Vehicles* or 49 CFR 567.5, *Requirements for Manufacturers of Vehicles Manufactured in two or More Stages* or, at the option of the manufacturer,

(b) On a tire information label affixed to the vehicle in the manner, location and form described in 49 CFR 567.4, (b) through (f).

Nissan Motor Corporation reports that 8,123 Nissan Stanza 4-wheel drive wagons manufactured from March 1985 through July 1986 do not comply with Federal Motor Vehicle Safety Standard No. 120, Specifically, the information lacking from the certification label is the size designation of tires, the size designation of rims, and the cold inflation pressure of the tires. These vehicles however have tire information labels located inside the glove boxes.

Nissan believes these specific noncompliances will have no effect on motor vehicle safety and supports its petition with the following:

1. Tire size designation and cold pressure inflation are listed on the tire placard located in the glove box.
2. The rim size designation is stamped on the original equipment rims and original equipment tires.
3. The owner's manual contains the correct tire size designation, rim size designation and the cold inflation pressure.

Interested persons are invited to submit written data, views and arguments on the petition of Nissan Motor Corporation, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 13, 1987.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 6, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–5212 Filed 3–11–87; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[Delegation Order 28, Docket No. 87–4]

Order of Succession to Act as Comptroller

By virtue of the authority contained in 12 U.S.C. 4 and 4a, and by Treasury Order No. 129 (Rev. No. 2), dated April 22, 1955, itis ordered as follows:

A. During a vacancy in the Office or during the absence or disability of the Comptroller, the following officers shall possess the power and perform the duties attached by law to the Office of the Comptroller of the Currency in the order of succession enumerated:

(1) Dean S. Marriott, Senior Deputy Comptroller for Bank Supervision Operations [1]

(2) Robert J. Herrmann, Senior Deputy Comptroller for Bank Supervision Policy [1]

(3) Judith A. Walter, Senior Deputy Comptroller for Administration

(4) Frank Maguire, Senior Deputy Comptroller for Legislative and Public Affairs

(5) J. Michael Shepherd, Senior Deputy Comptroller for Corporate and Economic Programs.

B. In the event of an enemy attack on the continental United States, all Deputy Comptrollers for the Districts, including any acting Deputy Comptrollers for the Districts, are authorized in their respective districts to perform any function of the Comptroller of the Currency or the Secretary of the Treasury, whether or not otherwise delegated, which is essential to carry

[1] Mr. Herrmann is first and Mr. Marriott is second in the order of succession in the exercise of the Comptroller's authority as an FDIC Board member on matters related to the closing of national banks.

out responsibilities otherwise assigned to them. The respective officers will be notified when they are to cease exercising the authority delegated in this paragraph.

C. Delegation Order No. 27 is hereby repealed.

Dated: February 19, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 87-5295 Filed 3-11-87; 8:45 am]

BILLING CODE 4810-33-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 48
Thursday, March 12, 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).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 6647, March 4, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, March 9, 1987.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Matters relating to the Plans administered under the Federal Reserve System's employee benefits program. (This item was originally announced for a closed meeting on February 18, 1987.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–5393 Filed 3–10–87; 11:23 am]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 6285 March 2, 1987].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, February 25, 1987.

CHANGE IN THE MEETING: Rescheduling.

The following item was not considered at a closed meeting on Tuesday, March 3, 1987, at 2:30 p.m. and has been rescheduled for Tuesday, March 10, 1987, at 2:30 p.m.

Litigation matter.

Commission Cox, as duty officer, determined that Commission business required the above change.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272–2149.

Jonathan G. Katz,

Secretary.

March 4, 1987.

[FR Doc. 87–5421 Filed 3–10–87; 12:56 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 6906 March 5, 1987].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: Friday, February 27, 1987.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting for Thursday, March 12, 1987, at 10:00 a.m.:

Consideration of whether to issue a notice of and order for hearing on an application under the Investment Company Act of 1940 (File No. 812–6393) filed by American Pathway Fund and Capital Research and Management Company. The requested order would permit shares of certain open-end management companies to be sold to separate accounts of affiliated and unaffiliated life insurance companies in connection with the funding of variable annuity and variable life insurance contracts. The Commission issued a notice of the filing of the above-referenced application (Investment Company Act Release No. 15233) on July 31, 1986, and received a timely request for a hearing on the application from Anchor National Life Insurance Company and its variable annuity separate account. For further information, please contact Joseph R. Fleming at (202) 272–3017.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272–2149.

Jonathan G. Katz,

Secretary.

March 6, 1987.

[FR Doc. 87–5422 Filed 3–10–87; 12:56 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 48
Thursday, March 12, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administration Jurisdiction; Patoka Lake, IN

Correction

In notice document 87–4482 beginning on page 6592 in the issue of Wednesday, March 4, 1987, make the following correction:

On page 6593, in the first column, in **FOR FURTHER INFORMATION CONTACT**, in the fourth line, the telephone number should read "(202) 235-2493".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 449

[Docket No. 86N-0497]

Antibiotic Drugs; Nystatin Pastilles

Correction

In rule document 87–3078 beginning on page 4616 in the issue of Friday, February 13, 1987, make the following correction:

§ 449.150d [Corrected]

On page 4617, in the second column, in § 449.150d(a)(3)(i)(*a*), in the second line, "driving" should read "drying".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-07-4220-10; I-7322]

Proposed Withdrawal of Public Lands in Owyhee County, Idaho; Public Meeting

Correction

In notice document 87–4102 beginning on page 6079 in the issue of Friday, February 27, 1987, make the following correction:

On page 6080, in the first column, in the third line from the bottom, "I–8322" should read "I–7322".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

[A.G. Order No. 1171-87]

Proceedings To Determine Deportability of Aliens in the United States; Apprehension, Custody, Hearing, and Appeal

Correction

In proposed rule document 87–1733 beginning on page 2949 in the issue of Thursday, January 29, 1987, make the following correction:

§ 242.22 [Corrected]

On page 2950, in the first column, in § 242.22, in the 18th line, after "was" insert "not".

BILLING CODE 1505-01-D

federal register

Thursday
March 12, 1987

Part II

Department of Transportation

Coast Guard

33 CFR Parts 151 and 158

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances

46 CFR Parts 30, 98, 151, 153 and 172

Pollution Rules for Ships Carrying Hazardous Liquids; Final Rules

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151 and 158

[CGD 85-010]

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the pollution regulations. These amendments implement Annex II port and terminal and reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, (MARPOL 73/78). Annex II of MARPOL 73/78, relating to the carriage of noxious liquid substances (NLS), comes into effect on April 6, 1987. These amendments will reduce the amount of residues and mixtures remaining in ships' cargo tanks, limit the amount of noxious liquid substances discharged into the sea, and ensure that ships experience no undue delay while waiting to discharge NLSs to a reception facility.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Timothy M. Mallon, Office of Marine Safety, Security, and Environmental Protection, (G-MPS-3), telephone 202-267-0494. Normal working hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard has consulted with the Administrator of the Environmental Protection Agency, as required by the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et. seq*) (the Act). Comments from EPA officials, including informal comments at meetings and formal comments on a draft of this rulemaking, have been considered before issuing this final rule.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Timothy M. Mallon, Office of Marine Safety, Security, and Environmental Protection, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Background to the Proposed Regulation

MARPOL 73/78, including Annex I and II, was ratified by the United States on August 12, 1980. Significant amendments to Annex II were adopted by the International Maritime Organization (IMO) in 1985 to reduce the need for reception facilities and simplify the operational requirements for ships. The vessel requirements of Annex II and the Standards for *Procedures and Arrangements for the Discharge of Noxious Liquid Substances* (Res. MEPC 18 (22), 1985), developed as an adjunct to MARPOL 73/78, are implemented under a final rule (CGD 81-101) appearing elsewhere in this issue of the **Federal Register.**

Regulation 7 of Annex II requires the Government of each Party to the Convention to ensure the provision of reception facilities to receive residues and mixtures containing NLS from ships according to the needs of the ships, in cargo loading and unloading ports and terminals and at "ship repair ports" undertaking repairs to chemical tankers. The NLS residues resulting from the application of Annex II must be accepted without undue delay to the ship. Regulation 7 also requires that cargo unloading terminals provide arrangements to facilitate stripping of cargo tanks of ships unloading NLS at these terminals, and it prohibits draining cargo hoses and piping systems containing NLS back to the ship that unloaded the cargo. The enabling legislation for implementing MARPOL 73/78, mandates the establishment of regulations setting criteria for determining the adequacy of reception facilities of a port or terminal and procedures for certifying that the facilities for receiving residues and mixtures containing oil or NLS from oceangoing ships are adequate.

A Notice of Proposed Rulemaking was published in the September 26, 1986 issue of the **Federal Register** (51 FR 34332). A meeting open to the public was held in Washington, DC on October 31, 1986 where oral and written questions were received and discussed. The **Federal Register** published a correction on October 23, 1986 (51 FR 37607), and a correction and extension of the comment period was published in the **Federal Register** on November 10, 1986 (51 FR 40450). A total of 35 comments were received on the NPRM and considered before this rulemaking was published. These comments are discussed below.

Changes to Part 151 and Part 158 to Implement Annex II

1. A number of editorial changes were made to clarify the requirements that apply to ships under 33 CFR Part 151 and ports and terminals under Part 158. All of these changes are for clarification and do not make any substantive change to the proposed rules.

2. *General Comments*—One commenter recommended that the Coast Guard establish rules that exclude domestic trade. The Coast Guard disagrees inasmuch as MARPOL 73/78 and the Act apply to all oceangoing ships and are not limited to foreign trade.

One commenter asked for clarification of the relationship between the terminal operator and the "person in charge" of the ship with respect to the operational requirements that only apply to the ship. The operating requirements of Part 151 are clearly the responsibility of the master or person in charge of the vessel. There are no operating requirements for vessels in Part 158. The regulations assign responsibilities to the appropriate person, they do not attempt to control the relationship between the terminal operator and the vessel.

One commenter indicated that existing regulations are sufficient to regulate the movement of hazardous chemicals and recommended that the Coast Guard develop regulations only after taking into consideration: (1) The Port and Tanker Safety Act, (33 U.S.C. 1221 through 1231), (2) the Federal Water Pollution Control Act (FWPCA) (1972), as amended by the Clean Water Act (CWA), (33 U.S.C. 1321 *et seq.*) and (3) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by Superfund Amendments and Reauthorization Act (SARA), 100 Stat. 1613 (1986). As to CERCLA and SARA, Congress recognized the potential overlap between the Act and other U.S. environmental laws administered by the Environmental Protection Agency (EPA) and required the Coast Guard to consult with the Administrator of EPA prior to issuing these regulations. MARPOL 73/78 was ratified by the United States and implementing legislation was enacted, in full awareness of existing legislation, including the first two statutes cited. The intent was to supplement those statutes. The Coast Guard considered all existing statutes affecting pollution of the marine environment in developing these regulations.

Another commenter suggested that more stringent regulations are necessary and recommended that the coastal zone of the United States be considered a special area because of the environmentally sensitive nature of the near coastal waters. The designation of "special areas" was fully considered in drafting MARPOL 73/78. New areas can not be adopted unilaterally. Publishing standards more stringent than those of Annex II would be contrary to the spirit of the convention, would put U.S. ships

at a disadvantage, and have an adverse effect on U.S. commerce.

One commenter questioned the rationale for developing the lower figure of $3.5K per system rather than $7.0K system cost for meeting the backpressure requirements. The rationale is fully developed in the full evaluation. The costs are based on certain assumptions about the configuration of a port or terminal and the various means available to reduce the pressure in the terminal's piping system. The Coast Guard estimated the costs will range from $1,416 to install a diaphram "booster" pump to $7,079 to utilize a surge tank and pump mounted on a flatbed. Since there was no way of determining the layout of every port or terminal, the Coast Guard used the (annualized) cost of $3,540 for one intermediately priced system in estimating the costs of these requirements.

One commenter recommended that the Coast Guard support these costs with empirical data. The regulatory evaluation discusses the costs which have been supported by empirical data from several sources including shipping industry trade associations, terminal owners and operators, independent waste haulers, the Department of Commerce and Army Corps of Engineers.

One commenter requested that the Coast Guard emphasize in the preamble of the final rule, that the lack of federal preemption authority discussed in the preamble to the NPRM was overstated. The Coast Guard agrees with the commenter that where State or local laws conflict with Federal laws in matters embraced by Federal Law, the Federal law would prevail.

Three commenters were concerned about the relationship of the EPA's Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 *et seq.*), CERCLA, and the vessel and reception facility requirements and another commenter requested that the regulations be revised to include rules for the handling of hazardous waste. The authority for all of these matters has been given by Congress to the EPA. The Coast Guard recommends that those interested in this matter refer to the discussion given to it in the preamble to the Interim Final Rule on Annex I reception facilities for receiving residues and mixtures containing oil which was published in the **Federal Register** of September 9, 1985 (50 FR 36770).

One commenter suggested that the EPA and Coast Guard enter into a Memorandum of Understanding (MOU) to permit terminal operators to use their RCRA generator numbers without the downstream liability for alleged improper disposal. The Coast Guard disagrees with the commenter over the need to take the action requested. The requirements for a generator to obtain an EPA Id number and the downstream liability for improper waste disposal imposed by CERCLA are within the jurisdiction given by Congress to the EPA which would make an MOU irrelevant.

One commenter suggested the regulation be revised so that waste disposal responsibility is coupled with financial responsibility requirements for violations of the Federal Water Pollution Control Act or CERCLA. The responsibility with respect to the disposal of wastes is not related to the financial responsibility provided by CERCLA as amended by SARA.

One commenter indicated that the information and recordkeeping requirements of the proposed rule duplicate existing RCRA information and recordkeeping requirements. The Coast Guard disagrees with the commenter. The Act mandates that the Coast Guard establish procedures whereby a person in charge of a port or terminal may request certification of the adequacy of its facilities. The information provided in Application Form B is the first step in that procedure, a step the applicant must make. The commenter would have the Coast Guard provide its own information, which would make the process much longer and delay issuance of the certificate.

Two commenters recommended republishing a corrected version of the proposed rule in the **Federal Register.** The Coast Guard disagrees with the commenters over the need to republish the entire regulations. A correction to the NPRM was published in the October 23, 1986 issue of the **Federal Register** (51 FR 37607). In addition, the correction to proposed Table 2 (now, § 151.49) in the **Federal Register** of November 10, 1986 (51 FR 40950) should have alleviated any confusion.

Two commenters recommended publishing the regulations as an Interim Final Rule with a one year comment period to gain operating experience and to identify areas needing change or clarification, while another commenter supported the implementation date of April 6, 1987. There is no advantage to publishing an Interim Final Rule. There is no guarantee that a one year period would be appropriate for further comment. If there are areas that need revision, comments may be submitted at any time and corrective action will be taken as necessary.

3. *Section 151.03 Applicability*—One commenter felt that the regulations were not intended to apply to vessels servicing the offshore industry and requested that the regulations be modified to reflect this. The Coast Guard disagrees with the commenter. The Act applies to oceangoing ships carrying NLSs and the requirements of 33 CFR Part 151 apply to each oceangoing ship carrying NLS. As to the applicability of the requirements of Title 46 CFR to vessels in the offshore industry, see the discussion elsewhere in this issue of the **Federal Register.**

One commenter recommended an exemption from the regulations for inland barges operating on a limited coastwise route. The Coast Guard agrees and added a new § 151.30 to exempt barges operating on a limited shore protected coastwise route from the requirements of Subpart C of Part 151 if the barge is constructed and certificated primarily for service on an inland route.

4. *Sections 151.05 and 158.120 Definitions.* a. "Harmful substance"—One commenter indicated that the addition of the term "harmful substance" to § 151.05 is confusing because the term "harmful material" is used in 46 CFR Part 153. The Coast Guard agrees with the commenter and has removed the definition.

b. "High viscosity NLS"—One commenter requested that when referring to "High viscosity NLS", the figure should include a centipoise (cP) reference and note that viscosity measurements are made with a rotating viscometer. The Coast Guard has chosen not to do this but has added an entry in Appendix III of 46 CFR Part 153 giving the conversion from millipascal-seconds to centipoise. See the discussion elsewhere in this issue of the **Federal Register.** Note that the conversion factor is 1, that is, the numerical value of viscosity is the same in both sets of units.

Another commenter requested that the term "high viscosity substance" be consistent with the definition adopted by the Annex II of MARPOL 73/78. The Coast Guard agrees with the commenter and has omitted the words "but does not include solidifying NLS" from the definitions of "High viscosity NLSs", "High viscosity Category B NLS", and "High viscosity Category C NLS".

c. "NLS residue"—Commenters recommended deleting from this definition the condition of the failure of NLS cargo meeting the consignee's specifications because it would potentially increase the quantity of NLS residue generated. The Coast Guard

disagrees with the need for this change. There is no requirement that the ship discharge the cargo as NLS residue to a reception facility. In 46 CFR 153.1102 (discussed elsewhere in this issue of the **Federal Register**) the Coast Guard has explicitly included returning the cargo to the shipper or discharging the NLS to another consignee among the permissible dispositions.

One commenter thought that the definition of NLS residue should not include ballast since this could create a situation where it is treated as residue without justification. The Coast Guard disagrees with the commenter because the definition only includes that ballast which is contaminated with Category A, B, C or D NLS.

One commenter thought that this definition is not consistent with the intent of the regulations applied under § 158.310 and § 158.320 because the definition includes many types of waste that are not intended to be regulated in these regulations. The Coast Guard disagrees with the commenter. This is a broad definition that uses the connective "or" and not "and"; therefore, any one of the conditions that apply can bring the situation under the definition.

d. "Oil-like substance"—One commenter felt that the term "oil-like substance" was not adequately defined. The Coast Guard disagrees with the commenter that additional clarification of this term is necessary. The Coast Guard has incorporated the list of oil-like Category C and D NLS developed by IMO which was published in proposed Table 2 (now § 151.49). This clearly states which chemicals can be carried as "oil-like". Under the unified interpretations of Regulation 14 of Annex II to MARPOL 73/78 MEPC(22)(21), the list of oil-like substances was published, and criteria were listed that will be used by IMO in deciding whether or not to add a chemical to the list of oil-like substances. As IMO adds to the list, the Coast Guard makes the necessary changes to § 151.49.

e. "Prewash"—One commenter suggested that the term "prewash" should be defined in Part 158. "Prewash" is defined and follows the definition of "Person in charge" in § 158.120 and is identical to the definition in 46 CFR 153.2.

f. "Ship"—One commenter suggested that the definition of ship should be fully defined in § 158.120 rather than referring to § 151.05(q). The Coast Guard agrees and has added the definition of "ship" and "oceangoing ship" to § 158.120.

g. "Terminal"—Four commenters recommended that the definition of "terminal" should be modified to remove the possibility that ships will be considered a terminal. The Coast Guard disagrees with the commenters. The reception facility and terminal requirements will not generally apply to ships. However, the COTP has the authority to designate a place or facility used or intended to be used for the transfer or other handling of a hazardous material as a "port". If the COTP designates an area as a "port", the master or person in charge of a ship involved in the transfer operations could choose to accept the responsibility for obtaining a COA and making reception facilities available in this "port", which will be subject to the regulations in 33 CFR Part 158. In order to avoid further confusion the note at the end of the definition was deleted.

One commenter referred to the differences in the definitions of ports and terminals in both federal statute and international agreements and recommended adopting a narrower definition for terminals. Another commenter recommended that the definition of terminal should be modified to remove the possibility that offshore structures that receive NLS for their "exclusive use" will be considered a terminal. The Coast Guard cannot change this definition which is in the Act.

5. *Section 151.08 Denial of Entry*—One commenter requested that the Coast Guard indicate how the ship operator will know if the port or terminal has a Certificate of Adequacy. The ship would be required under § 151.43 to make an advance notice of the need for reception facilities 24 hours prior to entering the port or terminal. In response, the port or terminal will notify the master or person in charge whether or not it holds a Certificate of Adequacy and whether or not a reception facility will be made available to meet the needs of the ship. In addition, 33 U.S.C. 1905(a) requires periodic publication in the **Federal Register** of a list of ports and terminals holding valid Certificates of Adequacy.

One commenter felt that the denial of entry provisions of § 151.08 should be amended to state that the provisions do not apply to tank barges. The Coast Guard disagrees with the commenter. A ship is defined in part to mean "a vessel of any type whatsoever operating in the marine environment". The regulations in Part 151 apply to all oceangoing ships, including barges, carrying residues and mixtures containing oil in bulk and oceangoing ships, including barges, carrying Category A, B, C or D NLSs.

6. *Section 151.31 Where to find the requirements applying to ships carrying Category A, B, C and D NLS*—Two commenters expressed concern over the lack of a mechanism to quickly add new chemicals to §§ 151.47 and 151.49 so that they may be carried on oceangoing ships. They recommended that the Coast Guard develop a procedure for shippers to ship chemicals found to meet the specifications of an NLS, but not listed in the tables. The Coast Guard agrees with the commenter that this may be confusing. In order to clarify this, a paragraph (d) was added to this section explaining that procedures for carrying NLSs not listed in §§ 151.47 and 151.49 are in 46 CFR 153.900(c).

7. *Sections 151.33 to 151.35 Certificates needed to carry Category D NLS and Category C and D oil-like NLS*—One commenter recommended that the requirements to have an International Pollution Prevention (IOPP) Certificate, Certificate of Inspection (COI), and Certificate of Compliance (COC) be modified to reflect that each cargo tank is certified to carry a particular Annex II category rather than list cargoes that each tank may carry. The Coast Guard disagrees with the commenter since the recommended approach does not recognize the differences between individual chemicals within the same category of chemicals. The equipment and operating requirements in § 151.37 and § 151.41 for each tank vary for the specific chemical being carried. In addition, if the suggestion was adopted, the certificate would have to be changed each time a different category was carried.

One commenter recommended an exemption from the requirements of §§ 151.33 and 151.35 for inland barges operating on a limited coastwise route because they do not have an IOPP Certificate. The Coast Guard agrees and has revised the § 151.03 to exempt barges operating on a limited short protected coastwise route from the requirements of Subpart C of Part 151 if the barge is constructed and certificated primarily for service on an inland route.

One commenter indicated that it is impractical to obtain an endorsement for the various chemical blends and constituents used in the drilling industry since these vary on almost a daily basis. They recommended evaluating a range of chemical blends and constituents. The Coast Guard will consider any request for an authorization under 46 CFR 153.900(c) provided sufficient data is submitted to Commandant (G-MTH) for evaluation and categorization of the material.

8. *Section 151.37 Obtaining an Attachment for NLSs to the IOPP*

Certificate Supplement and obtaining an NLS Certificate—One commenter recommended that the proposal be clarified to indicate that this subpart contains all the rules pertaining to Subchapter D tankers carrying Category C and D oil-like NLSs and Category D NLSs. This is incorrect. Section 151.31 directs the reader where to find additional requirements for the carriage of NLS cargo.

One commenter recommended that an exception to the monitor requirements in the proposed § 151.37(a)(1) be provided if the ship is incapable of being ballasted or configured to wash tanks enroute as was done for Annex I cargoes. A second commenter suggested that the Coast Guard delete the requirement that the ship have an approved monitor until specifications are developed for the monitor and, if different specifications are developed, that sufficient time be provided to allow vessels to come into compliance. A third commenter recommended the Coast Guard permit the use of existing monitors if they can be shown to monitor the oil-like NLSs carried. A fourth commenter recommended that the Coast Guard adopt some shipboard approval process for existing monitors. These requirements would not apply to oceangoing ships that are not configured to wash tanks or ballast enroute. To clarify this the Coast Guard has included an exception to § 151.37(a)(1) for ships that are not configured and are not equipped to ballast or wash cargo tanks while proceeding en route. Cargo monitor specifications presently exist in 46 CFR Part 162.050. To avoid any confusion, the Coast Guard deleted the proposed note at the end of § 151.37. The Coast Guard is preparing an NPRM that would adopt IMO Resolution A586 (1985) regarding specifications for monitors. If the proposal is adopted, the Coast Guard will permit the use of existing monitors that meet these specifications and can detect oil-like NLS cargo.

One commenter requested clarification whether or not oil product carriers with Category C products have to meet the type III hull requirements and another commenter recommended that proposed § 151.37(a) be clarified regarding the stability requirements that barges must meet. The Coast Guard agrees and has revised this section to distinguish the damage stability requirements for ships from the requirements for barges. An oceangoing barge of 150 meters or less in length carrying a Category C oil-like NLS must meet the stability requirements for type III hulls of Regulation 14(c) of Annex II to MARPOL 73/78. An oceangoing ship of 150 meters or less in length carrying a Category C oil-like NLS must meet the stability requirements for type III hulls under 46 CFR Part 172 Subpart F except §§ 172.130 and 172.133.

One commenter requested that the Coast Guard clarify the requirements of § 151.37(b)(2) regarding the exception to the residue discharge system requirements. The Coast Guard agrees that the proposal was confusing and has corrected the reference to read 46 CFR 153.1128(b).

9. *Section 151.41 Operating requirements for oceangoing ships with IOPP Certificates: Category C and D oil-like NLSs*—Two commenters suggested that this section should be revised to provide an exception to barges that are not equipped with cargo monitors when they can neither ballast nor wash cargo tanks enroute. The Coast Guard disagrees with the commenters over the need to make the requested change. The Coast Guard has provided an exception to the monitor requirements in § 151.37(a)(1) for non-self-propelled barges that neither ballast nor wash cargo tanks while proceeding enroute. Therefore, paragraph (b) of § 151.41 would not apply to these barges.

10. *Section 151.43 Control of discharge of NLS residues*—One commenter requested clarification of the situation where the ship is not able to meet the proposed 24 hour advance notification of arrival requirements. The Coast Guard does not feel that a change in the regulations is needed. There is no prohibition against the port or terminal agreeing to receive the ship with less than 24 hours of advance notification; however, this would be a case by case decision for the port or terminal which only must make reception facilities available after 24 hours' advance notification (proposed § 158.310).

Two commenters recommended that the Coast Guard except fixed and floating drilling rigs or platforms operating under an National Pollutant Discharge Elimination Systems (NPDES) permit from the requirements of MARPOL 73/78. The Coast Guard agrees with the commenter and has added the words "Unless the ship is a fixed or floating platform operating under an NPDES permit" in § 151.43(a) in recognition of the restrictions such permits would place on any discharge.

One commenter recommended clarifying § 151.43(b)(7) by adding the words "in the tank washing," at the end. The Coast Guard agrees with the commenter and has added the words "to be used during the prewash" since it is for that procedure the information is needed.

One commenter requested that the Coast Guard clarify the discharge restrictions that apply for NLSs in special areas. For clarification, the Coast Guard has added a new paragraph (c) which informs the reader that operations in a special area must meet 46 CFR 153.903.

11. *Section 151.45 Reporting Spills of Category A, B, C and D NLS*—One commenter suggested adding the name of the NLS spilled to the proposed reporting requirements of this section. The Coast Guard agrees with the commenter and has added this to the required report.

12. *Sections 151.47 and 151.49 Category D NLSs and Category C and D oil-like NLSs allowed for carriage*—One commenter suggested that Tables 1 and 2 should have a specific table number assigned to it. The request is confusing since the tables had specific numbers assigned to them; however, since their form fitted more properly into sections, Table 1 is now § 151.47 and Table 2 is now § 151.49.

One commenter suggested adding two Category D NLSs to § 151.49. The Coast Guard will propose to IMO, based on requests received, to add additional chemicals to the list of oil-like Category C or D and non-oil-like Category D NLS. If this proposal is not approved, the Coast Guard will evaluate the information available on a case by case basis to decide whether or not to authorize the ship to continue operating under 46 CFR 153.900(c).

One commenter suggested that § 151.49 contains more oil-like substances than those in Annex II of MARPOL 73/78 and includes some other Category B NLS cargoes. They recommended that proposed Decene, 1-Dodecene, 1-Octene, and Olefins that are listed as Category B substances be omitted. The Coast Guard published a corrected Table 2 (now, § 151.49) in the correction and extension of the comment period in the November 10, 1986 issue of the **Federal Register** (51 FR 40950).

One commenter requested clarification on how mixtures of NLS will be treated. The Coast Guard has a discussion on the policy concerning mixtures in the changes to 46 CFR Part 153 that appears elsewhere in this issue of the **Federal Register.**

13. *Section 158.110 Applicability*—In response to numerous comments, this section has been rewritten to exclude ports and terminals used by tank barges that carry NLS cargo that are not configured and are not equipped to

ballast or wash cargo tanks while proceeding en route. Further, the applicability regarding ship repair yards has been clarified.

Three commenters requested clarification regarding who must have the Certificate of Adequacy if a ship is transferring a regulated NLS cargo to a lightering ship or barge and another thought that lightering operations are covered by separate regulations and requested that a separate rulemaking be published if the lightering vessel is to be considered a terminal under Annex II. One commenter suggested that the lightering barge should not be considered a terminal for the purposes of Part 158 while another commenter recommended that the Coast Guard require the ship to make their own arrangements for reception facilities. The Coast Guard agrees that the practice of unloading an NLS cargo from a ship to another vessel, particularly when done outside the confines of a port, does not readily fit into commonly accepted concepts or "ports" and "terminals". The statutory definition of "terminal" which is limited to "onshore facility or offshore structure" appears to exclude lightering vessels. However, the clear intent of MARPOL 73/78 and the implementing legislation is to provide reception facilities for ships unloading NLS cargo and it is obvious that a lightering operation is unloading cargo. The vessel regulations in 46 CFR Part 153 require ships to prewash cargo tanks and transfer the contaminated tank washings to onshore reception facilities under specified conditions. Under the regulations, the means for accomplishing this are flexible.

Ships could comply with applicable prewash requirements and offload the resulting mixture of NLS residues to a lightering vessel for transfer to a shore reception facility, or apply for a waiver if the prewash mixture is to be discharged at another port or terminal. It is also possible that no reception facilities would be required if the vessel carries non-solidifying or non-high viscosity Category B or C NLS cargo and meets the efficient stripping requirements. The Coast Guard is of the opinion that no separate regulations are required. Under § 158.130, the COTP can designate the lightering area as a port, determine the availability of reception facilities, and evaluate the adequacy of whatever method is proposed for receiving the NLS residues. There is no restriction on who would be the person in charge of the designated port. The selection of the person in charge would be a decision made by representatives of the ship being offloaded, the lightering vessel, and possibly other parties such as the person in charge of the port or terminal ultimately receiving the cargo or the person in charge of the onshore reception facility.

Parties contemplating lightering operations subject to these rules should contact the cognizant COTP as early in the planning stage as possible. The lightering regulations in § 156.210(b) say in part that no person may transfer a hazardous substance in the marine environment beyond the baseline from which the territorial sea is measured, when the cargo is destined for a port or place subject to the jurisdiction of the United States without specific approval of Commandant (G–MPS).

Three commenters requested the Coast Guard to exempt fixed or floating drilling rigs, and other platforms from the reception facility regulations in 33 CFR Part 158. The Coast Guard disagrees with the commenters over the need to take the action requested. The Act defines a fixed or floating drilling rig, or other platform as a ship. However this does not preclude the platform from being a designated port. The reception facility and terminal requirements will not normally apply to platforms (ships), however, if a platform was involved in the transfer of oil or NLSs under circumstances where reception facilities are appropriate, the COTP has the authority to designate the area as a "port". A blanket exemption from the requirements of 33 CFR Part 158 is not appropriate. If the COTP designates an area as a "port", the master or person in charge of any platform or ship involved could choose to accept the responsibility for obtaining a COA and making reception facilities available in this "port", which would be subject to the regulations in 33 CFR Part 158.

One commenter felt that it is unnecessary to require all terminals to apply for a Certificate of Adequacy and requested that terminals used in support of the offshore oil and gas activities be exempted from the regulations. In order to comply with the convention, the Coast Guard can not make such a blanket exemption from the regulations. However, an exception to the regulations in Part 158 has been provided for ports and terminals used only by ships that are operating under waivers under 46 CFR 153.491 or used only by barges that are not configured to wash tanks or ballast while proceeding en route. All other ports and terminals used by oceangoing ships carrying NLS cargo will have to apply for a Certificate of Adequacy. However, it may be possible for a particular port or terminal to demonstrate that no on site reception facilities are actually required. One commenter felt that § 158.110 should clarify the type of barge that is regulated. The regulations in 33 CFR Part 158 apply to ports and terminals, not vessels. They apply to each port or each terminal located in the United States or subject to the jurisdiction of the United States that is used by oceangoing tankers and other oceangoing ships of 400 gross tons or more carrying oil or oily residues and oceangoing ships carrying NLS. A ship is defined in § 158.120 to mean "a vessel of any type whatsoever operating in the marine environment". The regulations therefore apply to ports and terminals used by oceangoing barges carrying oil or oily residues in bulk and oceangoing barges carrying Category A, B, C or D NLS. AS discussed above, limited exception has been provided for those ports and terminals used only by barges that can not ballast or wash tanks while proceeding enroute.

One commenter thought that the regulations should clearly state that ports and terminals handling only Category D NLSs do not have to apply for a COA. The Coast Guard disagrees with the commenter over the need to make the requested change. Taking the action recommended by the commenter would exempt ship repair yards from the requirement to make reception facilities available to meet the needs of the ship carrying Category D NLS cargo when required to wash cargo tanks while at the ship repair yard. This would cause the United States to deviate from Annex II of MARPOL 73/78. Regulation 7 of Annex II requires that ship repair yards make reception facilities available to receive all NLS residue generated incidental to the repair of the ship.

One commenter requested the Coast Guard to clarify whether facilities that dock oceangoing ships under 400 gross tons need Certificates of Adequacy. The rules for Subpart A and B of 33 CFR Part 158 apply to ports and terminals used by oceangoing tankers and other oceangoing ships of 400 gross tons or more that carry oil in bulk, while Subparts A, C and D of 33 CFR Part 158 apply to ports and terminals used by any oceangoing ships that carry NLS. Two commenters requested the Coast Guard to exempt an offshore operator's supply base from the requirement to have a COA when the base does not transfer liquids. The Coast Guard feels there is no need to take the action requested. These regulations would not apply to an offshore operator's supply base used by ships that do not transfer NLS since it would not be a port as defined in § 158.120, except by choice, or

as specifically designated by the COTP. A COTP would not designate a place or facility as a port unless it transferred or otherwise handled oil or NLS.

One commenter recommended developing a separate subpart in the regulations specifically detailing requirements of the offshore oil and gas industry including offshore supply vessels and associated shore bases. The Coast Guard disagrees with the commenter over the need to make the recommended change. This approach would be confusing because the regulations in Title 33 CFR and Title 46 CFR are organized by subject matter and not by industry.

14. *Section 158.130 Delegations*—One commenter felt that § 158.130(f) leaves open the possibility that a ship carrying a Category A NLS will be able to enter a port having only a Certificate of Adequacy for oil. They recommended rewriting this section to read "Adequacy for oil and for each NLS cargo or cargo residue the ship carries." The Coast Guard disagrees with the proposed change. This section deals with the delegation of authority to the COTP. Application Form B will be attached to and becomes part of the Certificate of Adequacy for ports and terminals that service ships carrying NLS cargo. Form B lists the NLS cargoes that the terminal will handle. The COTP will deny entry of ships carrying NLS cargo to those ports and terminals under § 158.110 that do not hold a Certificate of Adequacy covering the category of cargo carried.

15. *Section 158.140 Applying for a Certificate of Adequacy*—Numerous commenters expressed some concern about the organization of the Form B and suggested that the Coast Guard clarify whether a particular section applied to the reception facility or to port and terminal equipment and operating requirements. In order to avoid confusion, the Coast Guard has revised Form B into three distinct sections. Section 3 requires information on the type of NLS cargo handled; section 4 requires information on the port and terminal; and section 5 requires information on the reception facility. A copy of application Form B is attached as Appendix I to the preamble of this final rule and will be available from the COTP.

One commenter requested clarification regarding the date the application for the Certificate of Adequacy must be submitted. Ports and terminals currently handling NLS should submit their COA application as soon as possible. Others should submit their application as soon as information is available. After the effective date of these regulations, the COTP will deny vessels entry to ports and terminals not holding a COA.

One commenter requested that section 2.A.(5) of application Form B should designate the onsite or offsite location and type of disposal planned for NLS prewash water. The Coast Guard disagrees with the commenter. Taking the action requested by the commenter will impose redundant information collection and recordkeeping requirements on the public since this information is included on EPA's hazardous waste manifest.

One commenter recommended that section 3 titled "Waste Handled at the Port or Terminal" be revised to read "NLS Cargo Handled at the Port or Terminal". The Coast Guard agrees with the commenter and has revised the title. Another commenter suggested that this section 3 should be filled out generically as to the type of NLS cargo the terminal will handle. They thought that when a terminal desired to handle a new NLS, the COA application will have to be amended and the 12 month history will have no bearing on the reception facility capacity. The Coast Guard disagrees with the commenter. The name of the NLS cargo is necessary to determine which cargoes received from oceangoing ships will require a prewash of cargo tanks and discharge to a reception facility. This information is used to determine the required reception facility capacity. If the NLS cargoes change, the person in charge of the port or terminal will be required under § 158.165 to notify the COTP of the change.

One commenter recommended that proposed section 4 be revised by replacing the word "residue" with the words "during cargo tank stripping" because this section applies to cargo tank stripping operations. The Coast Guard agrees and has revised this section by replacing the words "noxious liquid substance residue" with the words "NLS cargo during cargo tank stripping operations". Two commenters recommended revising section 4 by substituting the words "back pressure at the ships manifold" for "pressure at the manifold". The Coast Guard agrees and has made the change since this clarifies the conditions under which the backpressure requirements must be met.

Several commenters requested that the reception facility capacities be clarified to indicate that they apply to NLS prewash water. The Coast Guard agrees with the comments and has revised these provisions. One commenter requested that the provisions concerning the receipt of NLS residues within 10 hours be revised by deleting the word "residues" and substitute "during efficient stripping". The Coast Guard disagrees with the commenter since this provision applies to reception of NLS residues resulting from prewashes, not the stripping operation.

16. *Section 158.160 Issuance and Termination of a Certificate of Adequacy*—One commenter recommended that the Coast Guard revise the regulation to limit the length of time that the Certificate of Adequacy will be valid and add a provision for periodic inspection at an interval of not more than two years. The Coast Guard disagrees with the commenter over the need to make the recommended change. Masters and persons in charge of oceangoing ships will notify the COTP if reception facilities for residues and mixtures containing oil are thought to be inadequate. The COTP has continuing authority to inspect facilities and investigate complaints. If needed corrective action is not taken, the COTP would initiate suspension and revocation procedures. Further, the Coast Guard conducts a facility inspection program whereby ports and terminals including reception facilities are inspected on a regular basis.

17. *Section 158.163 Reception Facility Operations*—One commenter recommended rewording § 158.163(a) to distinguish the responsibilities of the person in charge of the port or terminal from the person in charge of the reception facility. The COTP will make this distinction and initiate civil penalty action against either person as appropriate. The determination of responsibility must be made on a case by case basis because of the variety of different situations that could arise.

18. *Section 158.170 Grounds for suspension*—One commenter recommended that the grounds for suspension of a Certificate of Adequacy should be strengthened, that reference to deficiencies be defined, and that a suspension be imposed if the reception facility fails to comply with applicable regulations or is otherwise deemed inadequate by the COTP. A second commenter recommended adding the phrase "Under normal conditions" to the beginning of § 158.310(a)(5) and § 158.310(a)(6) because there are some instances when reception facilities are not available within 24 hours or capable of receiving NLS residue from the prewash within 10 hours after the start of the transfer of NLS residue. A third commenter recommended adding exceptions for legitimate causes for delay beyond the control of the reception facility. The Coast Guard disagrees with the commenters over the need to make the changes requested. Any substantial deviation from the

Annex II and those

criteria of adequacy that renders the port or terminal equipment or reception facility inadequate can result in suspension until the problem is corrected. The COTP will consider all the evidence available on a case by case basis prior to initiating civil penalty or suspension or revocation proceedings against the Certificate of Adequacy.

19. *Sections 158.200 to 158.230 Subpart B—Criteria for Reception facilities: Residues and mixtures containing oil*—One commenter recommended that § 158.200(a)(3) be revised to indicate that the reception facility should be prepared to receive oily wastes and mixtures from a ship at the estimated time of arrival, provided that notification is given at least 24 hours prior to arrival. The Coast Guard disagrees with the commenter. Ships will not normally need reception facilities until after unloading NLS cargo and completing the prewash. The estimated time of arrival is not as definite as 24 hour advance notice of the need for reception facilities. One commenter felt that the revisions to §§ 158.210 through 158.230 are not relevant for the purposes of Annex II requirements and requested that these changes be made part of a separate rulemaking concerning Annex I requirements. The Coast Guard disagrees with the commenter. The changes that were proposed are editorial in nature because of a change in the definition of "daily vessel average". Since the Annex I and Annex II requirements are interdependent, the regulations were published together.

20. *Section 158.310 Reception facilities: General*—Three commenters recommended that in the interests of operational safety that paragraph (a)(6) of this section should apply to the discharge of prewash residues. The Coast Guard agrees with the commenters and added the words "of NLS residue" between the words "transfer" and "begins" to clarify that the 10 hour time requirement refers to the time after the transfer of NLS residue begins. Another commenter requested clarification regarding whether or not terminals may wait until all cargo is unloaded before providing reception facilities. The Coast Guard disagrees with the commenter over the need to make the clarification. The regulation will not prohibit ports and terminals from waiting until all NLS cargo is offloaded before making reception facilities available. In some situations, ships may not be able to meet the standards for Procedures and Arrangements unless the reception facility is available when the prewash operations are being conducted. Under these circumstances, the requirements of § 158.310 must be met.

One commenter pointed out that § 158.310(a)(6) will cause undue delay to ships. The Coast Guard disagrees with the commenter. The regulations prescribe the maximum amount of time that the ship and reception facility will have to complete the transfer of NLS prewash residue to a reception facility. There is no restriction on the two parties agreeing to complete the transfer in a shorter time frame. However, requiring a faster time for completion of the transfer of NLS residue to a reception facility may preclude the use of tank trucks and require an unnecessary capital expenditure. If the Coast Guard finds that vessels are being unduly delayed because of this requirement, the Coast Guard will revise the regulations.

One commenter felt that the prewash will generate as much as 90 cubic meters of NLS prewash residue per hour and wanted to know whether the line or hose will be properly sized. The Coast Guard has published performance standards for reception facilities to receive NLS residue in the time frame specified. Usually, prewash residue will be pumped from the ship to the reception facility using cargo pumps and the reception facility must be capable of receiving the quantities of NLS residue generated in the time frame specified. In order to do so, the reception facilities must properly size the line or hose to match the pumping capacity of the ship that will discharge NLS residue.

One commenter requested the Coast Guard to clarify the grounds for which the terminal may refuse to accept wash water contaminated with cleaning agents. There are prohibitions on the use of cleaning agents unless specifically authorized by the ships Procedures and Arrangements manual. Under § 151.43, the master or person in charge of the ship will identify the cleaning agents to be used during the prewash when the 24 hour advance notice is given. If the reception facility is unable to receive these chemicals, the reception facility could refuse to take the material. However, the port or terminal will have to make other reception facilities available to meet the needs of the ship, or advise the ship that it can not provide reception facilities and refuse to accept the ship.

One commenter recommended that the Coast Guard revise the regulations to afford the port or terminal some protection against receiving NLS residues that are contaminated with other materials. The Coast Guard disagrees with the commenter that a regulatory requirement will be in accordance with the Act. This and other commercial aspects of the reception facility transactions that were commented on have been discussed in the preamble of the Interim Final Rule on Annex I reception facilities for residues and mixtures containing oil, published in the **Federal Register** of September 9, 1985 (50 FR 36770). The reader is referred to the preamble of the Interim Final Rule for a discussion of this issue since the commercial aspects of the reception facility requirements for NLS residues are the same.

21. *Section 158.320 Reception Facilities: Capacity*—One commenter requested that paragraph (a) be revised to read "each port and each terminal that is used by ships that unload Category A, B, or C NLS cargo" while another commenter requested that paragraph (a) be amended to read "if it is used by ships that unload only Category B or C NLS cargo". The Coast Guard agrees with the commenters over the need to clarify the capacity requirements. The Coast Guard rewrote the reception facility requirements to clarify that the regulations apply to ports and terminals that are used by ships that carry Category A, B, and C NLS cargo and unload these NLS cargoes at the port or terminal. At the same time, the capacity requirements for ship repair yards include all NLS residue generated incident to the repair of the ship. To clarify this, the Coast Guard has added a new paragraph (c) to § 158.320 to distinguish the capacity requirements for ship repair yards from the capacity requirements for other ports and terminals.

The Form B printed in the NPRM indicated that the reception facility must meet daily capacity requirements. To clarify that the reception facility capacity must be available daily, the words "each day the port or terminal is in operation" were added to the capacity criteria in this section. One commenter suggested that an upper limit be placed on the volume of prewash water that must be accepted by terminal operators. The Coast Guard disagrees with the comment. The Coast Guard has established minimum criteria that reception facilities must be capable of meeting based on anticipated normal operating requirements. The Coast Guard will certify the adequacy of reception facilities and issue a Certificate of Adequacy if the requirements of Subpart C are met. Port and terminal operators and vessel agents remain responsible for scheduling vessel movements and cargo to be handled. Under the advance notice

of arrival requirements of § 151.43, the master or person in charge must notify the port or terminal of the amount of NLS residue to be generated during the prewash. The port or terminal will be expected to notify the ship if sufficient reception facility capacity is not available to meet the needs of the ship within the criteria specified. Nothing precludes arrangements exceeding these criteria that are acceptable to the parties involved, however, absent consensual agreements, if the prewash starts and the reception facility has insufficient capacity to take the anticipated volume of NLS residue, the COTP may consider this grounds for suspension or revocation of the Certificate of Adequacy.

One commenter recommended reducing the capacity requirements because they require excess capacity and will require significant expenditure of capital funds. The Coast Guard disagrees with the commenter. The Coast Guard is adopting conservative capacity criteria and has no evidence to indicate that the commenters conclusions are valid. Further, the Coast Guard conducted a survey of available reception facilities and found that there are adequate mobile reception facilities to serve all ports, so a significant expenditure of capital funds will not be necessary.

22. *Section 158.330 Port and Terminal: Equipment*—Two commenters suggested that it is unnecessary to make arrangements for the stripping of all cargoes since ships are only required to meet the stripping standards for Category B or C NLS cargo. They recommended adding the words "Category B or C" between the words "receiving" and "NLS" in the first sentence of paragraph (a). The Coast Guard agrees with the commenter and has made the change requested. Cargo tanks containing Category A NLS must be prewashed and those containing residues of Category D NLS do not have to be stripped.

One commenter suggested that a new paragraph should be added which specifies the time required to complete the efficient stripping operation, while another commenter suggested that the regulations be clarified to indicate that the efficient stripping operation of § 158.330(a) is not also subject to the ten hour requirement for prewash residues in § 158.310(a)(6). These regulations do not specify a time limit for stripping operations, only equipment requirements to facilitate stripping. The 10 hour transfer time in § 158.310(a)(6) only applies to the receipt of NLS residues generated during a prewash. To clarify this, the Coast Guard has added the word "cargo" between "NLS" and "from" in § 158.330(a).

Three commenters requested clarification of the backpressure requirements. The Coast Guard disagrees with the need to further clarify these requirements. Figure 1 of this preamble shows the variables that must be considered in calculating the backpressure in the shore piping. Backpressure consists of the sum of the static head pressure due to liquid in the shore cargo tanks, the pressure drop in the terminals piping system due to friction caused by the ship pumping NLS cargo into terminal piping at the flow rate specified, and static head pressure due to change in the elevation between the ships manifold and the shore tank into which the NLS cargo is being pumped.

One commenter recommended inserting the words "above the static pressure on the line before stripping begins" after the word pressure. A second commenter recommended that the regulations be revised to allow terminals to operate at higher flow rates and a third commenter recommended the terminal be allowed to operate at higher backpressures. A fourth commenter requested that the approval process should be clearly outlined as to the procedures followed and the information required to operate at higher backpressures. The Coast Guard disagrees with the commenters. Taking the action recommended by the first commenter would not be consistent with Regulation 7 of Annex II to MARPOL 73/78 because this may substantially increase the pressure that ships will have to pump against during the last stages of cargo unloading. Nothing precludes operating at higher flow rates provided the specified backpressure is met. The procedures outlined in § 158.150 allow a port or terminal to submit a waiver to operate at higher backpressures. The Coast Guard will consider a waiver if evidence is submitted which demonstrates that the ship has passed the stripping tests while pumping at flow rates and against the backpressure requested in the waiver by the port or terminal.

One commenter suggested that § 158.330(b) should state that the lists of equipment and procedures necessary for receiving NLS can be described in the terminal's operations manual so that the terminal will not be burdened with more than one document dedicated to dock operations and transfers. The Coast Guard agrees with the commenter and has indicated that the instruction manual may be incorporated into the port's or terminal's operations manual required under § 154.300.

25. *Section 158.400 Draining cargo area and piping systems*—One commenter felt that the paragraph should state "the terminal person in charge". The Coast Guard disagrees with the commenter. Since these requirements only apply to NLS cargo, it will be redundant to refer to the terminal person in charge because cargo handling requirements do not apply to the reception facility which handles only residues. One commenter felt that this section should be revised by adding the words "back into the ship's tank" at the end of the last sentence since this will permit the terminal to drain lines back to a temporary storage tank placed on the vessel. The Coast Guard disagrees with the need to make the requested change. Taking the action requested by the commenter would be contrary to the intent of Annex II which prohibits the draining of cargo hoses and piping systems back to the ship, whether it be to the cargo tank or other location.

Regulatory Evaluation

This proposal is considered by the Coast Guard to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291. A final regulatory evaluation has been prepared and placed in the rulemaking docket. Copies of the evaluation may be obtained as indicated under **"FOR FURTHER INFORMATION CONTACT"** and may be inspected or copied as indicated under **ADDRESSES.** The projected costs are summarized as follows:

1. Costs to the Private Sector

a. Administrative costs associated with preparing the application for a Certificate of Adequacy under 33 CFR Part 158, completing the cargo record book under 46 CFR Part 153, and applying for certificates required to carry NLS cargo under 33 CFR Part 151 and 46 CFR Parts 151 and 153.

b. Equipment and construction costs for ports and terminals to meet Subparts C and D under 33 CFR Part 158.

c. Equipment, operating and disposal costs for ships to meet 33 CFR Part 151 and 46 CFR Parts 151 and 153.

2. Costs to the Federal Government

a. Administrative costs for processing applications and issuing Certificates of Adequacy.

b. Personnel costs for enforcement.

The costs of alterations to existing equipment and increased daily operating costs have been evaluated. The total capital costs for installation of

equipment to facilitate efficient stripping are approximately $12 million. The annualized costs of the backpressure requirements could be as high as $7,081,570 (1985 dollars), assuming that each port or terminal requires the most expensive type of system and each port or terminal will require five of these systems. A more realistic estimate is that 200 ports and terminals will require an average of 3 intermediately priced systems costing approximately $3,540 (annualized). The total anticipated annualized costs for ports and terminals is $2,195,255. Ports and terminals will not incur capital costs for reception facilities but will incur administrative costs to apply for certificates of adequacy in the amount of $23,405. Coast Guard costs, which include the administrative time to process applications for Certificates of Adequacy and personnel costs to conduct inspections to ensure compliance with the regulations amount to $47,850.

The costs to ships as a result of adopting the provisions of Annex II to MARPOL 73/78 include administrative costs for making entries in the cargo record book, and applying for certificates required to carry NLS cargo, equipment costs for ships to meet the efficient stripping requirements, discharge limitations at sea, and operating costs for ships to prewash cargo tanks and discharge the tank washing residues to a reception facility. These costs as well as the information collection costs of §§ 151.33 to 151.37 proposed in this notice are included in the costs discussed in the preamble of CGD 81–101.

Economic benefits could not be accurately quantified. However these regulations are considered to be the minimum necessary to comply with the obligations of the United States under MARPOL 73/78. The proposed regulations are part of the overall scheme to reduce accidental and intentional damage to the marine environment.

The port and terminal equipment requirements permit ships to efficiently strip cargo tanks and increase the amount of cargo recovered as product. Ships will not need to wash tanks as long and this should reduce the need to discharge wastes into the ocean or discharge wastes to a shore reception facility. Due to the variety of NLS carried and the uncertainty as to the damage these products can cause to the marine environment, no dollar value can be assigned to the effect of the reduced pollution anticipated. At the same time, these regulations will allow ports and terminals to minimize disruption of trade and limit involvement in the management of hazardous wastes. Prewashes will not be required in most cases where cargo tanks can be efficiently stripped. This will facilitate compliance with the discharge restrictions imposed elsewhere in CGD 81–101 on vessel operations and reduce the need to dispose of wastes ashore because there will be fewer required prewashes.

The benefits of the reception facility requirements will be to prevent undue delay to oceangoing ships and to minimize the costs to ports and terminals of reduced berth availability. These reception facility regulations will affect the locations where NLS residues are received by reception facilities. If left unregulated, ships would not be able to discharge NLS residue at all ports and terminals because reception facilities would not be readily available. Further, in those ports and terminals where reception facilities were available, the demand for reception facilities would exceed the supply. This will drive up the costs of disposal, contribute to the delay of vessels, and adversely affect compliance with the discharge restrictions imposed on vessels. The Coast Guard projects that oceangoing ships will need to use reception facilities approximately 200 times annually. At $1,000 an hour, the delay to ships awaiting reception facilities could result in lost revenue for ship owners or operators as well as port and terminal operators. However, the capacity requirement, transfer time requirement, and requirement to make arrangements with reception facilities prior to applying for a Certificate of Adequacy should hold delays to a minimum. The actual cost of this regulation will represent a small fraction of revenue to ports and terminals and will have no impact on either domestic or international trade.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, a regulatory flexibility analysis which discusses the impact of the final rule on small entities has been made part of the Final Regulatory Evaluation. The Coast Guard has adopted the Small Business Administration's (SBA) definition of "small business" for SBA loans to concerns engaging in transportation and warehousing (13 CFR 121.3–10(f)). Under this definition, a concern is considered small if its annual receipts do not exceed $1.5 million. The Coast Guard did not receive any comments on the number of terminals or ports affected by the proposed regulations that are considered small entities. The volume of cargo handled is not an accurate criterion because of the variety of business arrangements of ports and terminals and the different chemicals they handle. Some small ports and terminals are affiliated with large corporations having a substantial monetary interest in the cargo while others are independent contractors for wharfage and warehousing. The Coast Guard, recognizing a potential differential cost impact on small terminals, will allow ports and terminals to apply for Certificates of Adequacy as a group, thus reducing the administrative burden on individual operators. Furthermore, the cost for ports and terminals to make arrangements for reception facilities will be proportionate to the number of ships which are handled at the port or terminal that are required to prewash tanks and discharge the residues to a reception facility. The applicant need apply only once for a Certificate of Adequacy unless it is suspended or revoked.

The costs of this regulation on any individual small firm will be low because a small facility will require the installation of less equipment to facilitate efficient stripping. The total costs on small firms will be low because it is anticipated that few small entities will be affected. The small business impact of the regulations in §§ 151.31 to 151.45 proposed in this notice is discussed in the preamble of CGD 81–101, and has also been found to be minimal. Therefore the Coast Guard certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule adopts the information collection requirements in §§ 151.43, 158.140, 158.150, 158.165, and 158.190. Revisions have been approved by the Office of Management and Budget (OMB) for the proposed requirements (which have been assigned RCS/OMB numbers 2115–0543 and 2115–0544).

Environmental Impact

Under MARPOL 73/78, the Act, and final regulations published elsewhere in this **Federal Register** (CGD 81–101), oceangoing ships carrying NLS are severely limited in discharging NLS residue into the sea. This is accomplished by limiting the amount of cargo residues that remain in the tank upon completion of cargo unloading and by requiring the prewashing of tanks and discharge of the tank washings to a reception facility on shore. The port and

terminal equipment requirements will facilitate efficient stripping and help reduce the generation of NLS residue and the type and volume of waste delivered to reception facilities.

A final environmental assessment and a finding of no significant impact have been prepared and are available as detailed under "**ADDRESSES**" above. The environmental impact of the regulations in §§ 151.31 to 151.45 proposed in this notice is discussed in the preamble to CGD 81-101. Appendix I—Mandatory Application Form B and Instructions.

Application for a Reception Facility Certificate of Adequacy for Noxious Liquid Substance (NLS) Residues and Mixtures Containing NLS Residues

1. *General.* The United States, as a Party to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78), is required by Annex II and the Act to Prevent Pollution from Ships (33 U.S.C. 1901) to issue certificates to terminals or ports verifying they have adequate reception facilities to receive NLS residues and mixtures containing NLS residues from ships. Regulations implementing the United States waste reception facility program are in Part 158 of Title 33 Code of Federal Regulations.

2. The Certificate of Adequacy (COA) remains valid until suspended or revoked by the COTP.

3. Upon revocation, a Certificate of Adequacy shall be returned to the issuing U.S. Coast Guard Captain of the Port (COTP) within 5 days after the revocation becomes effective.

4. The Application, as submitted, shall be attached to and become a part of the Certificate of Adequacy upon issuance.

5. A copy of the Certificate of Adequacy with the Application attached shall be available at each port and terminal to which it applies. Persons in charge of a port shall ensure that terminals who are members of the port receive a copy of the certificate of adequacy and all attachments. The Certificate of Adequacy and all attachments shall be available for inspection by Coast Guard personnel and the master, person in charge, or agent of an oceangoing ship using or intending to use the reception facility.

6. The person in charge identified in the Application shall notify the U.S. Coast Guard Captain of the Port (COTP) in writing within 10 days after any of the reception facility information supplied in sections 2, 5.A., or 5.C. of Application Form B changes. The person in charge shall notify the COTP in writing within 30 days after any information supplied in sections 1., 3, 4, 5.B., 5.D., 5.E., 5.F., or 5.G. of Form B changes.

7. *Civil Penalties.* A person who, after notice and an opportunity for a hearing, is found:

a. To have made a false, fictitious or fraudulent statement or representation in any matter in which a statement or representation is required to be made under the Act to Prevent Pollution from Ships, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation; or

b. To have violated the Act to Prevent Pollution From Ships, or the regulations issued thereunder, shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation.

Instructions

Application for a Reception Facility Certificate of Adequacy for Residues and Mixtures Containing Noxious Liquid Substances (NLS) Residues

Form B

The following instructions for individual line items are provided to assist in completing the Application for a Certificate of Adequacy (COA). If you have any questions or need assistance in completing the Application, please contact the U.S. Coast Guard Captain of the Port (COTP) for your area. A list of definitions, which you may find helpful in completing the Application, is in Title 33 Code of Federal Regulations Part 158 (33 CFR Part 158).

1.A. Indicate terminal if you are applying as a single terminal or indicate port if you are applying as a group of terminals. Do not mark "COTP Designated Port". COTP designation of a facility or an area as a port is for unusual situations. If you have a question as to whether COTP designation as a port applies to your situation, contact the COTP for your area.

1.C.(1) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization by which the group of terminals is known.

1.C.(3) Enter the name of a person authorized to act in behalf of the terminal or port.

1.C.(5) For a terminal enter the company or corporation name. For a port enter the company, corporation, port authority, or organization of which the person in charge is a member.

1.D.(1) Those applying as terminals do not have to complete this section, since the information is the same as in 1.C. Ports are to provide this information for each of the terminals indicated in 1.B. If more room is needed for additional terminals, attach a separate sheet completed with the same information required in 1.D.

2.A. Enter the company or corporation name of the reception facility.

2.E. Check as many of the types of reception facilities as may be used.

3.A. through 3.F. Check the appropriate boxes that apply for cargoes handled at the Port or Terminal during the last 12 months. If 3.A., 3.B., or 3.C., is checked, indicate the specific NLS handled at the port on a separate attached sheet of paper. Applicable terminals and ports may alternatively check the applicable cargoes on the attached optional COTP NLS Cargo list. If you have any questions concerning cargoes not listed or the classification of any cargo, contact Commandant U.S. Coast Guard (G-MTH), Washington DC at (202) 267-1217.

4. Terminals or ports which checked boxes B, C, D or E in section 3 must complete section 4.

5.A. Terminals or ports which checked line items 3.A., 3.B., or 3.C. must complete this line item. Enter the capacity of the Reception Facility to handle the specified wastes in Cubic Meters. This may include third party contracted tank barges, tank trucks, etc. (NOTE: if using CG Optional Worksheet enter value as calculated on line "V".) Terminals or Ports which checked only line items 3.D., and 3.E. should enter "N/A".

5.B. Terminals or ports which checked line items 3.A., 3.B., or 3.C. must complete this line item. Enter value in cubic meters from your calculations or as calculated on Coast Guard Optional Worksheet line "T" for terminals or ports, and line "U" for ship repair yards. The value entered must meet the requirements detailed in 33 CFR 158.320.

Terminals or Ports which checked only line items 3.D., 3.E. and 3.F. should enter "N/A".

5.C. Indicate whether the Reception Facility can receive those residues resulting from prewashes required by 46 CFR 153.1120 within 10 hours after the beginning of the transfer of these residues begins.

5.G. Only ship repair yards complete this line item.

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FORM B

OMB No. Approved 2115-0543
Exp. Date 2/28/91

APPLICATION FOR A RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR NOXIOUS LIQUID SUBSTANCE (NLS) RESIDUES AND MIXTURES CONTAINING NLS RESIDUES

1. PARTICULARS OF TERMINAL OR PORT

A. APPLYING AS: *(CHECK ONE)* ☐ Terminal ☐ Port ☐ COTP Designated Port ☐ Ship Repair Yard

B NUMBER OF TERMINALS TO WHICH THIS APPLICATION APPLIES: _____

C TERMINAL/PORT INFORMATION:

(1) NAME OF TERMINAL/PORT _____

(2) ADDRESS OF TERMINAL/PORT _____

(3) NAME OF TERMINAL/PORT PERSON IN CHARGE _____

(4) TITLE/POSITION _____

(5) ORGANIZATION _____

(6) OFFICE PHONE NUMBER ( ) _____

(7) TELEX NUMBER _____

D. INDIVIDUAL TERMINAL INFORMATION: If applying as a port, list the information indicated for each terminal in the port. If more space is needed, continue on a separate sheet of paper and attach to the back of the application. The signature of the person in charge of the terminal acknowledges that the terminal agrees and volunteers to being considered as a member of the port, described in section 1, for purposes of these reception facilities. Complete the terminal name, location, etc. below.

(1) NAME OF TERMINAL _____

(a) ADDRESS OF TERMINAL _____

(b) NAME /TITLE PERSON IN CHARGE _____

(c) OFFICE PHONE NUMBER ( ) _____

(d) SIGNATURE OF TERMINAL PERSON IN CHARGE _____

(2) NAME OF TERMINAL _____

(a) ADDRESS OF TERMINAL _____

(b) NAME /TITLE PERSON IN CHARGE _____

(c) OFFICE PHONE NUMBER ( ) _____

(d) SIGNATURE OF TERMINAL PERSON IN CHARGE _____

2. PARTICULARS OF RECEPTION FACILITY: Enter information for each reception facility used by the terminal/port. If necessary, continue on a separate sheet and attach to the back of the application.

A. NAME OF RECEPTION FACILITY _____

B. ADDRESS _____

DEPT. OF TRANSP., USCG-CG-5401B (2-87)
LOCAL REPRO

REVERSE OF CG-5401B (2/87)

C. NAME AND TITLE OF PERSON IN CHARGE _____

D. OFFICE PHONE NUMBER OF PERSON IN CHARGE ( ) _____

E. TYPE OF RECEPTION FACILITY: CHECK THOSE THAT APPLY.

☐ FIXED: ☐ MOBILE: ☐ TANK TRUCK : ☐ TANK BARGE: ☐ OTHER:

(Describe other) _____

3. TYPE OF NLS CARGO OR RESIDUES UNLOADED AT THE TERMINAL OR PORT DURING THE LAST 12 MONTHS: Check the boxes that apply. If 3.A., 3.B., or 3.C . is checked, indicate the specific NLS handled on an attached sheet or check the appropriate cargoes on the attached COTP NLS cargo list.

☐ A. Category A
☐ B. Category B solidifying or high viscosity
☐ C. Category C solidifying or high viscosity
☐ D. Category B non-solidifying or non-high viscosity
☐ E. Category C non-solidifying or non-high viscosity
☐ F. Category D

4. TERMINAL AND PORT REQUIREMENTS: Only complete this section if line items 3.B., 3.C., 3.D., or 3.E. are checked.

A. WILL THE PORT OR TERMINAL BE CAPABLE OF RECEIVING NLS CARGO DURING TANK STRIPPING OPERATIONS FROM SHIPS AT AN INSTANTANEOUS FLOW RATE OF 6 CUBIC METERS (158.4 GALLONS) PER HOUR WITHOUT THE BACK PRESSURE EXCEEDING 101.6 kPa/sec (14.7 pounds per square inch gauge) AT THE POINT WHERE THE SHORE CONNECTION MEETS THE SHIP'S MANIFOLD? _____

B. WILL THE INSTRUCTION MANUAL THAT LISTS THE EQUIPMENT AND PROCEDURES REQUIRED BY LINE ITEM 4.A. BE AVAILABLE AT THE TERMINAL/PORT? _____

5. RECEPTION FACILITY REQUIREMENTS: Only complete this section if line items 3.A., 3.B., or 3.C. are checked. For line items 5.A. and 5.B. enter either the capacity or " N/A." For line items 5.C. through 5.G. enter either "YES," "NO," or "N/A" (if entering "NO" submit a waiver request in accordance with 33 CFR 158.150 on a separate attached sheet).

A. ESTIMATED DAILY CAPACITY OF RECEPTION FACILITY TO RECEIVE NLS RESIDUES RESULTING FROM PREWASH OPERATIONS: _____ (CUBIC METERS)

B. ESTIMATED DAILY CAPACITY REQUIREMENT OF THE TERMINAL/PORT TO RECEIVE NLS RESIDUES RESULTING FROM PREWASH OPERATIONS: _____ (CUBIC METERS)

C. CAN THE RECEPTION FACILITY RECEIVE ALL NLS RESIDUES RESULTING FROM PREWASH OPERATIONS FROM SHIPS WITHIN 10 HOURS AFTER NLS RESIDUE TRANSFER BEGINS? _____

D WILL THE RECEPTION FACILITIES FOR NLS RESIDUES BE PROVIDED WITHIN 24 HOURS AFTER NOTIFICATION BY A VESSEL INDICATING THE NEED FOR RECEPTION FACILITIES? _____

E. WILL RECEPTION FACILITIES BE PROVIDED AT THE UNLOADING TERMINAL/PORT? _____

F. DOES THE RECEPTION FACILITY HOLD EACH FEDERAL, STATE, AND LOCAL PERMIT AND LICENSE REQUIRED BY ENVIRONMENTAL LAWS AND REGULATIONS CONCERNING NLS RESIDUES? _____

G. CAN THE RECEPTION FACILITY RECEIVE ALL NLS RESIDUES PRIOR TO THE SHIP LEAVING THE SHIP REPAIR YARD? _____

CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION FOR A WASTE RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR RECEPTION FACILITIES RECEIVING NOXIOUS LIQUID SUBSTANCE (NLS) RESIDUES IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE OF TERMINAL/PORT PERSON IN CHARGE _____

PRINTED OR TYPED NAME OF PERSON IN CHARGE _____

DATE SIGNED _____

COTP NLS CARGO LIST

1 MARCH 1987

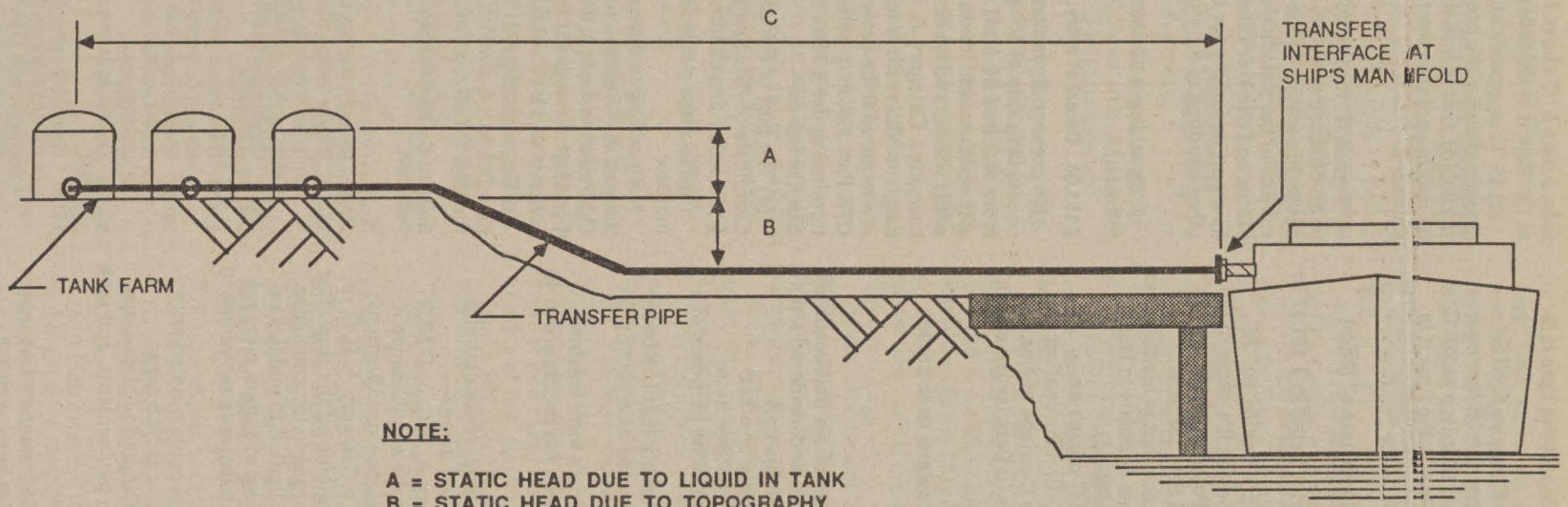
CATEGORY A NLS SOLIDIFYING

___Carbolic oil
___Chlorotoluenes (mixed isomers)
___Cresols, mixed isomers
___2,4-Dichlorophenol
___Diphenyl*
___Diphenyl/Diphenyl oxide mixtures*
___Diphenyl ether
___o-Ethylphenol*
___Naphthalene (molten)
___Phosphorus, yellow or white
___OTHERS

___ _____
___ _____
___ _____

Figure 1.

TRANSFER LINE BACKPRESSURE DIAGRAM



NOTE:

A = STATIC HEAD DUE TO LIQUID IN TANK
B = STATIC HEAD DUE TO TOPOGRAPHY
C = PRESSURE DROP DUE TO FRICTION IN PIPE

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List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Hazardous waste, Oil pollution, Ports, Reception facilities, Terminals, Vessels.

In consideration of the preceding, it is proposed to amend Parts 151 and 158 of Subchapter O of Chapter I of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b), E.O. 11735, 49 CFR 1.46(m) and (hh).

2. By revising the title of Part 151 to read as follows:

PART 151—OIL AND NOXIOUS LIQUID SUBSTANCE REGULATIONS

3. By revising § 151.01 to read as follows:

§ 151.01 Purpose.

The purpose of this part is to implement the Act to Prevent Pollution from Ships, 1980, (33 U.S.C. 1901 through 1911) and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London February 17, 1978.

Note.—MARPOL 73/78 is available from the National Technical Information Service, Springfield, VA. Please include reference number "ADA 168 505" in your request.

4. By revising § 151.03(a)(4) to read as follows:

§ 151.03 Applicability.

(a) * * *

(4) Except as provided by § 151.30, is operated under the authority of the United States and operates at any time seaward of the outermost boundry of the territorial sea of the United States as defined in § 2.05–10 of this chapter; or

* * * * *

5. By amending § 151.05 by removing the paragraph designations, alphabetizing the definitions, and by adding new definitions, in proper alphabetical order to read as follows:

§ 151.05 Definitions.

* * * * *

"High viscosity NLS" includes Category A NLSs having a viscosity of at least 25 mPa.s at 20° C and at least 25 mPa.s at the time they are unloaded, high viscosity Category B NLSs, and high viscosity Category C NLSs.

"High viscosity Category B NLS" means any Category B NLS having a viscosity of at least 25 mPa.s at 20° C and at least 25 mPa.s at the time it is unloaded.

"High viscosity Category C NLS" means any Category C NLS having a viscosity of at least 60 mPa.s at 20° C and at least 60 mPa.s at the time it is unloaded.

* * * * *

"Noxious liquid substance" (NLS) means—

(1) Each substance listed in § 151.47 or § 151.49;

(2) Each substance having an "A", "B", "C", or "D" beside it's name in the column headed "Pollution Category" in Table 1 of 46 CFR Part 153; and

(3) Each substance that is identified as an NLS in a written permission issued under 46 CFR 153.900 (d).

"NLS Certificate" means an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued under MARPOL 73/78.

* * * * *

"Oil–like NLS" means each cargo listed in § 151.49.

* * * * *

"Port" means—

(1) A group of terminals that combines to act as a unit and be considered a port for the purposes of this part;

(2) A port authority or other organization that chooses to be considered a port for the purposes of this part; or

(3) A place or facility that has been specifically designated as a port by the COTP.

"Prewash" means a tank washing operation that meets the procedure in 46 CFR 153.1120.

* * * * *

"Residues and mixtures containing NLSs" (NLS residue) means—

(1) Any Category A, B, C, or D NLS cargo retained on the ship because it fails to meet consignee specifications;

(2) Any part of a Category A, B, C, or D NLS cargo remaining on the ship after the NLS is discharged to the consignee, including but not limited to puddles on the tank bottom and in sumps, clingage in the tanks, and substance remaining in the pipes; or

(3) Any material contaminated with Category A, B, C, or D NLS cargo, including but not limited to bilge slops, ballast, hose drip pan contents, and tank wash water.

* * * * *

"Solidifying NLS" means a Category A, B, or C NLS that has a melting point—

(1) Greater than 0 °C but less than 15 °C and a temperature, measured under the procedure in 46 CFR 153.908(d), that is less than 5 °C above its melting point at the time it is unloaded; or

(2) 15 °C or greater and a temperature, measured under the procedure in 46 CFR 153.908(d), that is less than 10 °C above its melting point at the time it is unloaded.

* * * * *

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

* * * * *

6. By adding § 151.08 to read as follows:

§ 151.08 Denial of entry.

No oceangoing tanker or any other oceangoing ship of 400 gross tons or more required by § 151.09 to retain oil or oily residues and mixtures on board while at sea, and no oceangoing ship carrying a Category A, B, or C NLS cargo or NLS residue in cargo tanks that are required to be prewashed under 46 CFR Part 153, may enter any port or terminal under § 158.110(a) or (b) of this chapter unless—

(a) The port or terminal has a Certificate of Adequacy, as defined in § 158.120 of this chapter; or

(b) The ship is entering under force majeure.

7. By adding two new headings, Subpart A—General, and Subpart B—Oil Pollution. Subpart A consists of §§ 151.01 through 151.08 and Subpart B consists of §§ 151.09 through 151.25.

8. By amending Part 151 by adding a new Subpart C consisting of §§ 151.30 through 151.49 to read as follows:

Subpart C—Noxious Liquid Substance Pollution

Sec.

151.30 Exception to applicability.
151.31 Where to find the requirements applying to oceangoing ships carrying Category A, B, C, and D NLS.
151.33 Certificates needed to carry Category C Oil-like NLS.
151.35 Certificates needed to carry Category D NLS and Category D Oil-like NLS.
151.37 Obtaining an Attachment for NLSs to the IOPP Certificate and obtaining an NLS Certificate.
151.39 Operating requirements: Category D NLS.
151.41 Operating requirements for oceangoing ships with IOPP Certificates: Category C and D Oil-like NLSs.
151.43 Control of discharge of NLS residues.
151.45 Reporting spills of NLS: Category A, B, C, and D.
151.47 Category D NLSs Other Than Oil-like Category D NLSs allowed for carriage.

Sec.
151.49 Category C and D Oil-like NLSs allowed for carriage.

Subpart C—Noxious Liquid Substance Pollution

§ 151.30 Exception to applicability.

This subpart does not apply to each tank barge whose certificate is endorsed by the Coast Guard for a limited short protected coastwise route if the barge is constructed and certificated primarily for service on an inland route.

§ 151.31 Where to find requirements applying to oceangoing ships carrying Category A, B, C, and D NLS.

(a) The requirements for oceangoing ships carrying NLSs listed in §§ 151.47 and 151.49 are in §§ 151.33 through 151.45.

(b) The requirements for oceangoing ships carrying NLSs listed in Table 151.05 of 46 CFR Part 151 and Table 1 of 46 CFR Part 153, which are not listed in § 151.47 or § 151.49, are in 46 CFR Parts 98, 151, and 153.

(c) Alternatives to the requirements in this Part for oceangoing ships carrying NLSs are in 46 CFR Part 153.

(d) Procedures for obtaining permission to carry an NLS not listed in § 151.47, § 151.49, Table 151.05 of 46 CFR Part 151, or Table 1 of 46 CFR Part 153 are in 46 CFR 153.900(c).

§ 151.33 Certificates needed to carry Category C oil-like NLS.

(a) A U.S. oceangoing ship may not carry a Category C oil-like NLS listed in § 151.49 in a cargo tank unless the ship has a Certificate of Inspection endorsed to allow the NLS to be carried in that cargo tank, and if the ship engages in a foreign voyage—

(1) An Attachment for NLSs to the IOPP Certificate, issued under § 151.37(a), that allows the NLS to be carried in that cargo tank; or

(2) A Certificate of Fitness issued under 46 CFR Part 153 that allows the NLS to be carried in that cargo tank.

(b) A foreign oceangoing ship operating in the navigable waters of the U.S. may not carry a Category C oil-like NLS listed in § 151.49 in a cargo tank unless the ship has—

(1) An Attachment for NLSs to the IOPP Certificate that allows the NLS to be carried in that cargo tank; or

(2) A Certificate of Compliance issued under 46 CFR Part 153 to allow the NLS to be carried in that cargo tank.

(c) A U.S. oceangoing ship authorized to carry certain dangerous cargoes in bulk under 46 CFR Part 98 may not carry a Category C oil-like NLS listed in § 151.49 in a cargo tank unless the ship has a Certificate of Inspection endorsed to allow the NLS to be carried in that cargo tank, and if the ship engages in a foreign voyage, an NLS Certificate issued under § 151.37(b) that allows the NLS to be carried in that cargo tank.

§ 151.35 Certificates needed to carry Category D NLS and Category D Oil-like NLS.

(a) A U.S. oceangoing ship may not carry a Category D NLS listed in § 151.47 in a cargo tank unless the ship has a Certificate of Inspection endorsed to allow the NLS to be carried in that cargo tank, and if the ship engages if a foreign voyage—

(1) An NLS Certificate issued under § 151.37(b) to allow the NLS to be carried in that cargo tank; or

(2) A Certificate of Fitness issued under 46 CFR Part 153 to allow the NLS to be carried in that cargo tank.

(b) A U.S. oceangoing ship may not carry a Category D oil-like NLS listed in § 151.49 in a cargo tank unless the ship has a Certificate of Inspection endorsed to allow the NLS to be carried in that cargo tank, and if the ship engages if a foreign voyage—

(1) An Attachment for NLSs to the IOPP Certificate, issued under § 151.37(a), to allow the NLS to be carried in that cargo tank; or

(2) An NLS Certificate issued under § 151.37(b) to allow the NLS to be carried in that cargo tank, or

(3) A Certificate of Fitness issued under 46 CFR Part 153 to allow the NLS to be carried in that cargo tank.

(c) A foreign oceangoing ship in the navigable waters of the U.S. may not carry a Category D NLS listed in § 151.47 in a cargo tank unless the ship has one of the following:

(1) An NLS Certificate endorsed to allow the NLS to be carried in that cargo tank; or

(2) A Certificate of Compliance issued under 46 CFR Part 153 to allow the NLS to be carried in that cargo tank.

(d) A foreign oceangoing ship in the navigable waters of the U.S. may not carry a Category D oil-like NLS listed in § 151.49 in a cargo tank unless the ship has one of the following:

(1) An Attachment for NLSs to the IOPP Certificate to allow the NLS to be carried in that cargo tank; or

(2) An NLS Certificate endorsed to allow the NLS to be carried in the cargo tank; or

(3) A Certificate of Compliance issued under 46 CFR Part 153 to allow the NLS to be carried in the cargo tank.

(e) A U.S. oceangoing ship authorized to carry certain dangerous cargoes in bulk under 46 CFR Part 98 may not carry a Category D NLS listed in § 151.47 or a Category D oil-like NLS listed in § 151.49 in a cargo tank unless the ship has a Certificate of Inspection endorsed to allow the NLS to be carried in that cargo tank, and if the ship engages in a foreign voyage, an NLS Certificate issued under § 151.37(b) that allows the NLS to be carried in that cargo tank.

§ 151.37 Obtaining an Attachment for NLSs to the IOPP Certificate and obtaining an NLS Certificate.

(a) The Coast Guard issues an Attachment for NLSs to the IOPP Certificate to an oceangoing ship to allow the carriage of a Category C oil-like NLS or a Category D oil-like NLS if the following requirements are met:

(1) Except for ships that are not configured and are not equipped to ballast or wash cargo tanks while proceeding en route, the ship must have a Coast Guard approved monitor under § 157.12 that is approved for the cargoes that are desired to be carried.

(2) Except as required by paragraph (a)(3), ships of 150 meters or less in length carrying a Category C oil-like NLS must meet the damage stability requirements applying to a Type III hull as provided by Regulation 14 (c) of Annex II.

(3) A U.S. self propelled ship of 150 meters or less in length on a coastwise voyage carrying a Category C oil-like NLS must meet the damage stability requirements applying to a Type III hull as provided by 46 CFR Part 172, Subpart F except §§ 172.130 and 172.133.

(b) Except as allowed in paragraph (c) of this section, the Coast Guard issues an NLS Certificate endorsed to allow the oceangoing ship engaged in a foreign voyage to carry a Category D NLS listed in § 151.47 if the ship has—

(1) An approved Procedures and Arrangements Manual and Cargo Record Book, both meeting the requirements in 46 CFR 153.490; and

(2) A residue discharge system meeting 46 CFR 153.470, unless the approved Procedures and Arrangements Manual limits discharge of Category D NLS residue to the alternative provided by 46 CFR 153.1128(b).

(c) The Coast Guard issues a NLS Certificate with the statement that the vessel is prohibited from discharging NLS residues to the sea if the vessel does not meet 46 CFR 153.470 and 153.490 but meets 46 CFR Subpart 98.31.

§ 151.39 Operating requirements: Category D NLS.

The master or person in charge of an oceangoing ship that carries a Category D NLS listed in § 151.47 shall ensure that the ship is operated as prescribed for the operation of oceangoing ships carrying

Category D NLSs in 46 CFR 153.901, 153.906, 153.909, 153.1100, 153.1104, 153.1106, 153.1124, 153.1126, and 153.1128.

§ 151.41 Operating requirements for oceangoing ships with IOPP Certificates: Category C and D oil-like NLSs.

The master or person in charge of an oceangoing ship certificated under § 151.37(a) shall ensure that—

(a) The carriage and discharge of the oil-like NLS meets §§ 157.29, 157.31, 157.35, 157.37, 157.41, 157.45, 157.47, and 157.49 of this chapter; and

(b) The oil-like NLS is not discharged unless—

(1) The monitor required by § 151.37(a)(1) is set to detect the oil-like NLS; and

(2) A statement that the monitor has been set to detect the oil-like NLS is entered in the Oil Record Book Part II(Cargo/Ballast Operations), required by § 151.25.

§ 151.43 Control of discharge of NLS residues.

(a) Unless the ship is a fixed or floating drilling rig or other platform operating under an National Pollution Discharge Elimination System (NPDES) permit, the master or person in charge of an oceangoing ship that cannot discharge NLS residue into the sea in accordance with 46 CFR 153.1126 or 153.1128 shall ensure that the NLS residue is—

(1) Retained on board; or

(2) Discharged to a reception facility.

(b) If Category A, B, or C NLS cargo or NLS residue is to be transfered at a port or terminal in the United States, the master or person in charge of each oceangoing ship carrying NLS cargo or NLS residue shall notify the port or terminal at least 24 hours before entering the port or terminal of—

(1) The name of the ship;

(2) The name, category and volume of NLS cargo to be unloaded;

(3) If the cargo is a Category B or C high viscosity NLS cargo or solidifying NLS cargo listed in Table 1 of 46 CFR Part 153 with a reference to "§ 153.908(a)" or "§ 153.908(b)" in the "Special Requirements" column of that table, the time of day the ship is estimated to be ready to discharge NLS residue to a reception facility;

(4) If the cargo is any Category B or C NLS cargo not under paragraph (b)(3) of this section, whether or not the ship meets the stripping requirements under 46 CFR 153.480, 153.481, or 153.482;

(5) The name and the estimated volume of NLS in the NLS residue to be discharged;

(6) The total volume of NLS residue to be discharged; and

(7) The name and amount of any cleaning agents to be used during the prewash required by 46 CFR 153.1120.

(c) The master or person in charge of a U.S. ship in a special area shall operate the ship in accordance with 46 CFR 153.903.

Note.—The master or person in charge of a ship carrying Category A NLS that is required to prewash tanks under the procedures in 46 CFR Part 153.1120 is required under 46 CFR 153.1101 to notify the COTP at least 24 hours before a prewash surveyor is needed.

§ 151.45 Reporting spills of NLS: Category A, B, C, and D.

(a) The master or person in charge of an oceangoing ship involved in any incident described in paragraph (d) of this section, shall report the particulars of each incident without delay and to the fullest extent possible in accordance with the requirements of this section.

(b) If a ship involved in an incident is abandoned, or if a report from that ship is incomplete or unobtainable, the owner, charterer, manager, or operator of that ship or their agents shall, to the fullest extent possible, assume the obligations placed upon the master or person in charge under the requirements of this section.

(c) Each report must be made by radio or the fastest means available at the time the report is made to—

(1) The appropriate officer or agency of the government of a country in whose waters the incident occurs; and

(2) For incidents involving U.S. ships, the nearest Coast Guard Captain of the Port (COTP) or the National Response Center (NRC), toll free telephone number 800–424–8802, telex number 892427.

(d) The report must be made whenever an incident involves a discharge or the probability of a discharge—

(1) Other than as allowed by this part; or

(2) Allowed by this part because it—

(i) Secures the safety of the ship or saves lives at sea; or

(ii) It results from damage to the ship or its equipment.

(e) Each report must contain—

(1) The identity of the ship;

(2) The name of the NLS discharged;

(3) The time and date of the occurrence of the incident;

(4) The geographic position of the ship when the incident occurred;

(5) The wind and sea condition prevailing at the time of the incident;

(6) Relevant details respecting the condition of the ship; and

(7) A statement or estimate of the quantity of the NLS cargo or NLS residue discharged or likely to be discharged into the sea.

(f) Each person who is obligated under the provisions of this section to send a report shall—

(1) Supplement the initial report, as necessary, with information concerning further developments; and

(2) Comply as fully as possible with requests from affected countries for additional information concerning the incident.

(h) A report made under this section satisfies the reporting requirement of § 153.203 of this chapter.

§ 151.47 Category D NLSs Other Than Oil-like Category D NLSs Allowed for carriage.

The following is a list of Category D NLSs other than Oil-like Category D NLSs that the Coast Guard allows to be carried:

Ammonium sulfate solution
Amyl alcohol (n-, sec- primary)
sec-Butyl acetate
Butylene glycol
Gamma Butyrolactone
Calcium alkyl salicylate
Calcium chloride solutions
Caprolactam
Coconut oil, fatty acid methyl ester
Diacetone alcohol
Diethylene glycol butyl ether acetate
Diethylene glycol ethyl ether acetate
Diethylene glycol methyl ether acetate
Di-ethyl hexyl adipate
Di-ethyl hexyl phthalate
Diisobutyl ketone
Diisodecyl phthalate
Dinonyl phthalate
Dipropylene glycol methyl ether
Diundecyl phthalate
2-Ethoxy ethanol
Ethyl acetate
Ethyl acetoacetate
Ethylene diamine, tetra-acetic acid, tetrasodium salt
Ethylene glycol butyl ether
Ethylene glycol butyl ether acetate
Ethylene glycol methyl ether
Ethylene glycol methyl ether acetate
Ethylene glycol phenyl ether
2-Ethyl hexanoic acid
Formamide
1-Hexanol
N-Hydroxyethyl ethylene diamine triacetic acid, trisodium salt solution
Isoamyl alcohol
Isobutyl formate
Isophorone
Lactic acid
Latex
3-Methoxybutyl acetate
Methyl-tert-butyl ether
Methyl isobutyl ketone
Oleic Acid
Polypropylene glycols
n-Propyl acetate
n-Propyl alcohol
Propylene glycol methyl ether
Triisopropanolamine
Tripropylene glycol methyl ether
Urea, ammonium phosphate solution

§ 151.49 Category C and D Oil-like NLSs allowed for carriage.

The following is a list of Category C and D Oil-like NLSs that the Coast Guard allows to be carried:

(a) The following Category C oil-like NLSs may be carried:

Cyclohexane
P-Cymene
Decene
Diethyl Benzene
Dipentene
Dodecyl benzene
Ethyl benzene
Heptene (mixed isomers)
1-Hexene
2-Methyl-1-pentene
n-Pentane
Pentene, all isomers
Phenylxylylethane
Propylene dimer
Tetrahydro naphthalene
Toluene
Xylene

(b) The following Category D oil-like NLSs may be carried:

Alkylbenzene (C_9 to C_{17} straight or branched chain)
Butene oligomer
Diisopropyl naphthalene
Dodecane
Ethylcyclohexane
Isopentane
Nonane
Octane
n-Parafins (C_{10} to C_{20})

9. The authority citation to Part 158 is revised to read as follows:

Authority: 33 U.S.C 1903(b); 49 CFR 1.46(hh).

10. By revising the Title to Part 158 to read as follows:

PART 158—CONTROL OF RESIDUES AND MIXTURES CONTAINING OIL OR NOXIOUS LIQUID SUBSTANCES

11. By amending Part 158 by revising Subpart A consisting of §§ 158.100 through 158.190 to read as follows:

Subpart A—Certificates of Adequacy: Obtaining and Retaining

General

Sec.
158.100 Purpose.
158.110 Applicability.
158.120 Definitions and acronyms.
158.130 Delegations.
158.140 Applying for a Certificate of Adequacy.
158.150 Waivers and alternatives.
158.160 Issuance and termination of a Certificate of Adequacy.
158.163 Reception facility operations.
158.165 Certificate of Adequacy: Change of information.

Suspension, Revocation, and Appeals

158.170 Grounds for suspension.
158.172 Notification of a suspension order.
158.174 Suspension of a Certificate of Adequacy: Procedure.
158.176 Effect of Suspension of a Certificate of Adequacy.
158.178 Actions during a suspension.
158.180 Certificate of Adequacy: Procedure after revocation or the part no longer applies.
158.190 Appeals.

Subpart A—Certificate of Adequacy: Obtaining and Retaining

General

§ 158.100 Purpose.

This part establishes the following:

(a) Criteria for determining the adequacy of reception facilities.

(b) Procedures for certifying that reception facilities are adequate for receiving—

(1) Residues and mixtures containing oil from oceangoing tankers and any other oceangoing ships of 400 gross tons or more; or

(2) NLS residue from oceangoing ships.

(c) Standards for ports and terminals to reduce NLS residue.

§ 158.110 Applicability.

This part applies to each port and each terminal located in the United States or subject to the jurisdiction of the United States that is—

(a) Used by oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil, or by oceangoing ships to transfer NLSs, except those ports and terminals that are used only by—

(1) Non-self-propelled tank barges that are not configured and are not equipped to ballast or wash cargo tanks while proceeding enroute; or

(2) Ships carrying NLS operating under waivers under 46 CFR 153.491(b); or

(b) A ship repair yard that services oceangoing ships carrying oil or NLS residue.

§ 158.120 Definitions and acronyms.

As used in this part:

"Bunker oil" means oil loaded into bunker tanks for use as fuel.

"Captain of the Port" (COTP) means the Coast Guard officer commanding a Captain of the Port Zone described in Part 3 of this chapter.

"Certificate of Adequacy" means a Coast Guard issued Certificate of Adequacy with Form A or Form B or both attached.

"Clean ballast" has the same meaning as in § 157.03(e) of this chapter.

"Commandant" means Commandant, U.S. Coast Guard.

"Daily vessel average" means the total number of oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil, serviced over a typical continuous 12 month period, divided by 365.

"Form A" means the application for a reception facility Certificate of Adequacy for oil, Coast Guard form USCG–CG–5401A (9–85).

"Form B" means the application for a reception facility Certificate of Adequacy for NLS, Coast Guard form USCG–CG–5401B(2–87).

"High viscosity NLS" includes Category A NLSs having a viscosity of at least 25 mPa.s at 20 °C and of at least 25 mPa.s at the time they are unloaded, high viscosity Category B NLSs, and high viscosity Category C NLSs.

"High viscosity Category B NLS" means any Category B NLS having a viscosity of at least 25 mPa.s at 20 °C and at least 25 mPa.s at the time it is unloaded.

"High viscosity Category C NLS" means any Category C NLS having a viscosity of at least 60 mPa.s at 20 °C and at least 60 mPa.s at the time it is unloaded.

"MARPOL Protocol" (MARPOL 73/78) stands for the International Convention for the Prevention of Pollution from Ships, 1973, (done at London, November 2, 1973), as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973 (done at London on February 17, 1978), as amended, (1985).

"Noxious liquid substance" (NLS) means—

(1) Each substance listed in § 151.47 or § 151.49 of this chapter;

(2) Each substance having an "A", "B", "C", or "D" beside it's name in the column headed "Pollution Category" in Table 1 of 46 CFR Part 153; and

(3) Each substance that is identified as an NLS in a written permission issued under 46 CFR 153.900(d).

"Oceangoing ship" means a ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three miles from land;

(4) Is operated under the authority of the United States and operates at any

time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05 of this chapter; or

(5) Is operated under the authority of a country other than the United States.

Note.—A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters, or exclusively on the internal waters of the United States and Canada, is not an "oceangoing ship."

"Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse, and refined products (other than petrochemicals that are subject to the provisions of Annex II of MARPOL 73/78) and without limiting the generality of the forgoing, includes the substances listed in Appendix I of Annex I of MARPOL 73/78.

"Person" has the same meaning as in § 151.05(n) of this chapter.

"Person in charge" means an owner, operator, or a person authorized to act on behalf of a port or terminal.

Note.—The "person in charge" under this part is not necessarily the same person as the "person in charge" referred to in Parts 151, 154, 155, and 156 of this chapter (as defined in § 154.105 of this chapter.)

"Prewash" means a tank washing operation that meets the procedure in 46 CFR 153.1120.

"Port" means—

(1) A group of terminals that combines to act as a unit and be considered a port for the purposes of this part;

(2) A port authority or other organization that chooses to be considered a port for the purposes of this part; or

(3) A place or facility that has been specifically designated as a port by the COTP.

"Reception facility" means anything capable of receiving shipboard residues and mixtures containing oil, NLS residue, or both including, but not limited to—

(1) Fixed piping that conveys residues and mixtures from the ship to a storage or treatment system;

(2) Tank barges, railroad cars, tank trucks, or other mobile facilities; and

(3) Any combination of fixed and mobile facilities.

"Regulated NLS cargo" includes each Category A or high viscosity or solidifying Category B or C NLS cargo listed in Table 1 of 46 CFR Part 153 that contains a reference to § 153.908(a) or § 153.908(b) in the "Special Requirements" column of that table and is unloaded at the port or terminal within a typical continuous 12 month period either before or after application is made for a Certificate of Adequacy.

"Residues and mixtures containing NLSs" (NLS residue) means—

(1) Any Category A, B, C, or D NLS cargo retained on the ship because it fails to meet consignee specifications;

(2) Any part of a Category A, B, C or D NLS cargo remaining on the ship after the NLS is discharged to the consignee, including but not limited to puddles on the tank bottom and in sumps, clingage in the tanks, and substance remaining in the pipes; or

(3) Any material contaminated with Category A, B, C, or D NLS cargo, including but not limited to bilge slops, ballast, hose drip pan contents, and tank wash water.

"Segregated ballast" has the same meaning as contained in § 157.03(r) of this chapter.

"Ship" means a vessel of any type whatsoever, operating in the marine environment. This includes hydrofoils, air cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating drilling rigs or other platforms.

"Solidifying NLS" means a Category A, B, or C NLS that has a melting point—

(1) Greater than 0 °C but less than 15 °C and a temperature, measured under the procedure in 46 CFR 153.908(d), that is less than 5 °C above its melting point at the time it is unloaded; or

(2) 15 °C or greater and has a temperature, measured under the procedure in 46 CFR 153.908(d), that is less than 10 °C above its melting point at the time it is unloaded.

"Tank barge" has the same meaning as contained in 46 CFR 30.10–65.

"Tanker" means a ship constructed or adapted primarily to carry oil in bulk in the cargo spaces.

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

"The Act" means the Act to Prevent Pollution from Ships (94 Stat. 2297, 33 U.S.C. 1901 *et seq*).

§ 158.130 Delegations.

Each COTP is delegated the authority to—

(a) Conduct inspections of each reception facility for which an application under § 158.140 is submitted to determine if it meets Subpart B of this part or Subpart C of this part, or both;

(b) If Form B is submitted, conduct an inspection of each port or terminal to determine if it meets § 158.330;

(c) After determining that the reception facility passes the inspection under paragraph (a) of this section, and if applicable, the inspection under paragraph (b) of this section, issue a Certificate of Adequacy for the port or terminal;

(d) Grant waivers under § 158.150;

(e) Designate ports; and

(f) Except when a ship is entering under force majeure, deny entry of ships to any port or terminal under § 158.110 not having an applicable Certificate of Adequacy to any—

(1) Oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil; or

(2) Oceangoing ships carrying NLSs.

§ 158.140 Applying for a Certificate of Adequacy.

(a) Each port or terminal under this part must have a Certificate of Adequacy for its reception facilities in order for oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil; or oceangoing ships carrying NLSs to continue to call at the port or terminal. To apply for a Certificate of Adequacy, the applicant must apply to the COTP of the Zone in which the port or terminal is located on—

(1) Form A, for each port or terminal used by oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil; and

(2) Form B, for each port or terminal used by oceangoing ships carrying NLSs.

§ 158.150 Waivers and alternatives.

(a) If the person in charge believes that a requirement in this part is unreasonable or impracticable for the port's or terminal's operations, the person in charge may submit a request for a waiver to the COTP. This application must—

(1) Be in writing; and

(2) Include the—

(i) Reasons why the requirement is unreasonable or impracticable;

(ii) Proposed alternatives that meet MARPOL 73/78; and

(iii) Additional information requested by the COTP.

(b) If the COTP allows the alternative proposed under paragraph (a)(2)(ii) of this section, the waiver—

(1) Is in writing; and

(2) States each alternative that applies and the requirement under this part for which the alternative is substituted.

(c) The person in charge shall ensure that each waiver issued under paragraph (b) of this section is attached

to the Certificate of Adequacy issued for the port or terminal.

§ 158.160 Issuance and termination of a Certificate of Adequacy.

(a) After reviewing the application made under § 158.140, the COTP determines by inspection the following:

(1) When the application is made on Form A, whether or not the reception facility meets Subpart B of this part.

(2) When the application is made on Form B, whether or not the reception facility and the port, or the reception facility and the terminal, meet Subpart C of this part.

Note.—If in the instruction manual required by § 158.330(b) there is a certification by a registered professional engineer licensed by a state or the District of Columbia that the backpressure requirements under § 158.330(a) are met, the COTP may accept this finding.

(b) After the inspections under paragraph (a) are conducted, and after consulting with the Administrator of the Environmental Protection Agency (EPA) or his or her designee, the COTP—

(1) Issues a Certificate of Adequacy to the person in charge for the port or terminal; or

(2) Denies the application and informs the person in charge in writing of the reasons for the denial.

(c) The Certificate of Adequacy has attached to it any waivers that are granted under § 158.150 when the Certificate of Adequacy is issued.

(d) Each Certificate of Adequacy remains valid until—

(1) Suspended;

(2) Revoked; or

(3) This part no longer applies to the port or terminal.

§ 158.163 Reception facility operations.

(a) Each person in charge and each person who is in charge of a reception facility shall ensure that the reception facility does not operate in a manner that violates any requirement under this part.

(b) A copy of the Certificate of Adequacy issued for the port or terminal must be—

(1) At each port and terminal under this part; and

(2) Available for inspection by the COTP and the master, person who is in charge, or the agent of an oceangoing ship.

(c) Ports and terminals required to have an Operations Manual under this chapter or 46 CFR Chapter 1 must have a copy of the Certificate of Adequacy issued for the port or terminal, including any waivers, attached to that Operations Manual.

§ 158.165 Certificate of Adequacy: Change of information.

(a) Except as required in paragraph (b) of this section, the person in charge shall notify the COTP in writing within 10 days after any information required in section 2, 3A, 3G, or 3H, of Form A or section 2, 5A, or 5C of Form B changes.

(b) The person in charge shall notify the COTP in writing within 30 days after any information required in section 1, 3B, 3C, 3E, 3F, 3I, or 3J of Form A or section 1, 3, 4, 5B, 5D, 5E, 5F or 5G of Form B changes.

(c) The person in charge shall maintain at the port or terminal a copy of the information submitted under paragraphs (a) and (b) of this section, until a corrected Certificate of Adequacy is received from the COTP.

Suspension and Revocation

§ 158.170 Grounds for suspension.

The COTP may suspend a Certificate of Adequacy if—

(a) Deficiencies recur or significantly affect the adequacy of the reception facility;

(b) Continued operations will result in undue delay to ships calling at the port or terminal;

(c) There is a failure to accept NLS residue from a ship after it's cargo tanks are prewashed in accordance with 46 CFR 153.1120; or

(d) There is a substantial threat of discharge of oil or NLS into or upon the navigable waters of the United States or adjoining shorelines.

§ 158.172 Notification of a suspension order.

(a) If the COTP has grounds for an immediate suspension of or is considering suspending a Certificate of Adequacy, the COTP notifies the person in charge of the intended action. Each notification of a suspension order, whether oral or written, includes—

(1) The grounds for the suspension;

(2) The date when the suspension becomes effective; and

(3) Information on how the suspension may be withdrawn, including all corrective actions required.

(b) If the suspension order is made orally, the COTP issues a suspension order in writing within five days after the initial notification.

§ 158.174 Suspension of a Certificate of Adequacy: Procedure.

(a) If no evidence or arguments are submitted in response to a notification of a suspension order, the suspension is effective on the date stated in the order.

(b) If any petition for withdrawing a suspension order is submitted in response to a notification of a suspension order, the COTP considers the evidence or arguments and notifies the person in charge of any action taken including—

(1) Denial of the petition for withdrawing a suspension order;

(2) Initiation of civil or criminal penalty action under Subpart 1.07 of Part 1 of this chapter; or

(3) Withdrawing the suspension order.

§ 158.176 Effect of suspension of a Certificate of Adequacy.

After the COTP notifies the person in charge and places a suspension order in effect, the COTP denies entry of ships to the port or terminal while the Certificate of Adequacy is suspended.

§ 158.178 Actions during a suspension.

(a) If a Certificate of Adequacy is suspended for longer than a five day period, the person in charge shall return it to the COTP within five days after the suspension becomes effective.

(b) After the suspension is in effect, the COTP may—

(1) Terminate the suspension order after receiving information from the person in charge that corrective action has been taken; or

(2) Revoke the Certificate of Adequacy if no significant action is undertaken by the person in charge to meet any measures ordered by the COTP.

§ 158.180 Certificate of Adequacy: Procedures after revocation or the part no longer applies.

(a) If a Certificate of Adequacy is revoked, the person in charge shall return it to the COTP within five days after the revocation becomes effective.

(b) When this part no longer applies to the port or terminal, the person in charge shall return the Certificate of Adequacy to the COTP within 30 days after this part no longer applies.

(c) After the Certificate of Adequacy has been returned to the COTP under paragraph (a) or (b) of this section, an application for a new Certificate of Adequacy may be submitted under § 158.140.

§ 158.190 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (e) of this section, the person affected who is not satisfied with a ruling after having it reconsidered under paragraph (a) of this section may—

(1) Appeal that ruling in writing within 30 days after the ruling to the Coast Guard District Commander of the

district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section. Except as provided under paragraph (e) of this section, the person affected who is not satisfied with this ruling may—

(1) Appeal that ruling in writing within 30 days after the ruling to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Washington, DC, 20593; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(d) After reviewing the appeal submitted under paragraph (c) of this section, the Chief, Office of Marine Safety, Security and Environmental Protection issues a ruling which is final agency action.

(e) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) or (c) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

12. By revising § 158.200(a) to read as follows:

§ 158.200 General.

(a) Except as allowed in paragraph (b) of this section, the facility used to meet Regulation 12 of Annex I to MARPOL 73/78 must—

(1) Be a reception facility as defined under § 158.120 that is available at the port or terminal;

(2) Hold each Federal, State, and local permit and license required by environmental laws and regulations concerning residues and mixtures containing oil; and

(3) Be capable of—

(i) Receiving residues and mixtures containing oil from oceangoing ships within 24 hours after notice by that ship;

(ii) Completing the reception of oily ballast from the ship in less than 10 hours after waste transfer operations begin; and

(iii) Completing the reception of other residues and mixtures containing oil in less than 4 hours after the transfer operation begins.

* * * * *

13. By revising § 158.210 (b) and (c) to read as follows:

§ 158.210 Ports and terminals loading crude oil.

* * * * *

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily vessel average, whichever quantity is greater; and

(c) Oily ballast in the amount of 30% of the deadweight tonnage of the largest of the oceangoing tankers loading crude oil at the port or terminal that do not have clean ballast tanks (CBT), segregated ballast tanks (SBT), or crude oil washing (COW) meeting Part 157 of this subchapter, multiplied by one or the daily vessel average, whichever quantity is greater.

14. By revising § 158.220 (b), (c), and (d) to read as follows:

§ 158.220 Ports and terminals loading more than 1,000 metric tons of oil other than crude oil or bunker oil.

* * * * *

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily vessel average, whichever quantity is greater;

(c) Oily ballast in the amount of 30% of the deadweight tonnage of the largest of the oceangoing tankers loading oil other than crude oil or bunker oil, at the port or terminal, that do not have CBT or SBT meeting Part 157 of this chapter, multiplied by one or the daily vessel average, whichever quantity is greater; and

(d) Cargo residue in the amount of 0.2% of the total cargo capacity of the largest of the oceangoing tankers loading oil other than crude oil or bunker oil, at the port or terminal, multiplied by one or the daily vessel average, whichever quantity is greater.

15. By revising § 158.230 (a) and (b) to read as follows:

§ 158.230 Ports and terminals other than ports and terminals under §§ 158.210, 158.220, and 158.240.

* * * * *

(a) Sludge from on-board fuel and lubricating oil processing in the amount of 10 metric tons (11 short tons), or 1 metric ton (1.1 short tons) multiplied by the daily vessel average, whichever quantity is greater; and

(b) Oily bilge water in the amount of 10 metric tons (11 short tons) or 2 metric tons (2.2 short tons) multiplied by the daily vessel average, whichever quantity is greater.

16. By amending Part 158 by adding a new Subpart C consisting of §§ 158.300 through 158.330 to read as follows:

Subpart C—Criteria for Certifying That a Port's or Terminal's Facilities Are Adequate for Receiving NLS Residue

Sec.

158.300 Purpose.
158.310 Reception facilities: General.
158.320 Reception facilities: Capacity and exceptions.
158.330 Ports and terminals: Equipment.

Subpart C—Criteria for Certifying That a Port's or Terminal's Facilities Are Adequate for Receiving NLS Residue

§ 158.300 Purpose.

The purpose of this subpart is to supply the criteria needed for ports and terminals under § 158.110 used by oceangoing ships carrying NLS cargo or NLS residue to meet Regulation 7 of Annex II to MARPOL 73/78.

§ 158.310 Reception facilities: General.

(a) Except as allowed in paragraph (b) of this section, each reception facility, in order to pass the inspection under § 158.160, must—

(1) Be a reception facility as defined under § 158.120;

(2) Be available at the port or terminal;

(3) Meet the requirements of § 158.320;

(4) Hold each Federal, State, and local permit and license required by environmental laws and regulations concerning NLS residue;

(5) Be capable of receiving NLS residue from an oceangoing ship within 24 hours after notice by that ship of the need for reception facilities; and

(6) Be capable of completing the transfer of NLS residue within 10 hours after the transfer of NLS residue begins.

(b) A reception facility for a ship repair yard does not have to meet the requirements of paragraphs (a)(5) and (a)(6) of this section if it is capable of completing transfer of NLS residue from an oceangoing ship before the ship departs from the yard.

§ 158.320 Reception facilities: Capacity, and exceptions.

(a) Except as allowed in paragraph (b) of this section, each day the port or terminal is in operation, the port or terminal must have a reception facility that is capable of receiving—

(1) 75 cubic meters (19,810 gallons) of NLS residue for each regulated NLS cargo that is a solidifying Category A NLS; or

(2) 50 cubic meters (13,210 gallons) of NLS residue for each regulated NLS cargo that is not a solidifying Category A.

(b) The port or terminal need only meet § 158.330 if it is used by ships that only transfer Category B or C NLS

cargoes that are not high viscosity or solidifying Category B or C NLSs.

(c) For each category of NLS cargo carried on a ship, each day a ship repair yard is in operation and being used by a ship that must discharge NLS residue in order to proceed with repair work, the ship repair yard must have a reception facility that is capable of receiving—

(1) 50 cubic meters (13,210 gallons) of NLS residue that contains a—

(i) Category A NLS that is not a solidifying NLS;

(ii) Category B NLS; or

(iii) Category C NLS; or

(iv) Category D NLS; or

(2) 75 cubic meters (19,810 gallons) of NLS residue that contains a Category A NLS that is a solidifying NLS cargo.

§ 158.330 Ports and terminals: Equipment.

Each port and terminal except ship repair yards, in order to pass the inspection under § 158.160, must—

(a) At mean low tide and with the ship's manifold 10 feet above the surface of the water, be capable of receiving Category B or C NLS cargo during the stripping operations at an average flow rate of 6 cubic meters (1584 gallons) per hour without the backpressure at the ship's manifold exceeding 101.6 kPa (14.7 pounds per square inch gauge) pressure; and

(b) Have an instruction manual that lists the equipment and procedures for meeting paragraph (a) of this section. The instruction manual may be made part of the operations manual that is required under § 154.300 of this chapter.

17. By amending Part 158 by adding a new Subpart D consisting of §§ 158.400 through 158.420 to read as follows:

Subpart D—Port and Terminal Operations

Sec.

158.400 Draining cargo hose and piping systems.

158.420 Following the instruction manual.

Subpart D—Port and Terminal Operations

§ 158.400 Draining cargo area and piping systems.

The person in charge shall ensure that each cargo hose and each piping system containing NLS received from each oceangoing ship carrying NLS cargo is not drained back into the ship.

§ 158.420 Following the instruction manual.

The person in charge shall ensure that the instruction manual under § 158.330(b) is followed during the transfer of any NLS.

Dated: March 4, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-4918 Filed 3-6-87; 1:33 pm]

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46 CFR Parts 30, 98, 151, 153, and 172

[CGD 81-101]

Pollution Rules for Ships Carrying Hazardous Liquids

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is implementing Annex II of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) with design and operating requirements for all ships that are oceangoing United States ships or are foreign ships and trading in United States waters, and that carry bulk cargo of noxious liquid substances. Annex II of MARPOL 73/78 will be effective on April 6, 1987. The requirements will control operational pollution and reduce the chance of accidental pollution from ships carrying the cargoes.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Query, Office of Marine Safety, Security, and Environmental Protection, telephone (202)-267-1217 from 8:00 a.m. until 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on September 26, 1986 (51 FR 34350). Interested persons were given until November 10, 1986 to comment on the proposal, with an extension to November 24, 1986. The Coast Guard received 45 letters commenting on the proposal.

Drafting Information

The principal persons involved in drafting this final rule are: Mr. Robert M. Query, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Background to Annex II of MARPOL 73/78

The United States has ratified a convention to control marine pollution developed by the International Maritime Organization (IMO). This convention, entitled "International Convention for the Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973), as modified by the Protocol of 1978, relating to the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, February 17, 1978)," and its first two technical annexes, Annex I and Annex II, are referred to in this preamble as MARPOL 73/78. Under the Act to Prevent Pollution from Ships ("the Act") (33 U.S.C. 1901), the Secretary of Transportation is given the task of administering and enforcing MARPOL 73/78 and the Act; the Secretary delegated this task to the Coast Guard (49 CFR 1.46(hh)). Annex I of MARPOL 73/78 was implemented several years ago when the Coast Guard published requirements controlling the accidental and operational discharge of oil by ships (33 CFR Parts 151 and 157) and established criteria for determining the adequacy of reception facilities for receiving residues and mixtures containing oil (33 CFR Part 158). Implementation of Annex II of MARPOL 73/78, which controls accidental and operational discharges of residues and mixtures of noxious liquid substances from ships, typically the result of cargo tank cleaning, is the subject of this final rule and a second final rule mainly concerning reception facilities elsewhere in this edition of the **Federal Register**. This particular final rule contains the changes to Title 46, CFR, and affects ships that carry noxious liquid substances (NLSs). The changes in the other rulemaking affect principally reception facilities for NLSs but also contain requirements for carrying certain Category D and oil-like Category C NLSs that are alternatives to the requirements in this final rule.

The Coast Guard published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** of January 13, 1983 (48 FR 1519) requesting comments from the public on how best to implement the requirements in Annex II of MARPOL 73/78. Six comments were received, of which four were responses to the request for information on cargoes, which the Coast Guard had requested because it had little data on them. The remaining two comments were general but supportive. There were no specific responses to the other areas for which the Coast Guard requested information. The ANPRM described the implementation of Annex II of MARPOL 73/78 as it existed at the time.

Amendments to decrease Cost and Complexity of Annex II

As discussed in the preamble to the NPRM, Annex II has been revised heavily in the past three years to reduce costs to offloading ports and reduce the complexity its operations pose for the ships' crew.

Each NLS regulated by Annex II is assigned to one of four categories (A, B, C, or D) in order of decreasing aquatic toxicity and other harmful characteristics. Restrictions on discharging NLSs into the sea are, therefore, the most stringent for Category A. For all categories, the Annex attempts to ensure that the volume of cargo residues remaining on a ship after unloading a cargo is sufficiently small that the residues cause no environmental harm if discharged under the operating restrictions specified in the Annex.

As Annex II was originally structured, a ship which offloaded a Category A NLS cargo and was to wash the cargo tank at sea would be required to do a preliminary wash of the cargo tank and discharge the wash water to a reception facility until the concentration of the Category A NLS in the wash water was below 0.1% by weight. A similar requirement would have applied to a cargo tank that had offloaded a Category B NLS cargo under the old scheme, but the ship would not have required a prewash unless the quantity of the original cargo loading (typically in the cargo tank and piping systems but also in bilges and other slops) exceeded the greater of 1 cubic meter or 1/3000th of the tank capacity. The requirements after discharge of a Category C NLS cargo would have been similar to those for Category B, but the limit on the allowable quantity of cargo remaining would have been the greater of 3 cubic meters or 1/1000th of the tank capacity. The Annex placed no limits on the quantities of Category D NLSs which could have been discharged to the sea, and no reception facility requirements would have resulted from transporting Category D NLS cargoes.

To ensure that ships would have disposal facilities for the slops produced from the preliminary tank washing required when the NLS residues exceeded that allowed to be discharged at sea, the Annex required the signatory governments to undertake to ensure the provision of reception facilities according to the needs of ships using its loading and unloading ports or terminals and in ship repair ports undertaking repairs to chemical tankers.

With the cooperation of the chemical industry, through the Coast Guard's Chemical Transportation Advisory Committee, the U.S. analyzed the original Annex II system of requirements and tried them in actual shipboard use. This analysis led the Coast Guard to conclude that the original requirements were—

1. Unduly burdensome to ships' crews;
2. Not easily verified and thus difficult to enforce; and
3. Likely to result in a large and extremely expensive reception facility capacity.

Because of these problems, the U.S. presented arguments to IMO which led to the revision of Annex II with the goal of correcting these shortcomings. Of particular concern to the U.S. were the reception facility problems, which a position paper described as follows:

> A number of existing ships have tanks which are fitted with inefficient pumping systems which will retain excessive quantities of residues (more than 1 or 3 cubic metres of residue for Category B and C substances respectively) even when easily pumpable noxious substances are carried. Under the present system, tanks containing these excessive residues must be prewashed and discharged to reception facilities. When Annex II is implemented these existing ships will generate an initial high demand for reception facilities that subsequently will decrease as these ships are encouraged to retrofit improved stripping capabilities due to the high cost of waste disposal or are replaced with newer ships having efficient stripping systems. *For many ports, provision of reception facilities, adequate to meet this initial demand, will be very costly and due to the decreasing demand, will not be cost effective.* While the United States recognizes that the need for reception facilities for Category B and C substances cannot be entirely eliminated, it is our view that this transient need for reception facilities should be minimized as much as possible at the time the Annex enters into force.

Annex II, as amended, requires the signatory nations to ensure that ships built after June 30, 1986 have efficient stripping systems on tanks used to carry Category B and C NLSs. Beginning in 1994, a similar requirement applies to tanks on ships built before July 1, 1986. Until 1994, tanks on these existing ships would be allowed to operate with somewhat larger residues than with the efficient stripping systems, but these residues remain below the limits allowed under the earlier version of the Annex (no more than 1 cubic meter of Category B cargo, 3 cubic meters of Category C). Because ships would not need to discharge most residues of Category B and C cargoes to reception facilities (the Annex does require "prewashing" of tanks that have offloaded high viscosity and solidifying cargoes and the discharge of the prewash water to a reception facility), almost all capacity needed to handle Category B and C NLS residues would be eliminated. The amendments also reduce the enforcement burden the Annex places on signatory governments and the administrative burden it places on the ships' officers.

The amendments to Annex II have been approved by the signatory nations and will become effective April 6, 1987, the effective date of this final rule.

The final rule includes requirements developed by IMO that are contained in the *Standards for Procedures and Arrangements* (Resolution MEPC 18(22), 1985) (the Standards), and amendments to the *IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk* (Resolution MEPC 19(22), 1985) and the *IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk* (Resolution 20(22), 1985) (the last two codes collectively referred to as the Bulk Chemical Codes). The Standards contain detailed equipment and operating requirements developed to ensure uniform implementation of Annex II. The amendments to the Bulk Chemical Codes modify requirements for NLSs in that existing code and are intended to reduce the chance of accidental pollution from ships carrying NLSs in bulk. The U.S. implemented the Bulk Chemical Codes, without these amendments, in 46 CFR Part 153.

Discussion of Comments

The Coast Guard received 45 documents commenting on the NPRM. Many of the documents contained multiple comments. In addressing the comments, the Coast Guard has consolidated them as much as possible and has responded to them in general discussions on several topics, and, in many cases, in the discussion of specific sections.

Transfers Between Ships and Between Tanks on the Same Ship

Several comments have asked whether the regulations apply to transfers between ships or between tanks on the same ship. In the first instance, the transfer of cargo is an offloading, and the usual criteria apply when determining whether a prewash is required. If a prewash is required, the simplest way for a ship to deal with the prewash requirements when transferring to another ship would be to get a waiver to prewash in a "port" other than the offloading "port" under § 153.1119. The ship could then travel to the prewash port and prewash as usual. The prewash is required when a cargo is offloaded

but not when shifting cargoes between tanks. However, with the restriction on discharging any Category A residues except those from tank washing after a prewash, and with the limits on total quantity that can be discharged under § 153.1128, the Procedures and Arrangements Manual would need to treat these events with procedures as effective as a prewash.

Application of Requirements to Ships not Discharging While Underway

A number of comments suggested that the Coast Guard should not apply the NLS requirements to ships that do not discharge while underway. The Annex contains specific requirements covering ships that do not discharge. The Annex allows ships that have dedicated tanks to be relieved from many requirements (the waiver in § 153.491). It also waives efficient stripping systems for existing ships in domestic trade whose operators find reception facilities willing to take prewash residue (the waiver in § 153.483) and allows ships to be prewashed in a port other than the unloading port (§ 153.1119(c)). Additionally, the underwater discharge (§ 153.470) is needed only by those ships that discharge at sea. The Coast Guard believes these waiver provisions are sufficient, taken together, to relieve ship operators from most requirements in the Annex that are unnecessary for ships that do not discharge underway. New ships are still required to have efficient stripping systems, but the Annex retains these efficient stripping requirements for new ships to reduce the likelihood of violation and to minimize enforcement problems.

Viscosity Units

One comment suggested the value of viscosity in centipoise be listed next to the value in millipascal-seconds used in the proposal. The Coast Guard has chosen not to do this, but to add an entry in Appendix III of Part 153 giving the conversion from millipascal-seconds to centipoise; the conversion factor is 1, that is, the numerical value of the viscosity is the same in both sets of units.

Organization of the Regulations

Several comments questioned the organization for the proposal; specific complaints or questions were that Parts 151 and 153 should be kept separate and that the pollution rules should be placed together in Title 33 along with the oil pollution rules. The Coast Guard considered the option of devoting a part in either Title 33 or Title 46 wholly to Annex II requirements. The option of integrating the Annex into Part 153 was selected because the Annex deals primarily with the design and operation of chemical tankers as does Part 153, fewer cross-references to other parts and titles of the Code of Federal Regulations appear to be needed than with the alternatives, and Part 153 would require extensive changes regardless of where the Annex was placed. Placing the changes in Part 153 raised questions that would have been present with any organization but not evident until the implementation phase of the alternative choices.

The Coast Guard sees no virtue in keeping separate regulations for each possible vessel type and situation. The Coast Guard attempts to apply regulations that are appropriate to the vessel being regulated; if a set of regulations is appropriate for more than one type of vessel, the Coast Guard may put those vessels together under the same set of regulations. The Coast Guard is moving ocean-going barges that carry Category A, B, or C NLSs to Part 153 because the Annex applies the identical standards to both self-propelled and non-self-propelled chemical tankers carrying the same cargo. In most circumstances this is reasonable because the hazards do not change between the two types of vessels in the same environment. The differences between containment system requirements for a cargo carried under Part 151 and those for the same cargo carried under Part 153 are, for the most part, historical, not because of any difference in the nature of the hazard.

Application of MARPOL to Ships that are not Oceangoing

A number of comments were either related to the argument or argued that the Coast Guard was applying Annex II requirements to ships that were not oceangoing by moving cargoes from Parts 30 through 35 to Parts 151 and 153. This perception is a misunderstanding that the preamble to the NPRM discussed at length to avoid; the reevaluation of the cargoes was proposed under the authority to designate hazardous materials (49 U.S.C. 1804), not under the authority of the MARPOL implementing legislation. The Coast Guard has authority under 46 U.S.C. 3703 and other laws to issue regulations addressing environmental hazards as well as safety hazards. Nevertheless, to reduce the chance of confusing MARPOL requirements and any requirements the Coast Guard proposes for control of operational pollution from bulk cargoes in non-oceangoing trade in the future, the final rule is rewritten to omit any changes that would have affected ships other than oceangoing ships. This has been done by creating a class of cargoes that, for the present, are regulated under Parts 30 through 35 on non-oceangoing ships and under Part 153 on oceangoing ships. Those cargoes are marked with bullets in Table 30.25–1.

Consultation with the Towing Safety Advisory Committee

One comment said that the Coast Guard should withdraw the proposed requirements affecting barges and present the requirements to the Towing Safety Advisory Committee (TSAC) instead. The Coast Guard did, in fact, discuss Annex II and its effect on barges with TSAC during the development of the Annex and the implementing regulations, though the discussion did not produce any noticeably negative response.

Definition of "Oceangoing"

Several comments suggested that the term "oceangoing" should be defined so as to exclude a larger group of domestic trading ships than in the proposal. Others suggested that the Annex II requirements should not apply to ships in coastwise trade. The proposal used the definition of "oceangoing" that applies to Annex I (oil pollution) regulations. The Coast Guard rejects the suggestion to change the definition of "oceangoing" because having one definition for Annex I and a second for Annex II regulations would make a difficult set of regulations even more difficult, while changing the definition in both annexes would have effects far beyond that intended by the proposal. The Coast Guard has modified the applicability of Part 153 so that non-self-propelled ships trading between U. S. ports can make protected coastwise voyages without coming under Part 153. Neither the Annex nor its implementing legislation contains a general exclusion from meeting the requirements of the Annex for coastwise oceangoing ships.

Discussion of Changes to the Proposal

Changes made to the contents of the Proposal are discussed by section below. Minor spelling corrections and typographical corrections are not discussed where they appear unlikely to have led to any misunderstanding of the proposal, nor are editorial clarifications that have no substantive effect.

Section 30.25–1 Cargoes carried in vessels certificated under the rules of this subchapter.

The table of cargoes regulated under Subchapter D has been modified to avoid any effect on non-oceangoing

barges. This change requires that some cargoes, the NLS cargoes, be regulated under Part 153 when on an oceangoing barge or on a self-propelled ship and under Parts 30 through 35 otherwise. The cargoes that are NLSs are marked with a bullet beside them. This change from the proposal is a reduction in burden and is intended to avoid the misconception that these cargo changes were done under MARPOL 73/78. Future changes to these cargoes and their requirements would be proposed in a separate NPRM under an authority other than MARPOL 73/78.

Subpart 98.31—Control of Pollution From NLS Cargoes on Offshore Supply Vessels.

A number of comments noted that the Coast Guard was applying rules to offshore supply vessels that were written for chemical tankers. The Coast Guard did not propose to change the coverage of Part 153 as it applies to ships carrying bulk cargoes listed in Table 1 of the part; Part 153 has always applied to such ships and continues to do so except for those NLS cargoes carried under Part 98 in a new subpart to be described next.

As it had proposed in the NPRM preamble, the Coast Guard has included a new Subpart 98.31 to Part 98 of Title 46, which applies to offshore supply vessels carrying bulk NLS cargoes. Subpart 98.31 relieves offshore supply vessels of almost all requirements related to NLSs if the vessels do not discharge NLS residues underway. For vessels that do discharge NLS residues underway, the regular NLS related requirements in Part 153 would apply.

The International Maritime Organization is developing standards for the carriage of hazardous materials on offshore supply vessels which the Coast Guard will consider when they are completed.

Section 151.01–1 Applicability.

Several comments complained that the applicability was difficult to understand. This section has been reworded slightly in an attempt to clarify it, but the applicability is necessarily complex to limit the part to the vessels it is intended to cover.

Some comments noted that the material replaced by the revised § 151.01–1 contains terms used elsewhere in the part but not defined. The Coast Guard is aware that Part 151 has a number of outdated references and unnecessary references scattered throughout and is attempting to correct these, though not in this rulemaking.

Section 151.01–15 Dangerous cargoes not specifically named.

One comment noted that, as this section was written, mixtures of Category D NLS cargoes could be carried under Parts 30 through 35 without obtaining Coast Guard requirements for the particular mixture. The Coast Guard has added a clarifying sentence to this section requiring such mixtures to be carried as a Category D NLS cargo unless the Coast Guard has determined the mixture not to be a Category D NLS. See the discussion of the changes to Table 1 of Part 153 for information on determining the NLS category of mixtures.

Table 151.05

The amendments to this table have been deleted from the final rule since the rule has been modified to eliminate any effects on non-oceangoing ships.

Subpart 151.12—Equipment and Operating Requirements for Pollution Control

One comment dealt with the safety of ventilation of residues. This question is dealt with under the discussion on § 153.486.

Section 151.12–5 Equipment for Category D NLS.

The introductory language to the section has been edited but there is no substantive change.

Section 151.12–10 Operation of oceangoing non-self-propelled ships Carrying Category D NLS.

References to two requirements (§ 153.1102 and 153.1132) applying to Category D NLSs were left out of paragraph (b) and have been added. The Coast Guard believes it likely these additions will have no impact. The first is the general restriction on disposal of NLS residues which has little or no impact on Category D cargoes. The second is the requirement to report spills of Category D cargoes, but such spills are typically reported under the reporting requirements of Title 33 and the addition should have little impact.

Part 153

One comment stated that the title of the part was misleading; it is changed to clarify what the part covers.

Section 153.1 Applicability.

This section is revised to clarify that the part applies to the carriage of *bulk* cargoes and to exclude offshore supply vessels carrying NLS cargoes under Part 98. See the discussion on changes to Part 98 of this chapter.

Several comments said that it was difficult to determine from the applicability whether the proposed changes would bring fixed and floating platforms under Part 153. This confusion was probably caused by the word *bulk* having been left out of the applicability. The part would apply to fixed or floating platforms only if they carried one of the hazardous materials as bulk cargo (rather than, say, as a ship's store). This change has no impact on the proposal since the proposal only concerned bulk carriage.

Section 153.2 Definitions and acronyms.

One comment noted that the definitions of "high viscosity NLS," "high viscosity Category B NLS," "high viscosity Category C NLS" and "solidifying NLS" were not quite the same as in the Annex. The Coast Guard had worded the proposed definitions to avoid the possibility that a cargo could be both high viscosity and solidifying. A side effect of this approach was to create the impression that a prewash would not be required after discharging a cargo that was "potentially solidifying" but not solidifying, even thought the cargo was discharged at a viscosity exceeding values defining a high viscosity cargo. (The Coast Guard refers to cargoes for which viscosity or melting point information is required under § 153.908 as "potentially high viscosity" or "potentially solidifying" cargoes.) The Coast Guard did not intend to relieve people from prewash obligations by the proposed wording, and these definitions have been modified to follow the definitions used in the Annex more precisely and to implement the Annex more precisely, in accordance with the goal expressed in the NPRM. This change allows the high viscosity categories and the solidifying categories to overlap.

The *Standards for Procedures and Arrangements ("Standards")* from which these definitions are taken does not limit high viscosity to the 20 °C base temperature nor solidifying to the 0 °C base temperature the Coast Guard has used in its definitions. Other documents associated with the Annex require the shipper to furnish viscosity information only when the cargo's viscosity exceeds the trigger values (25 mPa sec or 60 mPa sec) at 20 °C; therefore, the definitions used in the *Standards* could result in the person in charge of a ship not having the viscosity information needed to determine whether the cargo was a high viscosity cargo at cargo temperatures below 20 °C. To correct this problem, the Coast Guard has limited the definition

of high viscosity to those cargoes which exceed the trigger values at 20 °C. Though perhaps not as pressing, a similar problem exists with "solidifying cargo" because there is no lower limit on the melting point in the *Standards* though melting point information is not required for all cargoes. In this case the Coast Guard has chosen a floor of 0 °C for the melting point of solidifying cargoes, which conforms to the parameters IMO used to determine for which cargoes the shipper would be required to supply melting point information. The Coast Guard will attempt to get an agreement with the other signatory countries on a resolution to both of these problems so that one can be assured of consistent definitions from country to country. If a change should be needed, the Coast Guard would propose it in an NPRM at a later date.

It is important to remember that a cargo is "high viscosity" or "solidifying" only at the time of unloading. Since the unloading temperature must be determined at that time, it may not be possible to predict ahead of time whether a cargo will be "high viscosity" or "solidifying."

Several comments stated that the definition of "cycle" was unclear. A definition similar to that used in the Annex is sustituted. No substantive change is intended.

Section 153.7 Ships built before December 27, 1977 and non-self-propelled ships built before July 1, 1983: application.

The text proposed to clarify the existing paragraphs of this section would have omitted certain restrictions on ships eligible for "grandfathering," restrictions which the Coast Guard believes require further evaluation. For this reason, the existing text is retained, while the proposed paragraph (e) has been redesignated paragraph (d) and added to the section to accommodate "grandfathering" of non-self-propelled ships.

Paragraph (e) has been reworded to clarify it and make it more understandable. The proposed requirement that the ship have a hull type as shown for the cargo in Part 151 has been removed so that the ship would only need to have the hull type that applied to the cargo before the changes in this rulemaking. These changes have no impact beyond the reduction mentioned.

Section 153.10 Procedures for requesting alternatives and waivers; termination of waivers.

Paragraph (d)(3) was clarified by including procedures with the waiver conditions that must be followed to maintain the validity of a waiver.

Section 153.12 IMO Certificates for United States Ships.

The first occurrence of the word "built" in paragraphs (c) and (d) was changed to "contracted," the term used in MARPOL 73/78. The remaining occurrences of the word "built" are proper.

Section 153.15 Conditions under which the Coast Guard issues a Certificate of Inspection or Certificate of Compliance.

The reference to an administration issuing IMO Certificates in paragraphs (b)(2) and (b)(3) was clarified to refer to the administration as being signatory to MARPOL 73/78.

Section 153.40 Determination of materials that are hazardous.

One comment noted that some confusion was likely in having the definition of "hazardous material" and the determination of hazardous materials stuck in the middle of Part 153. The Coast Guard agrees but will not try to relocate the definition or improve the organization of the regulations with this particular project because a number of changes not in the proposal would be necessary. Others commented that the Coast Guard had suddenly included all sorts of extraneous cargoes under the term "hazardous materials." The definition of "hazardous material" that the Coast Guard has included with the other definitions in § 153.2 is taken directly from the revised and consolidated Title 46, the law granting most of the authority the Coast Guard uses in Part 153. The list of cargoes in § 153.40 that the Coast Guard has determined to be hazardous materials is essentially no different than a list made from the outdated definition of "dangerous cargo" used in 46 CFR Part 151 since 1970: The list essentially comprises those materials the Coast Guard has already listed in regulations covering hazardous materials and those materials that other agencies in the Department of Transportation have determined to be hazardous materials. Another commenter seemed to be under the impression that the Coast Guard would add new materials to the regulations without publishing a notice of proposed rulemaking. The Coast Guard is required by law to propose in a public notice any addition of cargoes to the regulations and this is specifically pointed out in note 2 to the section, in both the proposal and the final rule.

Section 153.216 Shower and eyewash fountains.

This existing section was revised to allow the use of portable showers and eyewash fountains on non-self-propelled ships. Several comments requested this alternative because of the expense needed to meet the requirement on non-self-propelled ships, which typically do not have running water and often do not have power sources. The change reduces the burden on the ship owner while not significantly reducing the level of safety. The word "maintain" in paragraph (c)(2) was changed to "dispense" to be more precise.

Section 153.440 Cargo temperature sensors.

Several comments requested that the thermometer be allowed in the cargo tank's discharge line. The Annex and associated papers do not prescribe how one measures the cargo temperature when determining whether a cargo is high viscosity or solidifying. The Coast Guard has chosen to specify that the temperature measured should be that in the lower part of the cargo tank, which the Coast Guard believes is a reasonable implementation of the Annex's intent to ensure a low residue of those NLSs that tend to solidify on, or cling to, tank walls at lower temperatures. A thermometer in the discharge line may or may not give an indication of the temperature of the cargo in the tank, depending on whether the discharge line is heated or insulated, the length of the line, the ambient temperature, the cargo velocity through the line, the line cross-section, the cargo characteristics, and so forth. For these reasons, the Coast Guard has only conditionally accepted the comment. Proposed paragraph (a)(3) was changed to a performance standard that allows the use of a thermometer in the discharge line, but the responsibility for showing that a reading at this point would be representive of the temperature in the lower part of the cargo tank is left to the shipowner. The change widens the options available to the shipowner and reduces the regulatory burden as compared to the proposed wording.

Other comments requested that a portable thermometer be allowed. Paragraph (c) of this section in the present Part 153 allows the use of a portable thermometer with some restrictions. This paragraph is included in this rule with minor editorial changes

which do not affect the substance of the existing rule.

The proposed measuring procedure in § 153.908(d)(1) is modified to accommodate these changes.

Section 153.469 Application of §§ 153.470 Through 153.488.

This section was omitted from the final rule, and the application included in the individual sections.

Comments Applying To More Than one of §§ 153.470 Through 153.488.

A number of comments argued that the Coast Guard should waive pollution control equipment requirements on ships that do not discharge at sea. The Annex does not provide for any general waiver of pollution control equipment, only for dedicated cargo tanks or for ships built before July 1, 1986 that make only "restricted voyages." Both of these waivers were included in the proposal, the first under § 153.491, the second under § 153.483. The proposed text of these two sections has been clarified and simplified; see the discussion on these two sections below.

Section 153.470 System for Discharge of NLS Residue to the Sea: Categories A, B, C, and D.

Several comments suggested that the underwater discharge system should not be required on ships that do not discharge NLS residue to the sea. The introductory language to this section is modified to clarify that the residue discharge system is required only if the ship is to discharge residues to the sea under § 153.1126 or § 153.1128. The reworded section follows the requirement of the Annex more precisely than the wording of the proposal.

Other comments said that the requirement to have an underwater discharge system on "existing ships" by January 1, 1988 gives insufficient time to have the discharge designed and installed. This date comes from the Annex. The Coast Guard will monitor the progress of implementation of the regulation.

Section 153.481 Stripping Quantities and Interim Standards for Category B NLS Tanks on Ships Built Before July 1, 1986: Category B.

Minor editorial changes were made in proposed paragraph (b) and proposed paragraph (b)(4)(i) without changing the substance of the rule.

Section 153.483 Restricted Voyage Waiver for Category B and C NLS Tanks on Ships Built Before July 1, 1986: Category B and C.

The title was changed to refer to the equivalent topic in Annex II, and a note was added to point out the restriction that Annex II requires to be entered on the Certificate of Inspection. The language added to the certificate reiterates the conditions of the waiver and imposes no additional requirement.

Some changes to the proposed language have been made in the information required and the conditions necessary to obtain a waiver. These changes reduce the amount of information that is required and make the waiver more useful for ships that do not wash tanks at sea, reducing the burden on the ship operator.

Section 153.484 Prewash Equipment.

Several comments stated that the requirement that the prewash equipment cover "all" surfaces was excessive or unclear. Although the documents associated with the Annex use the term "all," the Coast Guard has changed the proposal by specifying coverage of all surfaces not obstructed by tank structure. With 100% coverage impractical in many tanks the Annex is clearly intended to cover and with no discussion of coverage in the Annex, the Coast Guard believes the wording in the final rule is practical, meets the goals of the Annex, and causes no increased burden as compared to the proposed wording.

One comment stated that the hot water temperature should be specified as it leaves the water heater. The Coast Guard disagrees. Specifying the water temperature as it leaves the washing machine nozzle is a performance standard on the wash water system; it is the least restrictive specification the Coast Guard can make and still meet the contents of the Annex. To specify the hot water temperature at the heater would require that the Coast Guard specify a higher temperature than may be necessary to ensure that the wash water was at the correct temperature when it left the nozzle. Such a specification would offer no encouragement for improving the piping insulation and reducing other sources of heat loss in the piping system.

Another comment asked that prewash equipment not be required unless the ship washed tanks underway. The Coast Guard agrees that to require the ship to carry tank washing equipment would be unnecessary if the ship operator could show that the equipment would be available at the ports and terminals at which the ship would prewash. The introductory language of the section has been changed to allow this relieving option.

One comment proposed that the Coast Guard approve the tank washing machines to be certain they produced the coverage and flow necessary to achieve the type of prewash envisioned in the Annex. The Coast Guard believes such an approval program to be unnecessarily complex and restrictive to institute at this time. If experience should show that a certification program might be the best way to ensure proper prewashes, the Coast Guard would reconsider.

Section 153.486 Design and Equipment for Removing NLS Residue by Ventilation: Categories A. B. C, and D.

Proposed paragraph (b) required the portable ventilation equipment to be able to ventilate the extremities of the tank but did not reference the requirement in § 153.490(b)(3) that the Procedures and Arrangements Manual prescribe ventilation procedures that meet Appendix C of the IMO *Standards for Procedures and Arrangements*. This clarifying reference was added to paragraph (b).

One comment asked whether the means of detecting whether liquid remained in the tank after ventilation could be a simple visual check. This section has been modified specifically to allow a simple visual check, using either the ventilation openings or other openings. The change agrees with the Annex and was intended by the proposal.

Several people questioned the safety of ventilation because of the possible toxicity and flammability hazards it presents. The Coast Guard did not seek to evaluate ventilation with respect to these hazards in the proposal. The proposal contained nothing affecting the use of ventilation but only prescribed to what extent and under what circumstances ventilation could be assumed to clean a tank for the purposes of Annex II. Because of the limit on vapor pressure of cargoes that are allowed to be removed by ventilation for the purposes of Annex II and because of the limited number of ships affected by these regulations, the Coast Guard does not believe there will be any noticeable affect on the frequency with which ventilation is used to remove cargo residues. If experience indicates that these practices require further regulations to control hazards, they will be subject to further rulemaking.

The EPA also requested that the Coast Guard add a note advising that state and local governments may have environmental restrictions that would affect whether one could remove residues by ventilation. Several notes to this effect have been added.

Section 153.488 Design and equipment for tanks carrying high melting point NLSs: Category B.

Several comments either complained that barges did not typically have power sources for heating cargo aboard or inquired as to whether heat could be supplied from shore. Proposed paragraph (a) has been reworded to allow heat sources to be located other than on the ship. This removes a restriction and leaves with the ship operator the economic decision whether to carry the heat source with the ship.

Section 153.491 Waiver of certain equipment for dedicated cargo tanks.

One comment noted that proposed paragraph (b), in waiving all of § 153.490, would have waived the requirement for a Cargo Record Book in certain cases not allowed in the Annex. It was not the Coast Guard's intention to propose less than the Annex requires in this respect, and this section has been reworded so that the Cargo Record Book is required even though the equipment requirements have been waived; the section now agrees with the Annex.

Several minor editorial corrections and changes have been made to this section.

Section 153.900 Certificates and authorization to carry a bulk liquid hazardous material.

Several comments noted that the references in proposed paragraph (a) to sections of Title 33 were incorrect, and these have been corrected.

Proposed paragraph (a)(4)(ii) has been reworded to limit the requirement to have an IMO Certificate of Fitness to those non-self-propelled ships in waters of a foreign country signatory to MARPOL 73/78. One comment noted that the proposal, in requiring a Certificate of Fitness in any foreign waters, exceeded the MARPOL 73/78 requirement to have a Certificate of Fitness when carrying Category A, B, or C cargo in the waters of another signatory country. Paragraph (a)(4)(i), applying to self-propelled ships in any foreign waters, combines the MARPOL 73/78 requirement with the broader requirement under SOLAS which applies to self-propelled ships in any foreign waters.

Section 153.901 Documents: Posting, availability, and alteration.

One comment pointed out that barges did not have wheelhouses. Paragraphs (a) and (b) have been changed to allow the documents to be carried on any location on the ship.

Section 153.906 Reporting equipment failures and replacing equipment.

Several comments said that the proposal to report all equipment failures was excessive. The contents of this section have been moved to § 153.1130, and the reporting requirement limited to pollution related equipment.

Section 153.908 Cargo viscosity and melting point information; measuring cargo temperature during discharge: Categories A, B, and C.

One comment inquired as to whether the exact viscosity of the cargo being shipped was necessary or whether an average or representative value could be used. In the case of mixtures, particularly, furnishing an exact viscosity at the time of shipment would require testing each tank of cargo. The intent of the Annex and the intent of the Coast Guard in its proposal is that the ship operator have the information necessary to determine whether a cargo is a high viscosity or solidifying cargo. Using a representative or average value for the melting point or high viscosity transition temperature would be inadequate because it could result in the incorrect handling of a large number of these cargoes. However, a maximum melting point or maximum temperature of transition to high viscosity would err on the conservative side and would be perfectly acceptable. The basic responsibility lies with the shipper to ensure that the information furnished the ship operator will ensure proper handling, that is, that it would more likely result in unloading at a slightly higher rather than lower temperature than would be necessary were the exact characteristics of the cargo known. The shipper retains the option of supplying exact characteristics.

Section 153.909 Completing the Cargo Record Book and record retention: Categories A, B, C, and D.

One comment noted that proposed paragraph (b) should include the authorities in a foreign country signatory to MARPOL if a U.S. ship is in its waters if the proposal is to implement the Annex precisely. A change has been made in this section that adds the Administration of the signatory government as the entity for whom the Cargo Record Book must be available when a U.S. ship is in the waters of that country. Although this requirement would also be made by the administration of the signatory country, the Coast Guard believes the modified language will help to avoid confusion when a U.S. ship is in one of these foreign ports, where the Administration of that country is the logical substitute for the Coast Guard.

Several of those commenting mistook the wording of proposed paragraph (c) to require a Surveyor to oversee each of the operations in paragraph (a). Such a requirement would be far in excess of the requirements in the Annex and those intended by the Coast Guard. This has been reworded to clarify that the Surveyor need sign the Cargo Record Book entry only on those occasions for which the regulations require the Surveyor's presence.

Section 153.1101 Procedures for getting a Surveyor; approval of Surveyors.

One comment suggested that the Coast Guard should discuss the cost of a private Surveyor. The Coast Guard has no cost data on private Surveyors since no Surveyors exist at this time; it is likely that a Surveyor will charge rates similar to what a Marine Chemist or a cargo surveyor charges.

Another comment said that the Coast Guard should have included some means for the person in charge of the ship to act as Surveyor. The Coast Guard disagrees. Under the Annex and these regulations, the person in charge is required to follow the procedures in the regulation; the Surveyor's function is to act as witness and as a check to verify that the person in charge is complying. It would be pointless were the person in charge and the Surveyor the same person.

Several comments suggested additional qualifications for Surveyors or changes in qualifications for Surveyors. The Coast Guard has not changed the description of the qualifications of the surveying organizations from the NPRM but is considering these comments. If it appears necessary to modify the qualifications of surveying organizations, a separate rulemaking will be initiated.

Section 153.1102 Handling and disposal of NLS residue: Categories A, B, C, and D.

The number of ways in which to deal with NLS residues has been increased in response to questions about how contaminated cargoes are to be dealt with. Since the definition of NLS residues includes cargo that is not

unloaded because it fails to meet the consignee's specifications, the Coast Guard has explicitly included returning the cargo to the shipper or discharging the cargo to another consignee among the permissible ways of disposing of such a cargo. These changes reduce the regulatory burden by increasing the options available to the ship operator.

Several comments noted that NLSs might be discharged under an EPA regulation. The Coast Guard recognizes that conflicts may arise under different laws and programs. This particular set of requirements implements MARPOL 73/78 and the Act, and there may be other laws and implementing regulations that allow the discharge of materials, some of which may be NLSs, under the controls specified in those laws. The Coast Guard believes it impractical and unnecessary to attempt to resolve all possible conflicts by these regulations, and will continue to consult with EPA and other organizations as specific instances arise.

The requirement that a Surveyor participate in the decision whether to remove residue by ventilation has been omitted from proposed paragraph (b) since it is covered by § 153.1114.

Section 153.1104 Draining of cargo hose: Categories A, B, C, and D.

The term "transfer terminal" is replaced by "receiver of the cargo" to cover all instances of cargo offloading. The Coast Guard believes this term to be clearer than the proposed term.

Section 153.1106 Cleaning agents.

In response to several comments about certain residues that cannot be cleaned with water, this section is reworded to allow alternatives to be prescribed in the approved Procedures and Arrangements Manual. See the discussion on § 153.1120 for more about non-water prewashes.

Section 153.1108 Heated prewash for solidifying NLS and high viscosity NLS: Categories A, B, and C.

Several comments suggested that the section implied a second prewash if another section required a prewash for a different reason, for example, if the cargo were a Category A NLS. This section was edited to clarify the requirements applying to heated prewashes. No substantive changes were made in the reworded text.

Section 153.1114 Conditions under which a prewash may be omitted: Categories A, B, and C.

Some minor editorial changes have been made. A new paragraph (c) has been added to enable the prewash to be omitted when the ship is not self-propelled, does not discharge at sea, and does not carry NLSs to foreign ports. This change simplifies the procedures for and reduces the regulatory burden on ships that are operating under "restricted voyage" waivers (see § 153.483).

Section 153.1116 Prewash for tanks unloaded without following the approved Procedures and Arrangements Manual: Category B and C.

Several comments indicated that proposed paragraph (b) of this section was confusing and appeared to allow a ship to discharge more to sea than allowed under the Annex so long as a Surveyor approved. The section attempts to provide an alternative mechanism for handling tank residues when, for reasons such as pump failure, other equipment failure, or errors, the unloading procedures in the approved Procedures and Arrangements Manual are not followed. The alternative must leave no more residue in the tank, in the estimation of a Surveyor, than would the unloading procedures specified in the Procedures and Arrangements Manual (those in the Procedures and Arrangements Manual should leave an amount of residue in the tank and piping approximately equal to the stripping quantity determined under § 153.1604). The section has been reworded to clarify its purpose.

Section 153.1119 When to prewash and discharge NLS residues from a prewash; unloading an NLS cargo in a country not signatory to MARPOL: Categories A, B, and C.

A number of comments complained that the proposals applying to ships that did not discharge to the sea were too cumbersome. Changes have been made to simplify the proposals applying to ships not discharging at sea, while still meeting the requirements in the Annex. One of the simplifications has been to rewrite the alternate port prewash described in this section. The proposal to get approval from Commandant (G–MTH) has been replaced by a requirement to get approval from the Coast Guard Captain of the Port if the prewash port is in the U. S. The Annex requires that the government granting approval to prewash in another port have written confirmation that reception facilities are available in the prewash port, a requirement that the Coast Guard does not wish to delegate to Coast Guard field units when the transaction is with a foreign government. A telephone number for the Commandant (G–MTH) has been included to help speed approval in these cases.

Several people raised the question of how a U. S. ship operator deals with Annex II requirements when unloading at ports or terminals in countries not signatory to MARPOL 73/78. The only significant requirement that might not be possible to meet in a non-signatory country would be the prewash requirement since the prewash water must be discharged to a reception facility. A provision has been added to get a waiver from Commandant (G–MTH) to prewash in another port when the prewash requirement occurs in a country that does not have reception facilities. This change simply points out an obvious occasion when this alternative must be provided for.

Section 153.1120 Procedures for tank prewash: Categories A, B, and C.

The introductory language added and the change to the introductory language of proposed paragraph (a) and (b) are editorial. Paragraphs (a)(3) and (b)(3) were clarified by enumerating stripping equipment as part of the cargo pump and piping. Paragraphs (a)(4) and (b)(5) were changed to leave to the Procedures and Arrangements Manual the specification of number of washing machines and whether washing machines need to be moved. These shift the difficulty of determining whether "all" surfaces have been prewashed to the review of the Procedures and Arrangements Manual, where it is more tractable. Paragraph (a)(6) was modified so that the Surveyor takes the sample but is not required to do the sample testing, the exact arrangement in the Annex. The procedure in paragraph (b) was elaborated to clarify that the tank has to be pumped out at the end of the prewash procedure. Finally, the requirement in paragraph (b) that a Surveyor be present for almost all prewashes was changed to require the Surveyor only for Category A prewashes; the Annex explicitly requires a Surveyor only for Category A prewashes. These changes either reduce the burden by allowing a greater number of options than the proposal or clarify the proposed wording without changing the burden.

Several comments expressed concern because the proposal did not discuss prewashing of tanks containing residues that cannot be washed using water. The Coast Guard agrees and has changed the introductory language to the description of the prewash procedure to allow the approved Procedures and Arrangements Manual to contain procedures for this possibility. In such cases it would be advisable for the Procedures and Arrangements Manual

to discuss the prewash in detail and to specify exactly what part of any series of washing steps is to be considered the prewash procedure so that the person in charge and the Coast Guard can determine when any required Surveyor might need to be present. Because no standard procedure for nonwater prewashes is in the material related to the Annex, the Coast Guard must determine whether the procedures in the Procedures and Arrangements Manual give results equivalent to those for a water prewash.

Table 3 in the proposal, now Table 153.1120 at the end of the section, was modified to correct references and to eliminate the requirement for additional prewash cycles for high viscosity cargoes.

Section 153.1126 Discharge of NLS residue from a slop tank to the sea: Categories A, B, C, and D.

An editorial change was made to the introductory language.

Section 153.1128 Discharge of NLS residue from a cargo tank to the sea: Categories A, B, C, and D.

A prohibition against discharging Category A residues other than from tank washing, more than $1m^3$ of any cargo tank loading of Category B cargo, and more than $3m^3$ of any cargo tank loading of Category C was added (with an allowance for large cargo tanks). The effect of adding these prohibitions is specifically to disallow the discharge of large quantities of cargo overboard, such as one might prefer to do with a contaminated cargo. Although these restrictions were not contained in the proposal, they are in the Annex and are the limits that the equipment and operating procedures required elsewhere in the proposal were designed to achieve. These added prohibitions will have no effect on any normal operations and are obviously within the concept of implementing the Annex. Adding these restrictions to the regulations simply emphasize the concept of the Annex and the results of the equipment and operating requirements.

The section was edited to make it easier to read and to correct cross-references.

Section 153.1130 Failure of slops discharge recording equipment; operating with, reporting failures, and replacing pollution equipment.

As described above, those requirements to report equipment failure have been reduced and combined in this section. A clarifying reference to the restriction in § 153.1126(b) that limits the rate of discharge of certain residues is added to paragraph (c)(1) of this section. This added reference clarifies that the restrictions in § 153.1126 apply even when the discharge recording equipment fails.

Section 153.1600 Equipment required for conducting the stripping quantity test.

Proposed paragraph (a) has minor clarifying changes.

Section 153.1602 Test procedure for determining the stripping quantity.

A requirement to have a Coast Guard inspector witness the stripping test was added. The Coast Guard believes that the necessity for the Coast Guard's witnessing the stripping test is obvious and comparable to the need to verify the other requirements of the rule. Incorrect cross-references were corrected, but these should have no impact.

Table 1 of Part 153

Some comments noted that cargoes carried as oil-like cargoes on oil tankers would have less stringent requirements, for example, open gauging, than the same cargoes carried on Part 153 tankers, for example, restricted gauging. This unevenness in requirements results from the differing treatment of cargo hazards under SOLAS and under the hazard evaluation scheme for the Bulk Chemical Codes. Accordingly, the comments were not accepted.

Some mixtures of cargoes listed in Table 1 cover ranges of composition that may cause them to overlap two or more adjacent NLS categories. The categories shown in the table are the highest for the allowable composition. Both the Coast Guard and IMO are working on the final stages of a calculation procedure that would enable a shipper to determine the actual NLS category of a mixture by calculating a weighted average of the categories of each component of the mixture. Until the calculation procedure can be proposed, the Coast Guard will allow shippers to use the calculation to determine categories of mixtures on an interim basis. The procedure can be obtained by contacting Commandant (G–MTH–1), U.S. Coast Guard, Washington, DC 20593, telephone (202) 267–1577. This change will simplify requirements for those shipping mixtures that vary in composition and will have no effect on any others.

The changes made in Table 1 of this final rule from the Table contained in the proposal are shown in boldface. These changes comprise moving cargoes to a less stringent pollution category and moving cargoes to a less stringent containment system type. Cargoes having a reduction in pollution category and in containment system type are those for which new data shows their pollution hazards to be less than previously thought.

The notation "III" in the "IMO Pollution Category" column means that the cargo is not an NLS. The "III" refers to Appendix III of the Annex, where such cargoes are listed.

Table 2 of Part 153

The table of "unregulated" cargoes, that is, cargoes that are not regulated when shipped as bulk liquids under Title 46, are listed in Table 2.

Regulatory Evaluation

These regulations are not considered to be major under Executive Order 12291 nor significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final evaluation has been prepared and placed in the public docket.

The benefit of the regulations is to reduce the quantities of noxious liquid substances discharged into the marine environment, both from ship operations and ship accidents. The particular approach chosen in Annex II of MARPOL 73/78 achieves these benefits with only minor increases in ship design costs, operating costs, personnel costs, and operating complexity. The final evaluation projects an estimated cost for the rule of approximately $4,600,000 in design and equipment cost with a recurring annual cost of approximately $1,900,000 including depreciation of the design and equipment costs, maintenance costs, slops disposal costs, ship delay costs, administrative costs, and effects of improved cargo recovery.

Regulatory Flexibility Analysis

The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities. The size and sophistication of the ships affected by this final rule are such that their cost ranges from several million to over $100 million. The daily operating costs can range from about $5000 for an oceangoing barge to $25,000 for a manned ship. The Coast Guard concludes that no company having capital and operating costs of this size is a "small entity."

Environmental Analysis

The environmental analysis shows the rule will have a beneficial effect on the environment by reducing the discharge of cargo tank washings to the sea. The amount of Category A cargo that would no longer be discharged to the sea by

U.S. flag ships under the rule is estimated to be 16,000 liters yearly. The amount of Category B and C cargo that would no longer be discharged to the sea by U.S. flag ships because of better cargo recovery from efficient stripping systems is estimated to be 3,000,000 liters per year. The amount of Category B and C cargo that would no longer be discharged to the sea by U.S. flag ships because of prewash requirements is estimated to be 85,000 liters per year.

Because most trade in noxious liquid substances moves in foreign flag tankers, the greatest benefit to the United States will probably come from the implementation of Annex II of MARPOL 73/78 by other nations whose ships either trade in the U.S. or pass near U.S. waters in their trade with neighboring countries. The implementation of Annex II of MARPOL 73/78 by the United States, though having a smaller impact than implementation by other nations, is crucial in gaining worldwide acceptance of the convention. Nevertheless, because the amount of cargo discharged by U.S. flag ships through tank washing is small relative to that discharged by ships of other nations and the ability of the oceans to absorb such discharges, the Coast Guard has determined that the regulation, if adopted, would not have a significant impact on the environment.

Paperwork Reduction Act

This rule contains information collection requirements in §§ 153.3, 153.8, 153.10, 153.12, 153.483, 153.490, 153.491, 153.900, 153.901, 153.1119, 153.1120, and 153.1132. It contains recordkeeping requirements in §§ 153.490, 153.900, 153.901, 153.909, 153.1114, 153.1116, 153.1120, 153.1130. These have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved under RCS/OMB number 2115–0089.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine Safety.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine Safety, Reporting and recordkeeping requirements.

46 CFR Part 153

Cargo vessels, Hazardous materials transportation, Marine Safety, Reporting and recordkeeping requirements.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation, Marine Safety.

In consideration of the foregoing, Chapter 1 of Title 46, Code of Federal Regulations, is amended as follows:

PART 30—[AMENDED]

1. The authority citation for Part 30 is revised to read as follows and removing the authority citations following the sections throughout the part.

Authority: 46 U.S.C. 3507, 3703; 49 U.S.C. 1804; 49 CFR 1.46 (n)(4) and (t).

2. By revising § 30.25–1 to read as follows:

§ 30.25–1 Cargoes carried in vessels certificated under the rules of this subchapter.

The cargoes listed in Table 30.25–1 have been found to be flammable or combustible and may be transported in bulk only in vessels certificated under the rules of this subchapter. Cargoes having a bullet beside the cargo name in Table 30.25–1 may be carried under this subchapter only if the cargo is carried on a non-self-propelled vessel and the vessel is excluded by § 153.1 of this chapter.

Table 30.25-1—List of Flammable and Combustible Bulk Liquid Cargoes

Acetone
Acetophenone
Acetyl tributyl citrate
Alcohols (mixed)
Alkenylsuccinic acid
Alkenylsuccinic anhydride
Alkyl benzene sulfonic acid (4% or less)
Alkyl phthalates (n-)
Alkyl succinate formaldehyde hydroxy amino condensate (3.2% or less)
•Amyl acetate (iso-, n-)
Amyl alcohol (n-)
Amylene
Amyl methyl ketone
Amyl tallate
Asphalt
Asphalt blending stocks:
  Roofers flux
  Straight run residue
Behenyl alcohol
•Benzyl alcohol
Bicyclic terpenel polyamine amide salt
Butane
•Butyl acetate (iso-, n-, sec-)
Butyl alcohol (iso-, n-, sec-, tert-)
•Butyl benzyl phthalate
Butylene
1,3-Butylene glycol
Butylene polyglycol
Butyl heptyl ketone
Butyl methyl ketone
Butyl stearate
Butyl toluene
Butyrolactone (gamma)
Calcium alkylphenate
Calcium alkyl salicylate
Calcium amino nonyl phenolate
Calcium carboxylate
Caprolactam solutions
Carbon black base
Cetyl alcohol (Hexadecanol)
Cetyl stearyl alcohol
Cleaning spirit (unleaded)
•Cumene
Cycloaliphatic resins
•Cyclohexane
•Cyclohexanol
Cyclopentadiene polymers
•Cymene (para-)
Decaldehyde (iso-, n-)
Decane
•Decene
•Decyl alcohol (iso-, n-)
Decyl benzene (n-)
Detergent alkylate
Diacetone alcohol
Dibutyl carbinol
•Dibutyl phthalate (ortho-)
Dicyclopentadiene
•Diethyl benzene
Diethylene glycol
Diethylene glycol butyl ether
Diethylene glycol butyl ether acetate
Diethylene glycol diethyl ether
Diethylene glycol ethyl ether
Diethylene glycol ethyl ether acetate
•Diethylene glycol methyl ether
Diethylene glycol methyl ether acetate
Diethylene glycol phenyl ether
Di(ethylhexyl) phthalate
•Diethyl phthalate
•Diglycidyl Ether of Bisphenol A
Diheptyl phthalate
Dihexyl Phthalate
Diisobutyl carbinol
•Diisobutylene
Diisobutyl ketone
•Diisobutyl phthalate
Diisodecyl phthalate
Diisononyl phthalate
Diisooctyl phthalate
•Diisopropyl benzene
Diisopropyl naphthalene
Dimethyl benzene
•Dimethyl phthalate
Dimethyl polysiloxane
2,2-Dimethylpropane-1,3-diol
Dinonyl phthalate
Di(octylphenyl)amine
Dioctyl phthalate
•Dipentene
•Diphenyl
•Diphenyl-Diphenyl oxide
•Diphenyl ether
Dipropylene glycol
Dipropylene glycol dibenzoate
Dipropylene glycol methyl ether
Distillates:
  Flashed feed stocks
  Straight run
Diundecyl phthalate
•Dodecylphenol
Epoxylated linear alcohols, C11-C15
Ethane
Ethoxyethanol
•Ethoxyethyl acetate
Ethoxylated alcohols, C11-C15

Ethoxy triglycol (crude)
Ethyl acetate
Ethyl alcohol
Ethyl amyl ketone
•Ethyl benzene
Ethyl butanol
Ethyl cyclohexane
Ethylene
Ethylene carbonate
Ethylene glycol
Ethylene glycol butyl ether
Ethylene glycol butyl ether acetate
•Ethylene glycol diacetate
Ethylene glycol ethyl ether
•Ethylene glycol ethyl ether acetate
Ethylene glycol isopropyl ether
Ethylene glycol methyl butyl ether
Ethylene glycol methyl ether
Ethylene glycol methyl ether acetate
Ethylene glycol phenyl ether
Ethylene-Propylene copolymer (in liquid mixtures)
Ethylhexaldehyde
Ethylhexanoic acid
2-Ethyl hexanol
Ethylhexoic acid
Ethyl hexyl phthalate
Ethyl hexyl tallate
•Ethyl toluene
Fatty acid amides
Formamide
•Furfuryl alcohol
Gas oil, cracked
Gasoline blending stocks:
  Alkylates
  Reformates
Gasolines:
  Automotive (containing not over 4.23 grams lead per gallon)
  Aviation (containing not over 4.86 grams lead per gallon)
  Casinghead (natural)
  Polymer
  Straight run
Glycerine
Glycerol
Glyceryl triacetate
•Glycidy ester of tertiary carboxylic acid
Glycidyl ester of versatic acid
Glycol diacetate
Glycols, Resins, & Solvents mixture
Glycol triacetate
Glyoxal (40%)
Grease
Heptadecane
Heptane
Heptanoic acid
•Heptanol
•Heptene
Herbicide (C15 -H22 -NO2-Cl)
Hexaethylene glycol
Hexamethylene glycol
Hexane (iso-, n-)
Hexanol
•Hexene
•Hexyl acetate
Hexylene glycol
Hog grease
Isophorone
Jet fuels:
  JP-1 (kerosene)
  JP-3
  JP-4
  JP-5 (kerosene, heavy)
Kerosene
Lactic acid
Lard
Latex, liquid synthetic
Magnesium nonyl phenol sulfide
Magnesium sulfonate
Maleic anhydride copolymer
2-Mercaptobenzothiazol (in liquid mixtures)
Methane
Methoxy triglycol
Methyl acetate
Methyl acetoacetate
Methyl alcohol
•Methyl amyl acetate
•Methyl amyl alcohol
•Methyl amyl ketone
Methyl butanol
Methyl ethyl ketone
Methyl formal (dimethyl formal)
•Methyl heptyl ketone
Methyl isobutyl carbinol
Methyl isobutyl ketone
Methyl naphthalene
•Methyl pentene
•Methyl pyrrolidone (N-)
Methyl tert-butyl ether
Mineral spirits
Naphtha:
  Aromatic (10% or less Benzene)
  Cracking fraction
  Heavy
  Paraffinic
  Petroleum
  Solvent
  Stoddard Solvent
  Varnish makers' and painters' (75%)
Naphthenic acid
Nonane
Nonanoic acid
Nonanoic, Tridecanoic acid mixture
•Nonene
•Nonyl alcohol
•Nonyl phenol
Nonyl phenol (ethoxylated)
Nonyl phenol sulfide (90% or less)
Octadecene
Octadecenoamide (oleamide)
Octane
•Octene
Octyl acetate
•Octyl alcohol (iso-, n-)
•Octyl aldehyde (iso-)
Octyl epoxytallate
Octyl phthalate
Oil:
  Absorption
  Aliphatic
  Animal
  Aromatic
  Aviation F2300
  Clarified
  Coal
  Coal tar
  Croton
  Crude
  Diesel
  Fuel oils:
  No. 1 (kerosene)
  No. 1-D
  No. 2
  No. 2-D
  No. 4
  No. 5
  No. 6
  Gas, low pour
  Gas, low sulphur
  Heartcut distillate
  Lanolin
  Linseed
  Lubricating
  Mineral
  Mineral Seal
  Motor
  Neatsfoot
  Oiticica
  Penetrating
  Perilla
  Pilchard
  Pine
  Range
  Residual
  Resin
  Resinous petroleum
  Road
•Rosin
  Seal
  Soapstock
  Sperm
  Spindle
  Spray
•Tall
•Tall, fatty acid
  Tanner's
  Transformer
  Tung
  Turbine
  Whale
  White (mineral)
  Wood
  Edible oils, including:
  Babassu
  Beechnut
  Castor
  Cocoa butter
  Coconut
  Coconut oil, esterified
  Coconut oil, fatty acid
  Coconut oil, methyl ester
  Cod liver
  Corn
  Cotton seed
  Cotton seed, fatty acid
  Fish
  Grapeseed
  Groundnut
  Hazelnut
  Lard
  Maize
  Mustard seed
  Nutmeg butter
  Olive
  Palm
  Peanut
  Poppy
  Raisin seed
  Rapeseed
  Rice bran
  Safflower
  Salad
  Sesame
  Soya bean
  Soyabean (epoxidized)
  Sunflower seed
  Tucum
  Vegetable
  Walnut
Oleic acid
Oleyl alcohol (octadecenol)
Organic amine 70 (mixture of high molecular weight alcohol amines)
Pentadecanol
Pentaethylene gylcol

•Pentane (iso-, n-)
•1-Pentene
Petrolatum
Phosphosulfurized bicyclic terpene
Phthalate plasticizers
•Pinene
Polyalkenyl succinic anhydride amine
Polyamine, amide mixture
Polybutene
Polyethylene glycols
Polyisobutylene
Polymerized esters
Polypropylene
Polypropylene glycol methyl ether
Polypropylene glycols
Polystyrene dialkyl maleate
Propane
Propyl acetate (iso-, n-)
Propyl alcohol (iso-, n-)
Propyl benzene
Propylene
Propylene butylene polymer
Propylene glycol
Propylene glycol ethyl ether
Propylene glycol methyl ether
Propylene polymer (in liquid mixtures)
Propylene tetramer
•Propylene trimer
Psuedocumene (1,2,4-Trimethylbenzene)
Rum
Sodium acetate, Glycol, Water solutions
Sodium sulfonate
Stearic acid
Stearyl alcohol (Octadecanol)
Sulfolane
Tallow
Tallow alcohol
Tallow fatty acid
Tallow nitrile
Tetradecanol
Tetradecene
Tetradecyl benzene
Tetraethylene glycol
•Tetrahydronaphthalene
Tetrapropyl benzene
•Toluene
Triarylphosphate
•Tributyl phosphate
•Tricresyl (Tritolyl) phosphate (less than 1% ortho isomer)
Tridecane
Tridecanoic acid
Tridecanol
Tridecene
•Tridecyl benzene
•Triethyl benzene
Triethylene glycol
Triethylene glycol butyl ether mixture
Triethylene glycol diethyl butyrate
Triethylene glycol ether mixture
Triethylene glycol methyl ether
Triethyl phosphate
Triisooctyl trimellitate
•Trimethyl benzene
2,2,4-Trimethylpentanediol-1,3-diisobutyrate
2,2,4-Trimethyl-3-pentanol-1-isobutyrate
Tripropylene
Tripropylene glycol
Tripropylene glycol methyl ether
•Trixylenyl phosphate
•Turpentine
Turpentine substitute (White spirit)
•Undecanol
•Undecene
Undecylbenzene
Vinyl acetate-fumarate copolymer
Waxes:
Candelilla
Carnauba
Paraffin
Petroleum
White spirit
•White spirit,Low Aromatic
Wine
Wool grease
•Xylene (meta-, para-, ortho-)
Zinc dialkyldithiophosphate

PART 98—[AMENDED]

3. By revising the authority citation for Part 98 to read as follows and removing the authority citations following the sections throughout the part.

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3306, 3703, 49 U.S.C. 1804; 49 CFR 1.46 (n)(4), (t), and (hh).

4. By amending Part 98 by adding a new Subpart 98.31 consisting of §§ 98.31–5 through 98.31–15 to read as follows:

Subpart 98.31—Control of Pollution from NLS Cargoes on Oceangoing Offshore Supply Vessels

Sec.
98.31–5 Applicability.
98.31–10 Certificate of inspection endorsements.
98.31–15 Operating requirements.

Subpart 98.31—Control of Pollution From NLS Cargoes on Oceangoing Offshore Supply Vessels

§ 98.31–5 Applicability.

This subpart applies to offshore supply vessels that are oceangoing as defined in 33 CFR 151.05(j) and that carry noxious liquid substances (NLSs) as defined in § 153.2 of this chapter in bulk, including carriage in marine portable tanks.

§ 98.31–10 Certificate of inspection endorsements.

(a) The Coast Guard issues the endorsed Certificate of Inspection or NLS Certificate required by § 98.31–15 for vessels under this subpart to carry NLSs if the vessel—

(1) Has the Cargo Record Book prescribed in § 153.490(a)(1) of this chapter; and

(2) Unless it discharges no NLS residues as defined in § 153.2 of this chapter to the sea, meets the requirements in § 153.470 through § 153.491 of this chapter.

(b) Vessels under this subpart that do not meet the requirements in § 153.470 through § 153.491 of this chapter have a statement on their Certificates of Inspection or NLS Certificates stating that the vessel is prohibited from discharging NLS residues to the sea.

§ 98.31–15 Operating requirements.

No person may operate a vessel that carries a bulk liquid cargo of NLS unless the vessel—

(a) Has on board a Certificate of Inspection and for ships making foreign voyages an NLS Certificate endorsed under § 98.31–10 with the name of the NLS cargo;

(b) Discharges no NLS residue to the sea unless the vessel meets—

(1) The equipment requirements in § 98.31–10(a)(2); and

(2) The operating requirements prescribed for oceangoing ships carrying NLSs in §§ 153.901, 153.903, 153.909, and 153.1100 through 153.1132 of this chapter.

5. By revising the authority citation for Part 151 to read as follows and removing the authorities following the sections throughout the part.

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3703; 49 CFR 1.46 (n)(4), (t), and (hh).

6. By revising the title of Part 151 to read as follows:

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

7. By revising § 151.01–1 to read as follows:

§ 51.01–1 Applicability.

This part applies to the following:

(a) Oceangoing, as defined in 33 CFR 151.05(j), non-self-propelled United States ships and non-self-propelled foreign ships operating in United States waters that carry a bulk cargo that is—

(1) Listed in Table 151.05;

(2) Not being carried in a marine portable tank regulated under Part 98 of this chapter; and

(3) Not an NLS or is an NLS cargo that is a Category D listed in § 151.12–5 of this part.

(b) All non-self-propelled United States ships that are not oceangoing that carry a bulk cargo that is—

(1) Listed in Table 151.05, and

(2) Not being carried in a marine portable tank regulated under Part 98 of this chapter.

§ 151.01–3 [Removed]

8. By removing and reserving § 151.01–3.

§ 151.01–5 [Removed]

9. By removing and reserving § 151.01–5.

§ 151.01–10 [Amended]

10. By removing and reserving § 151.01–10(f).

11. By removing Table 151.01–10(f).

12. By revising § 151.01–15(c) to read as follows:

§ 151.01–15 Dangerous cargoes not specifically named.

* * * * *

(c) Mixtures or blends of two or more cargoes appearing in Table 151.01–10(d) may be treated as though that mixture were included on the list and may be transported under the provisions of Subchapter D of this chapter. If the mixture contains an NLS cargo listed in § 151.12–5, the mixture must be carried as a Category D NLS cargo unless the Coast Guard has determined the cargo not to be an NLS.

13. By adding a new § 151.03–30 to read as follows:

§ 151.03–30 Hazardous material.

In this part "hazardous material" means a liquid material or substance that is—

(a) Flammable or combustible;

(b) Designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(c) Designated a hazardous material under section 104 of the Hazardous Material Transportation Act (HMTA) (49 U.S.C. 1803).

Note.—The Environmental Protection Agency designates hazardous substances in 40 CFR Table 116.4A. The Coast Guard designates hazardous materials that are transported as bulk liquids by water in § 153.40.

14. By adding a new § 151.03–36 to read as follows:

§ 151.03–36 Liquid.

In this part "liquid" includes liquefied and compressed gases.

§ 151.03–55 [Removed]

15. By removing and reserving § 151.03–55.

16. By adding a new Subpart 151.12 consisting of §§ 151.12–5 and 151.12–10 to read as follows:

Subpart 151.12—Equipment and Operating Requirements for Control of Pollution From Category D NLS Cargoes

Sec.

151.12–5 Equipment for Category D NLS.

151.12–10 Operation of oceangoing non-self-propelled ships Carrying Category D NLS.

Subpart 151.12—Equipment and Operating Requirements for Control of Pollution From Category D NLS Cargoes

§ 151.12–5 Equipment for Category D NLS.

The Coast Guard endorses the Certificate of Inspection and for ships making foreign voyages issues the endorsed NLS Certificate required by § 151.12–10 for an oceangoing non-self-propelled ship to carry as bulk cargo the following Category D NLSs if the ship meets the requirements of this part and the requirements applying to ships that carry Category D NLS cargoes in §§ 153.470, 153.486, and 153.490 of this chapter:

Acrylic acid
Adiponitrile
Aminoethylethanolamine
n-Butyl acrylate
Butyl methacrylate
Caustic soda solution
Chlorohydrins, crude
Cyclohexanone
Diethylenetriamine
Dimethylethanolamine
Dimethyl formamide
1,4-Dioxane
Ethylcyclohexylamine
2-Ethylhexyl acrylate
Ethylene cyanohydrin
Ethyl methacrylate
Formic acid
Glutaraldehyde solution
Hydrochloric acid
Mesityl oxide
Methyl methacrylate
(mono) Ethanolamine
Morpholine
1- or 2- Nitropropane
Phosphoric acid
Polymethylene polyphenyl isocyanate
Propionic acid
Propylene oxide
iso-Propyl ether
Tetraethylene pentamine
Tetrahydrofuran
Triethanolamine
Triethylene tetramine
n-Valeraldehyde

§ 151.12–10 Operation of oceangoing non-self-propelled ships Carrying Category D NLS.

(a) An oceangoing non-self-propelled ship may not carry in a cargo tank a Category D NLS cargo listed under § 151.12–5 unless the ship has on board a Certificate of Inspection and for ships making foreign voyages an NLS Certificate endorsed under that section to allow the cargo tank to carry the NLS cargo.

(b) The person in charge of an oceangoing non-self-propelled ship that carries a Category D NLS listed under § 151.12–5 shall ensure that the ship is operated as prescribed for the operation of oceangoing ships carrying Category D NLSs in §§ 153.901, 153.909, 153.1100, 153.1102, 153.1104, 153.1106, 153.1124, 153.1126, 153.1128, and 153.1132 of this chapter.

17. By revising the authority citation for Part 153 to read as follows and removing the authorities following the sections throughout the part.

Authority: 46 U.S.C. 3703; 49 CFR 1.46(n)(4) except § 153.40 which is issued under 49 U.S.C. 1804; 49 CFR 1.46(t). Additional authority under 33 U.S.C. 1903(b); 49 CFR 1.46(hh) for §§ 153.470 through 153.491, §§ 153.1100 through 153.1132, and §§ 153.1600 through 153.1608.

18. By revising the title of Part 153 to read as follows:

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

19. By amending Part 153 by removing the words "Table I" (Roman numeral) wherever they appear and inserting in their place the words "Table 1" (Arabic numeral).

20. By adding a new § 153.0 to read as follows:

§ 153.0 Availability of materials.

(a) Various sections in this part refer to the following documents which are incorporated in Annex II of MARPOL 73/78.

(1) IMO *Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances*, Resolution MEPC 18(22), 1985 in effect on April 6, 1987.

(2) IMO *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*, Resolution MEPC 19(22), 1985 in effect on April 6, 1987.

(3) IMO *Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*, Resolution MEPC 20(22), 1985 in effect on April 6, 1987.

(b) The IMO documents listed in this section are available from the following:

(1) IMO Secretariat, Publications section, 4 Albert Embankment, London SE1 75R, United Kingdom, Telex 23588;

(2) New York Nautical Instrument and Service Company, 140 West Broadway, New York, NY 10013;

(3) Baker, Lyman & Company, 308 Magazine Street, New Orleans, LA 70130;

(4) Labelmaster, 5724 N. Pulaski Road; Chicago, IL 60646;

(5) UNZ & Company, 170 Broadway, New York, NY 10038; and

(6) Southwest Instrument Company, 235 West 7th Street, San Pedro, CA 90731.

21. By revising § 153.1 to read as follows:

§ 153.1 Applicability.

This part applies to the following:

(a) All United States self-propelled ships and those foreign self-propelled ships operating in United States waters

that carry in bulk a cargo listed in Table 1 or allowed in a written permission under § 153.900(b), unless—

(1) The ship is carrying the cargo under 33 CFR Part 151;

(2) The ship is carrying the cargo in a marine portable tank under Subpart 98.30 of this chapter; or

(3) The ship is an offshore supply vessel carrying the cargo under Subpart 98.31 of this chapter.

(b) All United States oceangoing non-self-propelled ships and those foreign non-self-propelled ships operating in United States waters that carry in bulk a Category A, B, or C NLS cargo listed in Table 1 or allowed in a written permission under § 153.900(b), unless—

(1) The ship is carrying the cargo under 33 CFR Part 151;

(2) The ship is carrying the cargo in a marine portable tank under Subpart 98.30 of this chapter;

(3) The ship is an offshore supply vessel carrying the cargo under Subpart 98.31 of this chapter; or

(4) The ship's Certificate of Inspection is endorsed for a limited short protected coastwise route and the ship is constructed and certificated primarily for service on an inland route.

(c) All ships that carry a bulk liquid, liquefied gas, or compressed gas cargo that is none of the following:

(1) Listed in Table 1.

(2) Listed in Table 2.

(3) Carried under a written permission granted under § 153.900(b).

(4) Carried under Parts 30 through 35, 98, 151, or 154 of this chapter.

(5) Carried as an NLS under 33 CFR Part 151.

22. In § 153.2, by revising the definitions of "IMO Certificate" and "tankship" and adding new definitions in proper alphabetical order to read as follows:

§ 153.2 Definitions and acronyms.

"Adequate reception facility" means each facility certified as adequate under 33 CFR 158.160 and each facility provided by a Administration signatory to MARPOL 73/78 under Regulation 7 of Annex II.

* * * * *

"Annex II" means Annex II to MARPOL 73/78 and is the Annex to MARPOL 73/78 regulating the discharge of noxious liquid substances to the sea.

* * * * *

"Built" means that a ship's construction has reached any of the following stages:

(1) The keel is laid.

(2) The mass of the partially assembled ship is 50,000 kg.

(3) The mass of the partially assembled ship is one percent of the estimated mass of the completed ship.

"Cycle," means that the tank washing machine progresses through complete rotations until it reaches an orientation identical to its starting orientation.

Note.—For a typical one or two nozzle tank washing machine that rotates in both the horizontal and vertical planes though more slowly in one than the other, a cycle would be at least one rotation in each plane of rotation.

* * * * *

"Hazardous material" means a liquid material or substance that is—

(1) Flammable or combustible;

(2) Designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(3) Designated a hazardous material under section 104 of the Hazardous Material Transportation Act (HMTA) (49 U.S.C. 1803).

Note.—The Environmental Protection Agency designates hazardous substances in 40 CFR Table 116.4A. The Coast Guard designates hazardous materials that are transported as bulk liquids by water in § 153.40.

"High viscosity NLS" includes Category A NLSs having a viscosity of at least 25 mPa.s at 20 °C and at least 25 mPa.s at the time they are unloaded, high viscosity Category B NLSs, and high viscosity Category C NLSs.

"High viscosity Category B NLS" means any Category B NLS having a viscosity of at least 25 mPa.s at 20 °C and at least 25 mPa.s at the time it is unloaded.

"High viscosity Category C NLS" means any Category C NLS having a viscosity of at least 60 mPa.s at 20 °C and at least 60 mPa.s at the time it is unloaded.

* * * * *

"IMO Bulk Chemical Code" includes the IMO *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*, Resolution MEPC 19(22), 1985 and the IMO *Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*, Resolution MEPC 20(22), 1985.

"IMO Certificate" includes a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under the IMO *Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*, Resolution MEPC 20(22), 1985 and an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under the IMO *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*, Resolution MEPC 19(22), 1985.

* * * * *

"IOPP Certificate" means an International Oil Pollution Prevention Certificate required under 33 CFR 151.19.

"Liquid" means each substance having a vapor pressure of 172 kPa or less at 37.8 °C.

"MARPOL 73/78" means the International Convention for Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973), modified by the Protocol of 1978 relating to the International Convention for Prevention of Pollution from Ships, 1973 (done at London, on February 17, 1978).

* * * * *

"Master" means the person-in-charge of a self-propelled or non-self-propelled ship.

"Nearest land" has the same meaning as in 33 CFR 151.05(h).

"Noxious liquid substance" (NLS) means—

(1) Each substance listed in 33 CFR 151.47 or 33 CFR 151.49;

(2) Each substance having an "A," "B," "C," or "D" beside its name in the column headed "Pollution Category" in Table 1; and

(3) Each substance that is identified as an NLS in a written permission issued under § 153.900(c).

"NLS Certificate" means an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk issued under Annex II of MARPOL 73/78.

* * * * *

"Oceangoing" ship has the same meaning as in 33 CFR 151.05(j).

* * * * *

"Prewash" means a tank washing operation that meets the procedure in § 153.1120.

* * * * *

"Reception facility" means anything capable of receiving NLS residues in a country whose Administration is not signatory to MARPOL 73/78 and each adequate reception facility.

"Residues and mixtures containing NLSs" (NLS residue) means—

(1) Any Category A, B, C, or D NLS cargo retained on the ship because it fails to meet consignee specifications;

(2) Any part of a Category A, B, C, or D NLS cargo remaining on the ship after NLS is discharged to the consignee, including but not limited to puddles on the tank bottom and in sumps, clingage in the tanks, and substance remaining in the pipes; or

(3) Any material contaminated with a Category A, B, C, or D NLS cargo,

including but not limited to bilge slops, ballast, hose drip pan contents, and tank wash water.

* * * * *

"Ship" means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating platforms.

"Slop tanks" include slop tanks and cargo tanks used as slop tanks.

"Solidifying NLS" means a Category A, B, or C NLS that has a melting point—

(1) Greater than 0 °C but less than 15 °C and a temperature, measured under the procedure in § 153.908(d), that is less than 5 °C above its melting point at the time it is unloaded; or

(2) 15 °C or greater and has a temperature, measured under the procedure in § 153.908(d), that is less than 10 °C above its melting point at the time it is unloaded.

* * * * *

"Special area" means the Baltic Sea Area as defined in 33 CFR 151.13(a)(2) and the Black Sea Area as defined in 33 CFR 151.13(a)(3).

* * * * *

"Tankship" has the same meaning as "ship".

23. By adding § 153.3 to read as follows:

§ 153.3 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard official responsible for that action.

(b) Any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section by a Coast Guard official operating within a district may make a written appeal of that ruling, or an oral appeal as allowed under paragraph (d) of this section, to the Commander of the Coast Guard of that district. The appeal may contain supporting documentation and evidence that the appellant wishes to have considered. If requested to do so, the District Commander may stay the effect of the action being appealed while the ruling is reviewed. The District Commander issues a ruling after reviewing an appeal submitted under this paragraph.

(c) Any person not satisfied with a ruling made under the procedure contained in paragraph (b) of this section, or any person not satisfied with a ruling made by an official in the Office of Marine Safety, Security, and Environmental Protection, may appeal that ruling in writing, or orally as allowed under paragraph (d) of this section, to the Chief, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Washington, DC 20593. The appeal may contain supporting documentation and evidence that the appellant wishes to have considered. If requested to do so, the Chief, Office of Marine Safety, Security and Environmental Protection, may stay the effect of the action being appealed while the ruling is reviewed. The Chief, Office of Marine Safety, Security and Environmental Protection, issues a ruling after reviewing an appeal submitted under this paragraph. Any decision made by the Chief, Office of Marine Safety, Security and Environmental Protection, under the procedure of this paragraph is final agency action.

(d) Any appeal under this section must be made within 30 days after notification of the ruling being appealed. If the delay in presenting a written appeal would have a significant adverse impact on the appellant, the appeal under paragraph (b) or (c) of this section may first be presented orally. If the appeal is first presented orally, the appellant must submit the appeal in writing within five days of the oral presentation to the Coast Guard official to whom the oral presentation was made. The written appeal must contain the reason for the appeal and a summary of the oral presentation.

§ 153.5 [Removed]

24. By removing § 153.5.

25. By amending § 153.7 by revising the title and adding paragraph (d) to read as follows:

§ 153.7 Ships built before December 27, 1977 and non-self-propelled ships built before July 1, 1983: application.

* * * * *

(d) Except as required by this paragraph, Subpart B of this part does not apply to a non-self-propelled ship that carries an NLS cargo under this part if—

(1) The ship was built before July 1, 1983;

(2) The ship carries no NLS or NLS residue at any time it is in a foreign port;

(3) The NLS does not require a type I containment system;

(4) From the last voyage made before April 6, 1987, until April 6, 1987, the ship operates continuously under a Certificate of Inspection issued under Subchapter D or I of this chapter and—

(i) The Certificate of Inspection authorized the carriage of the NLS in the containment system that is to carry the NLS;

(ii) The NLS was listed in Table 30.25–1 of this chapter at the time the last Certificate of Inspection was issued, and the Certificate authorized the containment system to carry the flammability grade of the NLS; or

(iii) The Coast Guard had determined the NLS was not regulated under Subchapter D or O of this chapter at the time the last Certificate of Inspection was issued;

(5) The ship meets the provisions in § 153.216 and §§ 153.470 through 153.491 applying to the NLS category of that cargo;

(6) When the "Special Requirements" column of Table 1 contains an entry for § 153.408 or § 153.409 beside the cargo name, the ship meets the section, except the system prescribed by the section need be capable of operation only during loading;

(7) The ship continues to meet the requirements under which it was last certified to carry the NLS; and

(8) No part of the ship's hull plating is a component of a cargo tank if the cargo tank is endorsed to carry a cargo having a type II containment system in Table 1.

26. By revising § 153.8 to read as follows:

§ 153.8 Procedures for requesting an endorsed Certificate of Inspection.

(a) When applying for the endorsed Certificate of Inspection that § 153.900 requires for a ship to carry a cargo listed in Table 1, the applicant must proceed as follows:

(1) Send a letter to one of the Coast Guard offices listed in § 91.55–15 of this chapter that includes—

(i) A request for the endorsed Certificate of Inspection;

(ii) The name of the ship; and

(iii) A list of the cargoes from Table 1 the applicant wishes the endorsement to allow.

(2) Supply to the Coast Guard when requested—

(i) Hull type calculations;

(ii) The plans and information listed in §§ 54.01–18, 56.01–10, 91.55–5 (a), (b), (d), (g), and (h), and 110.25–1 of this chapter;

(iii) A copy of the Procedures and Arrangements Manual required by § 153.490; and

(iv) Any other ship information, including plans, design calculations, test results, certificates, and manufacturer's data, that the Coast Guard needs to determine if the ship meets this part.

(b) The Coast Guard notifies the applicant in writing—

(1) Whether any further information is necessary to evaluate the request for the endorsed Certificate of Inspection; and

(2) Of the outcome of the request for the endorsed Certificate of Inspection.

(c) The Coast Guard returns the Procedures and Arrangements Manual

stamped "Approved" or indicating what corrections are necessary.

Note.—The procedures for requesting an IOPP Certificate are found in 33 CFR Part 151.

27. By revising § 153.10 to read as follows:

§ 153.10 Procedures for requesting alternatives and waivers; termination of waivers.

(a) The Coast Guard considers allowing the use of an alternative in place of a requirement in this part if—

(1) The person wishing to use the alternative sends a written application to the Commandant (G–MTH) explaining—

(i) The requirement in this part that would not be met and the reason why;

(ii) The alternative the person proposes to be substituted; and

(iii) How the alternative would ensure a level of safety and pollution protection at least equal to that of the requirement for which the alternative would substitute;

(2) The alternative does not substitute an operational standard for a design or equipment standard; and

(3) The Commandant (G–MTH) determines that the alternative provides a level of protection for purposes of safety and pollution at least equal to the requirement in this part.

(b) The Coast Guard considers granting a waiver of a requirement for which this part allows a waiver if the person wishing the waiver sends a written application to the Commandant (G–MTH) that includes—

(1) A citation of the regulation that allows the waiver; and

(2) Any information and pledges that the regulation requires to be submitted with the application for the waiver.

(c) The Commandant notifies the applicant in writing—

(1) Whether any further information is necessary to evaluate the request for an alternative or waiver; and

(2) Of the outcome of the request for an alternative or waiver.

(d) A waiver issued under this part terminates if any—

(1) Information required to be supplied with the application for the waiver changes;

(2) Pledges required to be supplied with the application for the waiver are repudiated;

(3) Restrictions or procedures applying to operations under the waiver are violated; or

(4) Requirements in the section of this part authorizing the waiver are violated.

28. By revising § 153.12 to read as follows:

§ 153.12 IMO Certificates for United States Ships.

The Officer in Charge, Marine Inspection issues a United States ship an IMO Certificate endorsed to allow the carriage of a hazardous material or NLS cargo in Table 1 if the following requirements are met:

(a) The ship's owner must make a request to the OCMI for the IMO Certificate.

(b) The ship must meet this part.

(c) Self-propelled ships contracted for after November 1, 1973 but built before December 28, 1977 must meet requirements in this part that apply to a self-propelled ship built on December 28, 1977.

(d) Non-self-propelled ships contracted for after November 1, 1973 but built before July 1, 1983 must meet the requirements in this part applying to non-self-propelled ships built on July 1, 1983.

§ 153.16 [Amended]

29. By moving §§ 153.15 and 153.16 from Subpart B to Subpart A and revising § 153.15 to read as follows:

§ 153.15 Conditions under which the Coast Guard issues a Certificate of Inspection or Certificate of Compliance.

(a) The Coast Guard issues the endorsed Certificate of Inspection required under § 153.900 for a United States ship to carry a hazardous material or NLS listed in Table 1 if—

(1) The person wishing the Certificate of Inspection applies following the procedures under § 153.8; and

(2) The ship meets the design and equipment requirements of this part and—

(i) Subchapter D of this chapter if the hazardous material or NLS is flammable or combustible; or

(ii) Either Subchapter D or I of this chapter, at the option of the ship owner, if the hazardous material or NLS is non-flammable or non-combustible.

(b) The Coast Guard issues the endorsed Certificate of Compliance required under § 153.900 for a foreign ship to carry a hazardous material or NLS listed in Table 1 if—

(1) The person wishing the Certificate of Compliance follows the procedures under § 153.9;

(2) The ship has an IMO Certificate issued by its Administration and endorsed with the name of the hazardous material or NLS if the ship's Administration is signatory to MARPOL 73/78;

(3) The ship meets the requirements of this part applying to United States ships and § 30.01–5(e) of this chapter if the ship's Administration is not signatory to MARPOL 73/78; and

(4) The ship meets any additional design and equipment requirements specified by the Commandant (G–MTH);

§ 153.19 [Redesignated as § 153.190]

30. By redesignating § 153.19 as § 153.190 under the group heading "General Vessel Requirements".

31. By amending Subpart A by adding §§ 153.30 and 153.40 to read as follows:

§ 153.30 Special area endorsement.

The Coast Guard endorses the Certificate of Inspection of a United States ship allowing it to operate in special areas if the ship owner—

(a) Requests the endorsement following the procedures in § 153.8;

(b) Shows that the ship meets the design and equipment requirements applying to ships operating in special areas contained in Regulations 5, 5A, and 8 of Annex II and the Standards for Procedures and Arrangements.

§ 153.40 Determination of materials that are hazardous.

Under the authority delegated by the Secretary of Transportation in 49 CFR 1.46(t) to carry out the functions under 49 U.S.C. 1803, the Coast Guard has found the following materials to be hazardous when transported in bulk:

(a) Materials listed in Table 30.25–1 of this chapter.

(b) Materials listed in Table 151.05.

(c) Materials listed in Table 1.[1]

(d) Materials listed in Table 4 of Part 154.

(e) Materials that are NLSs under MARPOL Annex II.

(f) Liquids, liquefied gases, and compressed gases, that are—

(1) Listed in 49 CFR 172.101;

(2) Listed in 49 CFR 172.102; or

(3) Listed or within any of the definitions in Subparts C through O of 49 CFR Part 173.

(g) Those liquid, liquefied gas, and compressed gas materials designated as hazardous in the permissions granted under § 153.900(c).[2]

32. By revising the title of Subpart B to read as follows:

Subpart B—Design and Equipment

33. By removing the group heading "General" under Subpart B.

34. By amending § 153.214 by revising the introductory text to read as follows:

---

[1] Those hazardous material cargoes designated Category A, B, C, or D in Table 1 are also Noxious Liquid Substances under Annex II and the Act to Prevent Pollution from Ships, 33 U.S.C. 1901 *et seq.*

[2] The Coast Guard continues to propose in the Federal Register any addition of these designated hazardous materials to one of the tables referred to in paragraphs (a) through (d).

§ 153.214 Personnel emergency and safety equipment.

Each self-propelled ship must have the following:

* * * * *

35. By amending § 153.215 by adding introductory text to read as follows:

§ 153.215 Safety equipment lockers.

Each self-propelled ship must have the following:

* * * * *

36. By revising § 153.216 to read as follows:

§ 153.216 Shower and eyewash fountains.

(a) Each non-self-propelled ship must have a fixed or portable shower and eyewash fountain that operates during cargo transfer and meets paragraph (c) of this section.

(b) Each self-propelled ship must have a shower and eyewash fountain that operates at all times and meets paragraph (c) of this section.

(c) The shower and eyewash fountains required by paragraphs (a) and (b) of this section must—

(1) Operate in any ambient temperature;

(2) Dispense water at a temperature between 0° C and 40 °C (approx. 32 °F and 104 °F);

(3) Be located on the weatherdeck; and

(4) Be marked "EMERGENCY SHOWER" as described in § 153.955 (c), (d), and (e), so that the marking is visible from work areas in the part of the deck where the cargo containment systems are located.

37. By revising the introductory text to § 153.231(b) to read as follows:

§ 153.231 Type II system.

* * * * *

(b) Except as allowed in §§ 153.7 and 153.235—

* * * * *

38. By adding the following introductory text to § 153.234:

§ 153.234 Fore and aft location.

Except as allowed in § 153.7, each ship must meet the following:

* * * * *

39. By amending § 153.440 by revising the title, adding a new paragraph (a)(3), and revising paragraph (c) to read as follows:

§ 153.440 Cargo temperature sensors.

(a) * * *

(3) A cargo tank endorsed to carry a Category A, B, or C NLS must have a thermometer whose temperature reading is no greater than the temperature of the cargo at a point that is above the tank bottom at least one-eighth but no more than one-half the height of the tank if the cargo is—

(i) A Category A NLS or a Category B NLS having a viscosity of at least 25 mPa.s at 20 °C;

(ii) A Category C NLS having a viscosity of at least 60 mPa.s at 20 °C; or

(iii) A Category A, B, or C NLS that has a melting point greater than 0 °C.

* * * * *

(c) A portable thermometer may be substituted for the equipment required in paragraphs (a) and (b) of this section if—

(1) Table 1 allows open gauging with the cargo; or

(2) Table 1 allows restricted gauging with the cargo, and the portable thermometer is designed to be used through the containment system's restricted gauging system.

40. By amending § 153.460 by adding introductory text to read as follows:

§ 153.460 Fire protection systems.

Each self-propelled ship and each manned non-self-propelled ship must meet the following:

* * * * *

41. By adding §§ 153.470 through 153.491 grouped under a centered heading to read as follows:

Design and Equipment for Pollution Control

Sec.

153.470 System for discharge of NLS residue to the sea: Categories A, B, C, and D.
153.480 Stripping quantity for Category B and C NLS tanks on ships built after June 30, 1986: Categories B and C.
153.481 Stripping quantities and interim standards for Category B NLS tanks on ships built before July 1, 1986: Category B.
153.482 Stripping quantities and interim standards for Category C NLS tanks on ships built before July 1, 1986: Category C.
153.483 Restricted voyage waiver for Category B and C NLS tanks on ships built before July 1, 1986: Category B and C.
153.484 Prewash equipment.
153.486 Design and equipment for removing NLS residue by ventilation: Categories A, B, C, and D.
153.488 Design and equipment for tanks carrying high melting point NLSs: Category B.
153.490 Cargo Record Book and Approved Procedures and Arrangements Manual: Categories A, B, C, and D.
153.491 Waiver of certain equipment for dedicated cargo tanks.

Design and Equipment for Pollution Control

§ 153.470 System for discharge of NLS residue to the sea: Categories A, B, C, and D.

Unless waived under § 153.491, each ship that discharges Category A, B, or C NLS residue, or Category D NLS residue not diluted to 1/10th of its original concentration, into the sea under §§ 153.1126 and 153.1128 must have an NLS residue discharge system meeting the following:

(a) *Minimum diameter of an NLS residue discharge outlet.* The outlet of each NLS residue discharge system must have a diameter at least as great as that given by the following formula:

$$D = \frac{(Q_d)(\text{cosine } \phi)}{5L}$$

Where:

D = Minimum diameter of the discharge outlet in meters.

Q_d = Maximum rate in cubic meters per hour at which the ship operator wishes to discharge slops (note: Q_d affects the discharge rate allowed under § 153.1126(e)(2)).

L = Distance from the forward perpendicular to the discharge outlet in meters.

ϕ = The acute angle between a perpendicular to the shell plating at the discharge location and the direction of the average velocity of the discharged liquid.

(b) *Location of an NLS residue discharge outlet.* Each NLS residue discharge outlet must be located—

(1) At the turn of the bilge beneath the cargo area; and

(2) Where the discharge from the outlet is not drawn into the ship's seawater intakes.

(c) *Location of dual NLS residue discharge outlets.* If the value of 6.45 for K is used in § 153.1126(b)(2), the NLS residue discharge system must have two outlets located on opposite sides of the ship.

Note.—A ship built before July 1, 1986 does not need a residue discharge system to discharge to the sea under § 153.1128 until January 1, 1988.

§ 153.480 Stripping quantity for Category B and C NLS tanks on ships built after June 30, 1986: Categories B and C.

Unless waived under § 153.491, Category B and C NLS cargo tanks on each ship built after June 30, 1986 must have stripping quantities determined under § 153.1604 that are less than—

(a) 0.15 m^3 if Category B; and

(b) 0.35 m^3 if Category C.

§ 153.481 Stripping quantities and interim standards for Category B NLS tanks on ships built before July 1, 1986: Category B.

Unless waived under § 153.483 or § 153.491, each Category B NLS cargo tank on ships built before July 1, 1986 must meet the following:

(a) Unless the tank meets the interim standard provided by paragraph (b) of

this section, the tank must have a stripping quantity determined under § 153.1604 that is less than 0.35 m^3.

(b) Before October 3, 1994, the tank may have a total NLS residue determined under § 153.1608 that is less than 1.0 m^3 or 1/300th of the tank's capacity and an NLS residue discharge system meeting the following:

(1) The system must be capable of discharging at a rate equal to or less than Q in the following formula:

$$Q = K\,U^{1.4}L^{1.6} \times 10^{-5}\ m^3/hr$$

where:

K = 4.3, except K = 6.45 if the discharge is equally distributed between two NLS residue discharge outlets on opposite sides of the ship (see §§ 153.470(c) and 153.1126(b)).

L = ship's length in meters.

U = for a ship that is self-propelled, the minimum speed in knots specified in the approved Procedures and Arrangements Manual for discharging Category B NLS residue, but at least 7;

U = for a ship that is not self-propelled, the minimum speed in knots specified in the approved Procedures and Arrangements Manual for discharging Category B NLS residue, but at least 4.

(2) The system must have equipment capable of automatically recording—

(i) The time of day that discharge of NLS residue through the residue discharge system starts and ends; and

(ii) The dates on which discharge begins and ends unless the equipment allows a person to enter these dates on the record manually.

(3) Each system that has the capacity to exceed Q calculated in paragraph (b)(1) of this section must have equipment that—

(i) Records the NLS residue flow through the system; and

(ii) Is sufficiently accurate that its recorded values averaged over any 30 second period differ no more than 15% from the actual flow averaged over the same 30 second period.

(4) Unless the system automatically controls the flow rate, the system must have—

(i) Manual controls that enable the flow to be adjusted to the value of Q calculated in paragraph (b)(1) of this section and that must be moved through at least 25% of their total range of movement for the discharge rate to change from 0.5Q to 1.5Q; and

(ii) A flow rate meter located where the flow is manually controlled.

§ 153.482 Stripping quantities and interim standards for Category C NLS tanks on ships built before July 1, 1986: Category C.

Unless waived under § 153.483 or § 153.491, each Category C NLS cargo tank on ships built before July 1, 1986 must meet the following:

(a) Unless the tank meets the interim standard provided by paragraph (b) of this section, the tank must have a stripping quantity determined under 153.1604 that is less than 0.95 m^3.

(b) Before October 3, 1994, the tank may have a total NLS residue determined under § 153.1608 that is less than 3.0 m^3 or 1/1000th of the tank's capacity.

§ 153.483 Restricted voyage waiver for Category B and C NLS tanks on ships built before July 1, 1986: Category B and C.

At its discretion the Coast Guard waives §§ 153.481 and 153.482 under this section and allows a ship to carry Category B and C NLS cargoes between ports or terminals in one or more countries signatory to MARPOL 73/78 if the ship's owner requests a waiver following the procedures in § 153.10 and includes—

(a) A written pledge to—

(1) Limit the tank's carriage of Category B and C NLSs to those ports or terminals listed in accordance with paragraph (b) of this section; and

(2) Prewash the cargo tank as required under § 153.1118 after each Category B or C NLS is unloaded unless the prewash is allowed to be omitted under § 153.1114;

(b) Lists of all ports or terminals at which the ship is expected to load or unload Category B or C NLSs from the tank and all ports or terminals at which the ship is expected to prewash;

(c) An estimate of the quantity of NLS residue to be discharged to adequate reception facilities at each prewash port or terminal;

(d) Written statements from the owners of adequate reception facilities in each prewash port or terminal listed in accordance with paragraph (b) of this section who have agreed to take NLS residue from the ship, showing the amount of NLS residue each agrees to take;

(e) A written attestation from the person in charge of each prewash port or terminal that the Administration has determined the port or terminal to have adequate reception facilities for the NLS residue; and

(f) For ships requiring a Certificate of Inspection under § 153.900, a procedure that meets § 1.53.490(b)(2) that is included in the approved Procedures and Arrangements Manual.

Note:—Certificates of Inspection and any IMO Certificates issued to ships on restricted voyage waivers indicate that while the ship carries an NLS cargo or NLS residue, it is limited to voyages between the ports or terminals listed on the certificate.

§ 153.484 Prewash equipment.

Unless the ship operator shows that the prewash equipment specified in this section will be available at discharge or prewash facilities or the equipment is waived under § 153.491, to have its Certificate of Inspection or Certificate of Compliance endorsed to carry a Category A NLS or a Category B or C NLS requiring viscosity or melting point information under § 153.908 (a) and (b), a ship must have the following:

(a) For the tanks that carry the NLS, a tank washing system capable of washing all interior tank surfaces except those shielded from the washing system spray by ship's structure, and consisting of a wash water supply system and—

(1) A fixed tank washing machine in each tank; or

(2) A portable tank washing machine and, if required by the Coast Guard, equipment to move it during washing and when storing.

(b) Piping, valving, and crossovers needed to arrange the cargo piping so that the wash water passes through the cargo pump and cargo piping during tank washing or discharge of tank wash water.

(c) If the approved Procedures and Arrangements Manual specifies the hot water prewash required under 153.1108, a means of supplying water to the tank washing machine under paragraph (a) of this section at—

(1) A temperature of at least 60 °C (140 °F) when it leaves the washing machine; and

(2) The flow rate needed for the washing machine jets to meet paragraph (a) of this section.

§ 153.486 Design and equipment for removing NLS residue by ventilation: Categories A, B, C, and D.

(a) If NLS residue is to be removed from a cargo tank by ventilation, in addition to the equipment required under paragraph (b) of this section the ship must have—

(1) Openings in the tank deck near the sump or suction point;

(2) If the openings required by paragraph (a)(1) of this section are insufficient, an access opening for visually determining whether liquid remains in the sump area of the cargo tank after ventilation or some other means for making this determination; and

(3) An approved Procedures and Arrangements Manual with instructions that meet § 153.490(b)(3).

(b) Unless the ship operator shows that the ventilation equipment specified in this paragraph will be available from shore when needed, if NLS residue is to

be removed from a cargo tank by ventilation, in addition to the equipment required under paragraph (a) of this section the ship must have—

(1) Portable forced air ventilating equipment fitting the ventilation openings required in paragraph (a) of this section and able to ventilate the extremities of the tank to the extent prescribed in Appendix C of the IMO *Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances,* Resolution MEPC 18(22), 1985; and

(2) A connector that allows a fan or air supply to be connected to the hose connections for the tank at the manifold.

Note:—The Clean Air Act (42 U.S.C. 7401 *et seq.*) allows states to regulate emissions from tank ventilation. There may be other regulations, both local and Federal, that affect the use of tank ventilation for safety or environmental purposes.

§ 153.488 Design and equipment for tanks carrying high melting point NLSs: Category B.

Unless waived under § 153.491, for a ship to have its Certificate of Inspection or Certificate of Compliance endorsed allowing a tank to carry a Category B NLS with a melting point of 15 °C or more, the cargo tank must have—

(a) An arrangement enabling the cargo to be heated before cargo transfer, using heat supplied by the ship or by another source; and

(b) Sides and bottom separate from the ship's side or bottom shell plating.

§ 153.490 Cargo Record Book and Approved Procedures and Arrangements Manual: Categories A, B, C, and D.

(a) Unless waived under § 153.491, to have a Certificate of Inspection or Certificate of Compliance endorsed to carry NLS cargo, a ship must have—

(1) If U.S., a Cargo Record Book published by the Coast Guard (OMB App. No. 2115–0089), or, if foreign, a Cargo Record Book having the same entries and format as Appendix 4 of Annex II; and

(2) A Procedures and Arrangements Manual meeting paragraph (b) of this section and approved by—

(i) The Coast Guard, if the ship is a United States ship or one whose Administration is not signatory to MARPOL 73/78; or

(ii) The Administration, if the ship is one whose Administration is signatory to MARPOL 73/78.

(b) Each Procedures and Arrangements Manual under paragraph (a)(2) of this section must include the following:

(1) The standard format and content prescribed in Chapter 2 and Appendix D of the IMO *Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances,* Resolution MEPC 18(22), 1985.

(2) If the ship has a tank that carries a cargo under a waiver issued under § 153.483, procedures ensuring that—

(i) Category B and C NLSs are discharged from the tank only in the ports or terminals listed in accordance with § 153.483(b); and

(ii) The tank is prewashed after discharging each Category B or C NLS unless § 153.1114 allows the prewash to be omitted.

(3) If ventilation is used to clean a tank under § 153.1102(b)(2), ventilation procedures that meet those in Appendix C of the IMO *Standards for Procedures and Arrangements for the Discharge of Noxious Liquid Substances,* Resolution MEPC 18(22), 1985.

(4) If tank cleaning agents are used, quantities to use and instructions for using the cleaning agents.

(5) If the tank has the discharge recording equipment required in § 153.481(b), procedures to ensure that no NLS residue is discharged from the tank when the recording equipment is incapacitated unless the concentration and total quantity limits for the NLS in Annex II are not exceeded.

§ 153.491 Waiver of certain equipment for dedicated cargo tanks.

(a) The Coast Guard waives §§ 153.480, 153.481, 153.482, and 153.488 and endorses a ship's Certificate of Inspection or Certificate of Compliance allowing a cargo tank to carry a single, specific NLS cargo and no other cargo if the ship's owner—

(1) Requests a waiver following the procedures in § 153.10; and

(2) Pledges in writing that while any waiver is in effect the cargo tank will—

(i) Carry only the NLS cargo listed on the Certificate of Inspection or Certificate of Compliance;

(ii) Carry no cargo other than the NLS; and

(iii) Not be washed or ballasted unless the wash water or ballast water is discharged to a reception facility.

(b) The Coast Guard waives §§ 153.470 and 153.490(a)(2) if—

(1) The ship's owner requests a waiver following the procedures in § 153.10;

(2) The Coast Guard has issued a waiver to each of the ship's NLS cargo tanks under paragraph (a) of this section; and

(3) The ship's owner adds to the ship's operational manual any provisions for preventing NLS discharge specified by the Commandant (G–MTH) as a condition for issuing the waiver.

42. By revising § 153.900 to read as follows:

§ 153.900 Certificates and authorization to carry a bulk liquid hazardous material.

(a) Except as allowed in 33 CFR 151.33(a), no ship may carry a cargo of bulk liquid hazardous material listed in Table 1 or the residue of a bulk liquid hazardous material that is an NLS listed in Table 1 unless the ship meets the following:

(1) The cargo must be carried in a cargo tank.

(2) If a United States ship, the ship must have a Subchapter D or I Certificate of Inspection that is endorsed to allow the cargo tank to carry the cargo.

(3) If a foreign ship, the ship must have a Certificate of Compliance that is endorsed to allow the cargo tank to carry the cargo.

(4) The ship must have an IMO Certificate of Fitness issued under 153.12 that is endorsed to allow the cargo tank to carry the cargo if it is—

(i) A United States self-propelled ship in foreign waters; or

(ii) A United States non-self-propelled ship in the waters of another Administration signatory to MARPOL 73/78 and the cargo is a Category A, B, or C NLS.

(c) No ship may carry any bulk liquid cargo not listed in Table 1, Table 2, Table 4 of Part 154 of this chapter, § 30.25–1 of this chapter, or 33 CFR 151.47 without written permission from the Commandant (G–MTH) under paragraph (d) of this section naming the bulk liquid hazardous material or NLS.

(d) The Coast Guard at its discretion grants the written permission required in paragraph (c) if—

(1) The shipowner—

(i) Sends a request to the Commandant (G–MTH); and

(ii) Supplies any information the Coast Guard needs to develop carriage requirements for the bulk liquid cargo; and

(2) The ship—

(i) Has a Certificate of Inspection, Certificate of Compliance, or IOPP Certificate as specified by the Commandant (G–MTH);

(ii) Meets those design and equipment requirements of this part specified by the Commandant (G–MTH); and

(iii) Meets any additional requirements made by the Commandant (G–MTH).

43. By revising § 153.901 to read as follows:

§ 153.901 Documents: posting, availability, and alteration.

(a) No person may operate a United States ship unless the endorsed

Certificate of Inspection is readily available on the ship.

(b) No person may operate a foreign ship unless the endorsed Certificate of Compliance or Certificate of Inspection is readily available on the ship.

(c) No person may operate a ship under an alternative or waiver granted under this part unless the document granting the alternative or waiver is attached to the ship's Certificate of Inspection or Certificate of Compliance.

(d) Except as allowed in paragraph (e) of this section, the Coast Guard does not accept the following if altered:

(1) Certificates of Inspection.

(2) Certificates of Compliance.

(3) Certificates of Fitness, unless the alteration is by the issuing authority.

(4) Approved Procedures and Arrangements Manuals, unless the alteration is approved by the issuing authority.

(5) NLS Certificates.

(e) A person wishing to change a Procedures and Arrangements Manual approved by the Coast Guard must submit a copy to the Coast Guard following the procedures for requesting an endorsed Certificate of Inspection in § 153.8.

44. By revising § 153.902 to read as follows:

§ 153.902 Expiration and invalidation of the Certificate of Compliance.

(a) The Certificate of Compliance shows its expiration date.

(b) The endorsement of a Certificate of Compliance under this part is invalid if the ship's IMO Certificate expires or becomes invalid.

(c) The Coast Guard reinstates, at its discretion, the endorsement on a Certificate of Compliance invalidated under paragraph (b) of this section if the ship's owner submits a copy of the IMO Certificate to the Commandant (G-MTH) after the IMO Certificate is revalidated or reissued.

Note: See § 153.809 for procedures for having a Certificate of Compliance reissued.

45. By revising § 153.903 to read as follows:

§ 153.903 Operating a United States ship in special areas: Categories A, B, and C.

No person may operate a United States ship that carries an NLS or NLS residue in a special area unless—

(a) The ship's Certificate of Inspection is endorsed in accordance with § 153.30; and

(b) The ship meets the operating requirements applying to special areas in Regulations 5, 5A, 8 and the Standards for Procedures and Arrangements of Annex II.

46. By adding § 153.908 to read as follows:

§ 153.908 Cargo viscosity and melting point information; measuring cargo temperature during discharge: Categories A, B, and C.

(a) The person in charge of the ship may not accept a shipment of a Category A, B, or C NLS cargo having a reference to this paragraph in the "Special Requirements" column of Table 1 unless the person has, from the cargo's manufacturer or the person listed as the shipper on the bill of lading, a written statement of the following:

(1) For Category A or B NLS, the cargo's viscosity at 20 °C in mPa.s and, if the cargo's viscosity exceeds 25 mPa.s at 20 °C, the temperature at which the viscosity is 25 mPa.s.

(2) For Category C NLS, the cargo's viscosity at 20 °C in mPa.s and, if the cargo's viscosity exceeds 60 mPa.s at 20 °C, the temperature at which the viscosity is 60 mPa.s. If the cargo's viscosity varies from shipment to shipment, the maximum viscosity and maximum temperature values may be supplied.

(b) The person in charge of the ship may not accept a shipment of a Category A, B, or C cargo having a reference to this paragraph in the "Special Requirements" column of Table 1 unless the person has a written statement of the cargo's melting point in °C from the cargo's manufacturer or the person listed as the shipper on the bill of lading. If the cargo's melting point varies from shipment to shipment, the highest melting point may be supplied.

(c) The person in charge of the ship shall ensure that the cargo temperature is read and recorded in the Cargo Record Book following the procedures in paragraph (d) of this section when a cargo having a reference to paragraph (a) or (b) of this section in the "Special Requirements" column of Table 1 is unloaded.

(d) The cargo temperature measured in paragraph (c) of this section must be made using the following procedure:

(1) Each reading must be made with the sensor or thermometer required by § 153.440(a)(3) or (c). If a portable thermometer is used, it must be located as prescribed for the temperature sensor in § 153.440(a)(3).

(2) A total of 2 readings must be made, the first reading to be made no more than 30 minutes after cargo transfer begins and the second reading no more than 30 minutes before the main cargo pump is shut down.

(3) The cargo's temperature is the average of the 2 readings made under paragraph (d)(2) of this section.

47. By adding § 153.909 to read as follows:

§ 153.909 Completing the Cargo Record Book and record retention: Categories A, B, C, and D.

(a) The person in charge of a ship shall ensure that the Cargo Record Book required under § 153.490 is completed immediately after any of the following occurs:

(1) An NLS cargo is loaded.

(2) An NLS cargo is transferred between tanks on a ship.

(3) An NLS cargo is unloaded from a tank.

(4) A tank that last carried an NLS cargo is prewashed under this part.

(5) A tank that last carried an NLS cargo is washed, except as reported under paragraph (a)(4) of this section, cleaned, or ventilated.

(6) Washings from a tank that last carried an NLS cargo are discharged to the sea.

(7) Tanks that last carried an NLS cargo are ballasted.

(8) Ballast water is discharged to the sea from a cargo tank that last carried an NLS.

(9) An NLS cargo or NLS residue is discharged to the sea by accident or except as allowed by this part.

(10) A Surveyor is present during an operation that this part requires the presence of a Surveyor.

(11) NLS residue or NLS cargo is transferred from cargo pumproom bilges or transferred to an incinerator.

(12) A waiver is issued to the ship, ship owner, ship operator, or person in charge of the ship under this part.

(13) The concentration of a Category A NLS residue is measured under § 153.1120(a).

(14) Any discharge recording equipment required by § 153.481(b)(2) fails.

(b) The person in charge of the ship shall ensure that the Cargo Record Book is on board and readily available for inspection and copying by the Coast Guard and when the ship is a U.S. ship in the waters of a foreign country whose Administration is signatory to MARPOL 73/78, the authorities of that country.

(c) Each officer in charge of an operation listed under paragraph (a) of this section, and each Surveyor observing an operation that this part requires the presence of a Surveyor, shall attest to the accuracy and completeness of each Cargo Record Book entry concerning those operations by signing after each entry.

(d) After all the entries on a page of the Cargo Record Book are completed, and if the person in charge of the ship agrees with the entries, the person in charge of the ship shall sign the bottom of that page.

(e) The ship owner or operator shall ensure that—

(1) Each Cargo Record Book is retained on board the ship for at least 3 years after the last entry; and

(2) Each discharge recording required by § 153.1126(b)(1) is retained on board the ship for at least three years.

48. By adding §§ 153.1100 through 153.1132 grouped under a centered heading to read as follows:

Approval of Surveyors and Handling of Categories A, B, C, and D Cargo and NLS Residue

Sec.

153.1100 Responsibility of the person in charge.
153.1101 Procedures for getting a Surveyor; approval of Surveyors.
153.1102 Handling and disposal of NLS residue: Categories A, B, C, and D.
153.1104 Draining of cargo hose: Categories A, B, C, and D.
153.1106 Cleaning agents.
153.1108 Heated prewash for solidifying NLS and high viscosity NLS: Categories A, B, and C.
153.1112 Prewash for tanks containing Category A NILS residue.
53.1114 Conditions under which a prewash may be omitted: Categories A, B, and C.
153.1116 Prewash for tanks unloaded without following the approved Procedures and Arrangements Manual: Category B and C.
153.1118 Prewash of Category B and C cargo tanks not meeting stripping standards: Category B and C.
153.1119 When to prewash and discharge NLS residues from a prewash; unloading an NLS cargo in a country whose Administration is not signatory to MARPOL 73/78: Categories A, B, and C.
153.1120 Procedures for tank prewash: Categories A, B, and C.
153.1122 Discharges of NLS residue from tank washing other than a prewash: Categories A, B, and C.
153.1124 Discharges of Category D NLS residue.
53.1126 Discharge of NLS residue from a slop tank to the sea: Categories A, B, C, and D.
153.1128 Discharge of NLS residue from a cargo tank to the sea: Categories A, B, C, and D.
153.1130 Failure of slops discharge recording equipment; operating with, reporting failures, and replacing pollution equipment: Category A, B, C, D.
153.1132 Reporting spills and non-complying discharges: Category A, B, C, and D.

Approval of Surveyors and Handling of Categories A, B, C, and D Cargo and NLS Residue

§ 153.1100 Responsibility of the person in charge.

The person in charge of the ship shall ensure that—

(a) The requirements of §§ 153.1102 through 153.1132 are met; and

(b) The procedures in the approved Procedures and Arrangements Manual are followed.

§ 153.1101 Procedures for getting a Surveyor: approval of Surveyors.

(a) At least 24 hours before a Surveyor is needed, the person wishing the services of a Surveyor must contact the Captain of the Port or the Marine Safety Office that has jurisdiction over the port at which the Surveyor will be needed to—

(1) Arrange for the Coast Guard to provide a Surveyor; or

(2) Inform the Coast Guard of the selection of a Surveyor from one of the organizations accepted by the Coast Guard to provide Surveyors.

(b) Organizations may be accepted by the Coast Guard to provide Surveyors if they—

(1) Are engaged, as a regular part of their business, in performing inspections or tests of bulk liquid cargo tanks or bulk liquid cargo handling equipment;

(2) Are familiar with the references in § 153.0(b) and with the requirements of this part;

(3) Are not controlled by the owners or operators of ships needing the services of the Surveyors or the facilities at which those ships would unload cargo;

(4) Are not dependent on Coast Guard acceptance under this section to remain in business; and

(5) Sign a Memorandum of Understanding with the Coast Guard.

(c) Each application for acceptance as a Surveyor must be submitted to the Commandant (G–MTH) and must contain the following:

(1) The name and address of the organization, including subsidiaries and divisions, requesting acceptance by the Coast Guard to provide Surveyors.

(2) A statement that the organization is not controlled by the owners or operators of ships needing the services of Surveyors or the facilities at which these ships would unload, or a full disclosure of any ownership or controlling interest held by such parties.

(3) A description of the experience and qualifications of the personnel who would be performing the function of Surveyor.

(4) A statement that the persons who will be performing the function of Surveyor have been trained in and are familiar with the requirements of Annex II and the regulations in this part.

(5) A statement that the Coast Guard may verify the information submitted in the application and may examine the persons who will be performing the function of Surveyor to determine their qualifications.

(d) The acceptance of an organization may be terminated by the Commandant if the organization fails to properly perform or supervise the inspections required in this part.

§ 153.1102 Handling and disposal of NLS residue: Categories A, B, C, and D.

(a) Except those Category A NLS residues that must be discharged under paragraph (c) of this section, NLS residue from an NLS whose vapor pressure is 5 kPa (50 mbar) or less at 20 °C (68 °F) must be—

(1) Unloaded to any consignee;

(2) Returned to the shipper;

(3) Discharged to a reception facility;

(4) Retained on the ship;

(5) Discharged to the sea under § 153.1126 or 153.1128.

(b) Except those Category A NLS residues that must be discharged under paragraph (c) of this section, NLS residue from an NLS whose vapor pressure is greater than 5 kPa (50 mbar) at 20 °C must be—

(1) Handled in the same way as the NLS residue under paragraph (a) of this section; or

(2) Ventilated following a ventilation procedure in the approved Procedures and Arrangements Manual.

Note.—The Clean Air Act (42 U.S.C. 7401 *et seq*) allows states to regulate emissions from tank ventilation. There may be other regulations, both local and Federal, that affect the use of tank ventilation for safety or environmental purposes.

(c) NLS residue containing Category A NLS in pumproom bilges and in spill trays at the manifold must be discharged to a reception facility.

§ 153.1104 Draining of cargo hose: Categories A, B, C, and D.

Before a cargo hose containing a Category A, B, C, or D NLS is disconnected after unloading the NLS cargo, the hose must be drained to the receiver of the cargo.

§ 153.1106 Cleaning agents.

No tank cleaning agent other than water or steam may be used to clean an NLS residue from a cargo tank except as prescribed in the approved Procedures and Arrangements Manual.

§ 153.1108 Heated prewash for solidifying NLS and high viscosity NLS: Categories A, B, and C.

(a) When a cargo tank must be prewashed under § 153.1112, 153.1116, or 153.1118 and the unloaded cargo is a high viscosity NLS or solidifying NLS, the wash water used in the prewash must leave the tank washing machine at a temperature of at least 60 °C (140 °F) unless § 153.1114 allows the prewash to be omitted or paragraph (c) of this section allows heating of the prewash water to be omitted.

(b) When a high viscosity NLS or solidifying NLS is unloaded from a cargo tank that is not required to be prewashed under § 153.1112, 153.1116, or 153.1118, the tank must be prewashed following the procedures in § 153.1120 using wash water that leaves the tank washing machine at a temperature of at least 60 °C (140 °F) unless § 153.1114 or paragraph (c) of this section allows the prewash to be omitted.

(c) The heating of the prewash water required under paragraph (a) of this section and the prewash required under paragraph (b) of this section may be omitted if the approved Procedures and Arrangements Manual contains a procedure for measuring the temperature of all interior cargo tank surfaces throughout unloading and under the measuring procedure the temperature of these surfaces is—

(1) Greater than the temperature of the cargo's melting point and the cargo is a Category B or C solidifying NLS; or

(2) Greater than the temperature at which the cargo's viscosity exceeds—

(i) 25 mPa.s, if the cargo is a high viscosity NLS that is a Category A or Category B; or

(ii) 60 mPa.s, if the cargo is a high viscosity Category C NLS.

§ 153.1112 Prewash for tanks containing Category A NLS residue.

Unless § 153.1114 allows the prewash to be omitted, a cargo tank that unloads a Category A NLS cargo must be prewashed following the procedures in § 153.1120.

§ 153.1114 Conditions under which a prewash may be omitted: Categories A, B, and C.

A prewash required by this part may be omitted if one of the following requirements is met:

(a) A Surveyor has signed a statement in the Cargo Record Book that the next cargo has been determined to be one that may be loaded without washing the tank, and the tank is not washed or ballasted before it is loaded with the next cargo.

(b) A Surveyor has signed a statement in the Cargo Record Book that the approved Procedures and Arrangements Manual contains procedures for removing the NLS residue by ventilation, and the cargo tank is not washed or ballasted before being cleaned following the ventilation procedure.

Note.—The Clean Air Act (42 U.S.C. 7401 *et seq.*) allows states to regulate emissions from tank ventilation. There may be other regulations, both local and Federal, that affect the use of tank ventilation for safety or environmental purposes.

(c) The tank requiring the prewash has a waiver issued under § 153.483 or 153.491 and the waiver states when the tank is to be prewashed.

§ 153.1116 Prewash for tanks unloaded without following the approved Procedures and Arrangements Manual: Categories B and C.

If for any reason more Category B or C NLS residue remains in a cargo tank and transfer piping of a ship after unloading than would remain after a normal discharge of the cargo when the unloading procedures in the approved Procedures and Arrangements Manual are followed, the tank must be prewashed following the procedures in § 153.1120 unless—

(a) Section 153.1114 allows the prewash to be omitted; or

(b) The residue is reduced using another procedure, and a Surveyor estimates and states in the Cargo Record Book that the cargo tank and transfer piping contain no more NLS residue than they would if discharged following the procedures in the approved Procedures and Arrangements Manual, and no other prewash is required by this part.

§ 153.1118 Prewash of Categories B and C cargo tanks not meeting stripping standards: Categories B and C.

(a) Unless § 153.1114 allows the prewash to be omitted, a cargo tank from which a Category B NLS is unloaded must be prewashed using the procedures in § 153.1120(b) if the tank—

(1) Operates under the interim standard in § 153.481(b); or

(2) Has a waiver issued under § 153.483.

(b) Unless § 153.1114 allows the prewash to be omitted, a cargo tank from which a Category C NLS is unloaded must be prewashed using the procedures in § 153.1120(b) if the tank has a waiver issued under § 153.483.

§ 153.1119 When to prewash and discharge NLS residues from a prewash; unloading an NLS cargo in a country whose Administration is not signatory to MARPOL 73/78: Categories A, B, and C.

(a) Except as allowed in paragraphs (b), (c), and (e) of this section, each prewash required by this subpart must be completed and all tank washings must be discharged to a reception facility before the ship leaves the unloading port.

(b) NLS residue from the prewash following the unloading of a Category B NLS may be transferred to a slop tank for discharge under § 153.1126 instead of being discharged under paragraph (a) of this section if the prewash is required solely under § 153.1118(a)(1).

(c) A tank that is required by this part to be prewashed may be prewashed in a port other than the unloading port if the following conditions are met:

(1) The person in charge requests permission from the Commandant (G-MTH) (tel # 202-267-1217) if the prewash port is a foreign port, or the Captain of the Port having jurisdiction over the unloading port if the prewash port is a U.S. port.

(2) The person in charge supplies with the request required under paragraph (c)(1) of this section—

(i) The name of the ship;

(ii) The name of the owner;

(iii) The name of the NLS;

(iv) The approximate date the tank will be prewashed if the relocation of the prewash port is for one time only;

(v) A written agreement to receive the tank washings by a reception facility in the prewash port;

(vi) When the prewash port or terminal is in a country whose Administration is signatory to MARPOL 73/78, a written attestation from the person in charge of each prewash port or terminal that the Administration has determined the port or terminal to have adequate reception facilities for the NLS residue;

(vii) Written pledges from the person in charge that—

(A) The tank to be prewashed will not be washed or ballasted before being prewashed; and

(B) The ship will be taken to the reception facility and the tank prewashed in accordance with the requirements in § 153.1120; and

(viii) Any additional information the Captain of the Port or Commandant (G-MTH) requests to evaluate granting the permission.

(3) The Coast Guard or Commandant (G-MTH) has granted the permission in writing, the permission is carried aboard the ship, and the person in charge of the

ship has made an entry in the Cargo Record Book stating that the permission has been granted.

(d) Unless the permission granted under paragraph (c)(4) of this section includes alternate conditions of termination or revocation in writing, the permission is—

(1) Terminated after the tank is prewashed as pledged in paragraph (c)(3)(vii) of this section or loaded with another cargo;

(2) Revoked if either of the pledges in paragraph (c)(3)(vii) of this section is invalidated or the agreement in paragraph (c)(3)(v) of this section is repudiated; and

(3) Revoked at any time the ship is not operated in accordance with the pledges in paragraph (c)(3)(vii) of this section and the conditions listed with the granted permission.

(e) A U.S. ship that would otherwise be required by this part to prewash in a port without reception facilities must obtain permission from Commandant (G-MTH) to prewash in an alternate port.

§ 153.1120 Procedures for tank prewash: Categories A, B, and C.

Except where the approved Procedures and Arrangements Manual prescribes a different procedure, a prewash required by this part must meet the following:

(a) When this part requires a prewash of a tank containing Category A NLS residue and the alternative prewash procedure in paragraph (b) of this section is not used, the prewash must meet the following:

(1) The prewash may not begin until—

(i) A Surveyor is present; and

(ii) Instrumentation or equipment is available that is capable of measuring the concentration of the Category A NLS in the NLS residue and determining whether it is below 0.1 per cent by weight.

(2) The equipment specified in § 153.484 must be used as prescribed in the approved Procedures and Arrangements Manual for the prewash.

(3) The wash water must be heated if required by § 153.1108, and water or tank washings must pass through the cargo pump and piping, including any stripping equipment, during washing or during discharge of tank washings.

(4) The tank washing machine must be placed in all positions specified for the tank's Category A NLS prewash procedure in the approved Procedures and Arrangements Manual.

(5) The tank must be pumped out each time there are enough tank washings collected in the bottom of the tank for the pump to gain suction, and if the NLS is immiscible with water or is a solidifying cargo, all floating and suspended NLS must be discharged.

(6) The washing machine must be operated until samples of the discharged tank washings taken by the Surveyor are tested using the equipment required by paragraph (a)(1)(ii) of this section and the concentration of NLS is below 0.1 per cent by weight.

(7) After the washing is stopped, the remaining tank washings must be pumped out.

(8) The Cargo Record Book must have items 12 through 14 completed and must show the Surveyor's written certification of their accuracy.

(9) The Cargo Record Book must have the Surveyor's written concurrence that the prewash procedures specified in the approved Procedures and Arrangements Manual were followed.

(b) When this part requires a prewash of a tank containing Category B or C NLS residue or when the procedure in this paragraph is used as an alternative to the prewash procedure under paragraph (a) of this section, the prewash must meet the following:

(1) If the prewash is for a Category A NLS, the prewash may not begin until a Surveyor is present.

(2) The equipment specified in § 153.484 must be used as prescribed in the approved Procedures and Arrangements Manual for the prewash.

(3) The wash water must be heated if required by § 153.1108, and water or tank washings must pass through the cargo pump and piping, including any stripping equipment, during washing or during discharge of tank washings.

(4) Except as required in paragraph (b)(5) of this section, the number of washing machine cycles specified in Table 153.1120 must be completed. If a prewash is required by a section listed under Column 1 of Table 153.1120 and another section listed under Column 2, the number of cycles in Column 1 must be completed but no additional cycles are necessary.

(5) If the approved Procedures and Arrangements Manual specifies that a tank washing machine must be moved for the prewash of a tank from which a Category A NLS or a solidifying NLS has been unloaded, the number of washing machine cycles specified in Table 153.1120 must be completed at each position to which the washing machine is moved.

(6) When the NLS is immiscible with water or is a solidifying cargo, the tank must be pumped out each time enough tank washings collect in the bottom of the tank for the pump to gain suction, or the procedures in paragraphs (b)(3), (b)(4), and (b)(5) of this section must be repeated two additional times with the tank pumped out each time, for a total of three washings.

(7) Items 12 through 14 in the Cargo Record Book must be completed and, if the prewash is for a Category A NLS, verification that the procedures specified in the approved Procedures and Arrangements Manual were followed shown by the Surveyor's endorsement in the Cargo Record Book.

TABLE 153.1120—NUMBER OF WASHING MACHINE CYCLES IN THE PREWASH PROCEDURE

	Number of washing machine cycles	
	Column 1: Prewash under § 153.1116 or for a solidifying NLS under § 153.1108	Column 2: Prewashes except those listed under column 1
Category A NLS	2	1
Category B or C NLS	1	1/2

§ 153.1122 Discharges of NLS residue from tank washing other than a prewash: Categories A, B, and C.

Tank washings that do not result from a prewash and that contain Category A, B, or C NLS residues must be discharged to a reception facility or discharged to the sea under § 153.1126 or 153.1128 except those tank washings resulting from washing a tank that has been cleaned following a ventilation procedure in the approved Procedures and Arrangements Manual.

§ 153.1124 Discharges of Category D NLS residue.

NLS residue from Category D NLSs must be discharged to a reception facility or discharged to the sea using the following procedure:

(a) Before discharge begins, drain or flush the NLS residue in the tank's piping systems into the tank.

(b) After draining or flushing, discharge the NLS residue to the sea in accordance with § 153.1128 or transfer it to a slop tank and discharge in accordance with § 153.1126.

§ 153.1126 Discharge of NLS residue from a slop tank to the sea: Categories A, B, C, and D.

NLS residue in a slop tank may not be discharged into the sea unless—

(a) The ship meets the conditions for discharging the NLS residue from a cargo tank in § 153.1128; and

(b) For Category B NLS residue transferred to the slop tank under § 153.1119(b), the NLS is discharged—

(1) Through an NLS residue discharge system with the flow recording

equipment required in § 153.481(b)(2) operating; and

(2) At a rate maintained at or below Q in the following:

For tank contents that are miscible

$$Q = \frac{VKU^{L}L^{L6}}{N} \times 10^{-5}\ m^3/hr$$

For tank contents that are immiscible

$$Q = KU^{L}L^{L6} \times 10^{-5} m^3/hr$$

where:

Q = maximum permissible slops discharge rate in cubic meters per hour.

V = volume of slops in the tank in cubic meters.

K = 4.3, except K = 6.45 if Q is distributed between two NLS residue discharge outlets on opposite sides of the ship (see §§ 153.470(c) and 153.481(b)).

U = ship's speed in knots.

L = ship's length in meters.

N = number of tanks containing Category B NLS residue pumped into the slop tank.

§ 153.1128 Discharge of NLS residue from a cargo tank to the sea: Categories A, B, C, and D.

The discharge of NLS residue to the sea must be made with the ship at least 22.24 km (12 nautical miles) from the nearest land, and must meet the following additional conditions:

(a) To discharge the following the ship must be in water at least 25 m (76.2 ft) deep:

(1) Category B or C NLS residue diluted to less than 1 ppm of the NLS.

(2) Category B or C NLS residue resulting from washing a tank after the following washing procedure has been completed:

(i) If the tank is not required to be prewashed under this part, the tank must be washed following the procedures that apply to a prewash of a Category B NLS in § 153.1120 using one washing machine cycle, and the tank washings discharged to a reception facility or to the sea under § 153.1126 or paragraphs (a)(1), (c) or (d) of this section.

(ii) After the tank has been prewashed or has been washed under paragraph (a)(2)(i) of this section, the tank must then be washed with one cycle of the tank washing machine, and the tank washings discharged to a reception facility or to the sea in accordance with § 153.1126 or paragraphs (a)(1), (c), or (d) of this section.

(b) To discharge a Category D NLS residue to which 10 times its volume in water is added and mixed, the ship must be—

(1) If self-propelled, maintained at a speed of at least 12.97 km/hr (7 knots); and

(2) If not self-propelled, maintained at a speed of at least 7.41 km/hr (4 knots).

(c) Each ship built before July 1, 1986 that discharges Category A, B or C NLS residues before January 1, 1988 must be—

(1) In water at least 25 m (76.2 ft) deep;

(2) If discharging the residue of a Category A NLS cargo, discharging only residue created by washing the Category A NLS's cargo tank after a prewash;

(3) If discharging the residue of a Category B NLS cargo, discharging no more than the larger of 1 m^3 or 1/3000th the volume of the Category B cargo loaded;

(4) If discharging the residue of a Category C NLS cargo, discharging no more than the larger of 3 m^3 of or 1/1000th the volume of the Category C cargo loaded;

(6) If self-propelled, maintained at a speed of at least 12.97 km/hr (7 knots); and

(7) If not self-propelled, maintained at a speed of at least 7.41 km/hr (4 knots).

(d) To discharge Category A, B, C, or D NLS residue other than as allowed under paragraphs (a) through (c) of this section, the ship must be—

(1) In water at least 25 m (76.2 ft) deep;

(2) Discharging at a rate not exceeding that used for Q_d in § 1.53.470;

(3) If self-propelled, maintained at speed no less than the minimum specified in the approved Procedures and Arrangements Manual but at least 12.97 km/hr (7 knots);

(4) If not self-propelled, maintained at a speed no less than the minimum specified in the approved Procedures and Arrangements Manual but at least 7.41 km/hr (4 knots);

(5) If discharging the residue of a Category A NLS cargo, discharging only residue created by washing the Category A NLS's cargo tank after a prewash;

(6) If discharging the residue of a Category B NLS cargo, discharging no more than the larger of 1 m^3 or 1/3000th the volume of the Category B cargo loaded;

(7) If discharging the residue of a Category C NLS cargo, discharging no more than the larger of 3 m^3 of or 1/1000th the volume of the Category C cargo loaded;

(8) Discharging through an NLS residue discharge system meeting § 153.470.

§ 153.1130 Failure of slops discharge recording equipment; operating with, reporting failures, and replacing pollution equipment: Category A, B, C, D.

(a) If equipment required in §§ 153.470 through 153.488 fails, the Coast Guard Marine Inspection Office, Marine Safety Office, or Captain of the Port must be notified within 24 hours after the failure.

(b) No person shall replace a piece of equipment required by §§ 153.470 through 153.488 unless the replacement is—

(1) Identical to the original equipment; or

(2) Allowed as an alternative under § 153.10.

(c) The following conditions apply when discharge recording equipment required under § 153.481(b)(2) fails:

(1) No NLS residue may be discharged unless the approved Procedures and Arrangements Manual contains procedures for discharging with incapacitated discharge recording equipment while meeting the discharge restrictions of § 153.1126(b) and these procedures are followed.

(2) The failure of the discharge recording equipment must be recorded in the Cargo Record Book within 24 hours after the failure.

(3) If the ship operates under a Certificate of Inspection, the failed discharge recording equipment must be repaired or replaced within 60 days after it fails, and the repair or replacement recorded in the Cargo Record Book and reported to the Coast Guard within 24 hours after it is completed.

§ 153.1132 Reporting spills and non-complying discharges: Category A, B, C, and D.

The following shall be reported following the procedures applying to oil in 33 CFR 151.15 (c), (d), (g), (h):

(a) All discharges of the NLS that do not meet the requirements of this part.

(b) All spills into the water.

49. By adding new Subpart D, consisting of §§ 153.1600 through 153.1608 to read as follows:

Subpart D—Test and Calculation Procedures for Determining Stripping Quantity, Clingage NLS Residue, and Total NLS Residue

Sec.

153.1600 Equipment required for conducting the stripping quantity test.

153.1602 Test procedure for determining the stripping quantity.

153.1604 Determining the stripping quantity from the test results.

153.1608 Calculation of total NLS residue and clingage NLS residue.

Subpart D—Test and Calculation Procedures for Determining Stripping Quantity, Clingage NLS Residue, and Total NLS Residue

§ 153.1600 Equipment required for conducting the stripping quantity test.

The operator shall ensure the stripping quantity test is conducted with—

(a) Equipment that maintains a backpressure of at least 100 kPa (1 atm) (gauge) at the connection of the discharge line of the tank to be tested to the cargo transfer hose, including, but not limited to, piping whose discharge is 10 m above the manifold or a constant pressure valve in the discharge line and set at 100 kPa;

(b) A container for measuring the volume of water remaining in the tank to an accuracy of ± 5%;

(c) A squeegee or broom to collect standing water on the tank floor;

(d) One or more containers for collecting and transferring water; and

(e) One of the following for transferring the water remaining in the tank to the measuring container:

(1) A wet vacuum.

(2) A positive displacement pump.

(3) An eductor with an air/water separator in line.

§ 153.1602 Test procedure for determining the stripping quantity.

(a) The stripping quantity of a tank must be determined by testing the tank under the procedures in paragraph (b) of this section unless the Coast Guard agrees under the provisions of § 153.10 to accept the stripping quantity, previously determined under paragraph (b) of this section, of a tank having similar geometry, internal structure, and piping system.

(b) When testing a tank for stripping quantity, the owner or operator of the ship shall proceed as follows:

(1) Make arrangements with the Officer in Charge, Marine Inspection, for a Coast Guard Marine Inspector to witness the stripping test.

(2) Clean and gas free the tanks to be tested.

(3) Determine the least favorable values of list and trim for drainage within the range allowed by the approved Procedures and Arrangements Manual.

(4) Maintain the ship's list and trim during the test to that determined under paragraph (b)(3) of this section.

(5) Load the tank with enough water so that unloading the water simulates the final stages of unloading a full tank of cargo.

(6) Pump out the water and strip the tank using the procedures specified in the approved Procedures and Arrangements Manual.

(7) After shutting the manifold valve, open any cargo pump foot valve to allow water trapped in the cargo pump to drain into the tank.

(8) Open all valves in the piping system except the manifold valve and allow the water to drain into the tank.

(9) Squeegee or sweep the water drained under paragraphs (b)(7) and (b)(8) of this section and any water that stands in puddles on the tank floor to the tank's low point or sump and collect in the container required by § 153.1600(b) using the equipment required in § 153.1600(e).

(10) With the manifold valve still closed, drain any water remaining in the piping system on the ship's side of the cargo transfer manifold valve into containers, and add this water to that collected from the tank under paragraph (b)(9) of this section. Water collected from a cargo line serving a block of tanks may be prorated between all the tanks it serves if—

(i) The ship owner requests, under the provisions of § 153.10, that the water be prorated; and

(ii) The ship's approved Procedures and Arrangements Manual specifies that no tank in the block be washed until all the tanks in the block have been discharged.

(c) Include any water that is trapped in dead end pipe sections, either by—

(1) Draining the pipe sections and adding the water to that collected in the container under paragraphs (b)(9) and (b)(10) of this section; or

(2) Adding an estimate of the water's volume to the sum calculated in paragraph (d) of this section using the pipe's dimensions, the ship's list and trim, and the geometry of the piping system.

(d) Measure the volume of water collected in the container under paragraphs (b)(9), (b)(10), and (c)(1) of this section and add to that volume the volume, if any, estimated under paragraph (c)(2) of this section.

§ 153.1604 Determining the stripping quantity from the test results.

(a) For a single test, the stripping quantity is the volume of water calculated under § 153.1602(d).

(b) If multiple tests are made on a tank without modifications to the tank, pumping system, or stripping procedure between the tests, the stripping quantity must be taken as the average of the stripping quantities for all of the tests.

(c) If multiple tests are made on a tank with modifications to the tank, pumping system, or stripping procedure between the tests, the stripping quantity is the stripping quantity determined under paragraph (b) of this section using only those tests performed after the last modification.

§ 153.1608 Calculation of total NLS residue and clingage NLS residue.

(a) The total NLS residue for each tank is calculated by adding the stripping quantity and the clingage NLS residue.

(b) The clingage NLS residue for each tank is calculated using the following formula:

$$Q_{clingage} = 1.1 \times 10^{-4} A_d + 1.5 \times 10^{-5} A_w + 4.5 \times 10^{-4} L^{1/2} A_b$$

where:

A_b = Area of the tank bottom added to the area in square meters of tank structural components projected on a horizontal surface

A_d = Area of the tank underdecks added to the area in square meters of tank structural components projected on a horizontal surface

A_w = Area of the tank walls added to the area in square meters of tank structural components projected on a vertical surface

L = Length of tank in meters from fore to aft

$Q_{clingage}$ = volume of clingage in cubic meters

When using the formula in this paragraph, areas that are inclined more than 30° from the horizontal may be assumed to be vertical.

Note.—The Commandant (G-MTH) (tel #202-267-1217) has information that may be useful in approximating surface areas of typical structural members for the projected area calculations under § 153.1608(b).

50. By revising Table 1 to Part 153 to read as follows:

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
#**Acetic acid**	**D**	III	4m	PV	Restr	A	**.238(a), .527, .554**	I-D
Acetic anhydride	C	II	4m	PV	Restr	A	.238(a), .526, .527, .554	I-D
#Acetone cyanohydrin	A	II	B/3	PV	Closed	A	.238(a), .316, .336, .408, .525, .526, .527, .912(a)(2), .933, .1002, .1004, .1020, .1035.	I-D
Acetonitrile	III	II	B/3	PV	Rest	A	.525, .526, .1020	I-D
Acrylamide solution (50% or less)	D	II	NR	Open	Closed	NSR	.409, .525(a), (c), (d), (e), .912(a)(1), .1002(a), .1004, .1020.	NA
Acrylic acid	D	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	I-D
Acrylonitrile	B	II	B/3	PV	Closed	A	.236(a), (c), (d), 316, .408, .525, .526, .527, .912(a)(1), .1004, .1020.	I-D
#Adiponitrile	D	III	4m	PV	Restr	A	.526	I-D
*Alkyl acrylate—Vinyl pyridine copolymer in Toluene.	C	III	4m	PV	Restr	A	.409	NA
Alkyl benzene sulfonic acid (greater than 4%).	C	III	NR	Open	Open	B	.440, .908(a)	NA
Allyl alcohol	B	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .933, .1020	I-C
Allyl chloride	B	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-D
2-(2-Aminoethoxy) ethanol	D	III	NR	Open	Open	A, C, D	.236(b), (c), .409	NA
Aminoethylethanolamine	D	III	NR	Open	Open	A	.236(a), (b), (c), (g)	NA
*N-Aminoethylpiperazine	D	III	4m	PV	Restr	A, C, D	.236(b), (c), 409, .526	I-C
*2-Amino-2-methyl-1-propanol (90% or less)	D	III	NR	Open	Open	A	None	I-D [15]
Ammonium hydroxide (28% or less NH_3)	C	III	4m	PV	Restr	C	.236(b), (c), (f), .526, .527	I-D
*Ammonium nitrate solution (greater than 45% and less than 93%).	D	II	NR	Open	Open	NSR	.336, .409, .554(a), (b)	NA
*Ammonium sulfide solution (45% or less)	B	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .525, .526, .933, .1002, .1020.	I-D
*Ammonium thiosulfate solution (60% or less).	C	III	NR	Open	Open	NSR		NA
*(commercial, iso-, n-, sec-) Amyl Acetate	C	III	4m	PV	Restr	A	.409	I-D
#Aniline	C	II	B/3	PV	Closed	A	.316, .408, .525, .526, .933, .1020	I-D
#Benzene, or hydrocarbon mixtures containing 10% or more Benzene.	C	III	B/3	PV	Restr	B	.316, .440, .526, .908(b), .1060	I-D
Benzenesulfonyl chloride	D	III	4m	PV	Restr	B, D	.236(a), (b), (c), (g), .409, .526	I-D
*Benzyl alcohol	C	III	NR	Open	Open	A	None	I-D
# Benzyl chloride	B	II	B/3	PV	Closed	B	.316, .408, .525, .526, .527, .912(a)(2), .1004, .1020	I-D
*(iso-, n-) Butyl acetate	C	III	4m	PV	Restr	A	.409	I-D
(iso-, n-) Butyl acrylate	D	II	4m	PV	Restr	A	.526, .912(a)(1), .1002(a), (b), .1004	I-D
#Butylamine (all isomers)	C	II	B/3	PV	Restr	A	.236(b), (c), .316, .408, .525, .526, .527, .1020	I-D
*Butyl benzyl phthalate	A	II	NR	Open	Open	A	.409, .440, .908(a)	I-D
*1,2-Butylene oxide	C	III	4m	PV	Restr	A, C	.372, .408, .440, .500, .526, .530(a), (c), (e)-(g), (m)-(o), .1010, .1011.	I-B [15]
n-Butyl ether	C	III	B/3	PV	Restr	A, D	.500, .525, .526, .1020	I-C
Butyl methacrylate	D	III	4m	PV	Restr	A, D	.526, .912(a)(1), .1002(a), (b), .1004	I-D
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture.	D	III	4m	PV	Restr	A, C, D	.912(a)(1), .1002(a), (b), .1004	I-D
(n-, crude) Butyraldehyde	B	III	4m	PV	Open	A	.526	I-C
iso-Butyraldehyde	C	III	4m	PV	Open	A	.526	I-C
*Butyric acid	B	III	4m	PV	Restr	A	.238(a), .554	I-D
*Calcium hypochlorite solution (13% or less)	C	III	4m	PV	Restr	NSR	.409	NA

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
*Calcium hypochlorite solution (more than 13%).	B	III	4m	PV	Restr	NSR	.409	NA
*Calcium naphthanate in Mineral oil mixture	A	III	NR	PV	Open	A	.440, .908(a)	NA
#Camphor oil	B	II	4m	PV	Open	B	.409	I-D
#Carbolic oil	A	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020	NA
Carbon disulfide	B	II	B/3	PV	Closed	C	.236(c), .252, 408, .500, .515, .520, .525, .526, .527, .1020, .1040.	I-A
Carbon tetrachloride	B	III	B/3	PV	Closed	NSR	.316, .409, .525, .526, .527, .1020	NA
Cashew nut shell oil (untreated)	D	III	4m	PV	Restr	B	.526, .933	NA
#Caustic potash solution	C	III	NR	Open	Open	NSR	.236(a), (c), (g), .440, .908(b), .933	NA
Caustic soda solution	D	III	NR	Open	Open	NSR	.236(a), (c), (g), .933	NA
Cetyl-Eicosyl methacrylate	III	III	NR	Open	Open	A, C, D	.912(a)(1), .1002(a), (b), .1004	NA
*Chloroacetic acid (80% or less)	C	II	B/3	PV	Closed	NSR	.236(a), .238(a), .408, .440, .554, .908(b)	I-D
#Chlorobenzene	B	II	4m	PV	Restr	B	.409, .526	I-D
Chloroform	B	III	B/3	PV	Restr	NSR	.525, .526, .527, .1020	NA
(crude) Chlorohydrins	D	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-D
*4-Chloro-2-methylphenoxyacetic acid, dimethylamine salt.	C	III	NR	Open	Open	NSR	None	NA
o-Chloronitrobenzene see o-Nitrochlorobenzene								
#2- or 3-Chloropropionic acid	C	III	NR	Open	Open	A	.238(a), .440, .554, .908(b)	NA
Chlorosulfonic acid	C	I	B/3	PV	Closed	NSR	.408, .525, .526, .527, .554, .555, .602, .933, .1000, .1020, .1045.	I-B[11]
o-Chlorotoluene	A	III	4m	PV	Restr	B, C	.526	I-D
m-Chlorotoluene	B	III	4m	PV	Restr	B, C	.526	I-D
#p-Chlorotoluene	B	II	4m	PV	Restr	B, C	.409, .440, .526, .908(b)	I-D
*Chlorotoluenes (mixed isomers)	A	II	4m	PV	Restr	B, C	.409, .440, .526, .908(b)	I-D
*Coal tar	A	II	4m	PV	Restr	B,D	.409	I-D[15]
#Coal tar naphtha solvent	B	III	4m	PV	Restr	A, D	.526	I-D
*Coal tar pitch (molten)	D	III	4m	PV	Restr	B, D	.409	I-D[15]
#Creosote (wood)	A	II	NR	Open	Open	B, D	.409	NA
#Creosote (coal tar)	C	III	NR	Open	Open	B, D	.409	I-D
#Cresols	A	II	NR	Open	Open	B	.409, .440, .908(b)	I-D
Cresylate spent caustic (mixtures of Cresols and Caustic soda solutions).	—	III	NR	Open	Open	NSR	.236(a), (c), .933	NA
Crotonaldehyde	B	II	B/3	PV	Restr	A	.316, .525, .526, .527, .1020	I-C
*Cumene	B	III	4m	PV	Restr	A	.409	I-D
*Cyclohexane	C	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
*Cyclohexanol	C	III	NR	Open	Open	A	**.440, .908(a), (b)**	I-D
Cyclohexanone	D	III	4m	PV	Restr	A	.236(a), (b), .526	I-D
Cyclohexylamine	C	III	4m	PV	Restr	A, D	.236(a), (b), (c), (g), .526	I-D
*p-Cymene	C	III	4m	PV	Restr	A	.409	I-D
*Decene	B	III	4m	PV	Restr	A	.409	I-D
#(iso-, n-) Decyl acrylate	A	II	NR	Open	Open	A, C, D	.236(a), (b), (c), .409, .912(a)(1), .1002(a), (b), .1004	I-D[15]
*Decyl alcohol (all isomers)	B	III	NR	Open	Open	A	.440, .908(b)	I-D
#Diammonium salt of Zinc ethylenediamine tetraacetic acid solution [13].		III	NR	Open	Open	NSR	.236(a), .238(a)	I-B
Dibutylamine	C	III	4m	PV	Restr	B, D	.236(b),(c), .526	I-C
*Dibutyl phthalate	A	II	NR	Open	Open	A	.409	I-D
#o-Dichlorobenzene	B	IIII	4m	PV	Restr	B, D	.236(a),(b), .409, 526	I-D

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
1,1-Dichloroethane	B	III	4m	PV	Restr	B	.526, .527	I–D
#2,2'-Dichloroethyl ether	B	II	4m	PV	Restr	A	.236(a), (b), .526	I–C [15]
2,2'-Dichloroisopropyl ether	C	II	B/3	PV	Restr	B, C, D	.236(a), (b), .316, .408(a), 440, .525, .526, .1020	I–D
#Dichloromethane	D	III	4m	PV	Restr	NSR	.526	I–D [15]
#2,4-Dichlorophenol [14]	A	II	4m	PV	Restr	B, C, D	.236(a), (b), (c), (g), .409, .440, .500, .501, .526, .908(b), .933.	I–D [15]
*2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution.	A	III	NR	Open	Open	NSR	None	NA
*2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	A	III	NR	Open	Open	NSR	None	NA
*2,4-Dicholrophenoxyacetic acid, triisopropanolamine salt solution.	A	III	NR	Open	Open	NSR	None	NA
1,1-, 1,2-, or 1,3-Dichloropropane	B	II	B/3	PV	Restr	B	.525, .526, .1020	I–D
1,3-Dichloropropene	B	II	B/3	PV	Closed	B	.316, .336, .408, .525, .526, .527, .1020	I–D
#Dichloropropene, Dichloropropane mixtures	B	II	B/3	PV	Closed	B, C, D	.316, .336, .408, .526, .527	I–D
2,2-Dichloropropionic acid	D	III	4m	PV	Restr	A	.236(a), .238(a), .266, .500, 501, .554	NA
Diethanolamine	III	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylamine	C	III	B/3	PV	Restr	A	.236(a), (b), (c), (g), .525, .526, .527, .1020	I–C
Diethylaminoethanol see Diethylethanolamine								
*Diethylbenzene	C	III	4m	PV	Restr	A	.409	I–D
*Diethylene gylcol methyl ether	C	III	NR	Open	Open	A	None	I–C
Diethylenetriamine	D	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylethanolamine	C	III	4m	PV	Restr	A, D	.236(a), (b), (c), (g), .526	I–C
Diethyl ether see Ethyl ether								
*Di-(2-ethylhexyl) phosphoric acid	C	III	NR	Open	Open	B, C, D	.236(b), (c)	I–D
*Diethyl phthalate	C	III	NR	Open	Open	A	None	I–D
#Diethyl sulfate	B	II	4m	PV	Closed	A, D	.236(a), (c), (d), .526	I–D [15]
*Diglycidyl ether of Bisphenol A	B	III	NR	Open	Open	A	.440, .908(b)	NA
Diisobutylamine	C	II	4m	PV	Restr	B, D	.236(a), (b), (c), (g), .409, .525(a) (c), (d), (e), .526, .1020.	I–C
*Diisobutylene	B	III	4m	PV	Restr	A	.409	I–D
*Diisobutyl phthalate	B	III	NR	Open	Open	A	.440, .908(a)	I–D
#Diisopropanolamine	C	III	NR	Open	Open	A	**.236b), (c), .440, .908(a), (b)**	I–D [15]
Diisopropylamine	C	II	B/3	PV	Closed	A	.236(b), (c), .408, .525, .526, .527, .1020	I–C
*Diisopropyl benzene (all isomers)	A	II	NR	Open	Open	A	.409	I–D
*N,N-Dimethyl acetamide	D	III	B/3	PV	Restr	B	.236(b), .316, .525, .526, .527, .1020	I–D [15]
#Dimethylamine solution (45% or less)	C	III	B/3	PV	Restr	C, D	.236(a), (b), (c), (g), .525, .526, .527, .1020	I–C
*Dimethylamine solution (over 45% but not over 55%).	C	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I–C
*Dimethylamine solution (over 55% but not over 65%).	C	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .1020.	I–C
*N,N-Dimethylcyclohexylamine	C	II	B/3	PV	Restr	A, C	.236(a), (b), (c), (g), .409, .525, .526, .527, .1020	NA
Dimethylethanolamine	D	III	4m	PV	Restr	A, D	.236(b) (c), .526	I–C
Dimethylformamide	D	III	4m	PV	Restr	A, D	.236(b), .526	I–D
*Dimethyl hydrogen phosphite	—	III	4m	PV	Restr	A, D	.526	NA
*Dimethyl phthalate	C	III	NR	Open	Open	A	None	I–D
*Dinitrotoluene (molten)	B	II	B/3	PV	Closed	A	.316, .408, .440, .525, .526, .527, .908(a), .1020	I–C
1,4-Dioxane	D	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I–C
*Dipentene	C	III	4m	PV	Restr	A	.409	I–D

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
*Diphenyl	A	II	NR	Open	Open	B	.409	I-D [15]
*Diphenyl/Diphenyl oxide mixtures	A	II	NR	Open	Open	B	.409	I-D [15]
*Diphenyl ether	A	III	NR	Open	Open	A	.440, .908(b)	I-D
#Diphenyl methane diisocyanate [12]	B	II	B/3	PV	Closed	C, D	.236(a), (b), .316, .440, .500, .501, .525, .526, .602, .908(a), .1000, .1020.	NA
*Diphenyl oxide, Biphenyl phenyl ether mixtures.	A	III	NR	Open	Open	B	None	NA
Di-n-propylamine	C	III	4m	PV	Restr	A	.236(b), (c), .409, .525, .526, .1020	I-C
*Dodecanol	B	III	NR	Open	Open	A	**.440, .908(a), (b)**	I-D
*Dodecene (all isomers)	B	III	NR	Open	Open	A	None	I-D
Dodecyl alcohol see Dodecanol								
*Dodecylbenzene	C	III	NR	Open	Open	A	None	I-D
#Dodecyl diphenyl oxide disulfonate solution.	B	III	NR	Open	Open	NSR	.440, .908(a)	NA
Dodecyl methacrylate	III	III	NR	Open	Open	A, C	.236(b), (c), .912(a)(1), .1004	I-D
Dodecyl-Pentadecyl methacrylate mixture	III	III	NR	Open	Open	A, C, D	.912(a)(1), .1002(a), (b), .1004	NA
*Dodecyl phenol	A	I	NR	Open	Open	A	.408	I-D
Epichlorohydrin	C	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-C
#Ethanolamine	D	III	NR	Open	Open	A	.236(b), (c), .526	I-D [15]
*2-Ethoxyethyl acetate	C	III	4m	PV	Restr	A	.409	I-C
Ethyl acrylate	B	II	4m	PV	Restr	A	.526, .527, .912(a)(1), .1002(a), (b), .1004	I-D
*Ethylamine	C	II	B/3	PV	Closed	C, D	.236(b), (c), .372, .525, .526, .527, .1020	I-D
#Ethylamine solution (72% or less)	C	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .525(a), (c), (d), (e), .526, .527, .1020.	I-D
*Ethyl benzene	C	III	4m	PV	Restr	A	.409	I-D
N-Ethylbutylamine	C	III	4m	PV	Restr	A	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I-C
*Ethyl butyrate	C	III	4m	PV	Restr	A		I-D
N-Ethylcyclohexylamine	D	III	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .409, .526	I-C
#Ethylene chlorohydrin	C	II	B/3	PV	Closed	D	.316, .408, .525, .526, .527, .933, .1020	I-D
Ethylene cyanohydrin	D	III	NR	Open	Open	A	None	NA
#Ethylenediamine	C	II	4m	PV	Restr	A	.236(b), (c), .440, .526, .908(b)	I-D
#Ethylene dibromide	B	II	B/3	PV	Closed	NSR	.408, .440, .525, .526, .527, .908(b), .1020	NA
#Ethylene dichloride	B	II	4m	PV	Restr	B	.236(b), .408, .526	I-D
*Ethylene glycol diacetate	C	III	NR	Open	Open	A	.409	I-D [15]
*Ethylene glycol ethyl ether acetate	C	III	NR	Open	Open	A	None	I-C
*Ethylene oxide (30% or less), Propylene oxide.	D	II	B/3	PV	Closed	A, C	.372, .408, .440, .500, .525, .526, .530, .1010, .1011, 1020.	I-B
Ethyl ether	A	.236(g), .252, .372, .408, .440, .500, .515, .526, .527	I-C					
#2-Ethylhexyl acrylate	D	III	NR	Open	Open	A	.912(a)(1), .1002(a), (b), .1004	I-D
#2-Ethylhexylamine	B	II	B/3	PV	Restr	A	.236(b), (c), .525, .526, .1020	I-D [15]
Ethylidene norbornene	B	III	B/3	PV	Restr	B, C, D	.236(b), .409, .526	NA

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Ethyl methacrylate	D	III	4m	PV	Restr	B, D	.526, .912(a)(1), .1002(a), (b), .1004	I-D
*Ethyl phenol	A	III	NR	Open	Open	B	None	I-D [15]
#2-Ethyl-3-propyl acrolein	B	III	4m	PV	Restr	A	.440, .526, .908(b)	I-C
*Ethyl toluene	B	III	4m	PV	Restr	A	.409	I-D
*Fatty alcohols, C_{12}–C_{20}	B	III	NR	Open	Open	A	.440, .908(a)	NA
#Formaldehyde (50% or more), Methanol mixtures.	—	III	4m	PV	Closed	A	.526, .527	I-B
#Formaldehyde solution (37% to 50%)	C	III	4m	PV	Restr	A	.526, .527	I-B
Formic acid	D	III	4m	PV	Restr	A	.238(b), (c), .526, .527, .554	I-D
*Fumaric adduct of rosin, water dispersion	B	III	NR	Open	Open	NSR	.440, .908(a)	NA
Furfural	C	III	4m	PV	Restr	A	.526	I-C
*Furfuryl alcohol	C	III	NR	Open	Open	A	None	I-C
Glutaraldehyde solution (50% or less)	D	III	NR	Open	Open	NSR	None	NA
*Glycidyl ester of tridecyl acetic acid	B	III	NR	Open	Open	A	None	NA
*Heptanol (all isomers)	C	III	4m	PV	Restr	A	.409	I-D
*Heptene (mixed isomers)	C	III	4m	PV	Restr	A	.409	I-D
*Heptyl acetate	B	III	NR	Open	Open	A	None	NA
#Hexamethylenediamine solution	C	III	4m	PV	Restr	A	.236(b), (c), .409, .440, .526, .908(b)	I-D
Hexamethyleneimine	C	II	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .526	I-C
*1- or 2-Hexene	C	III	4m	PV	Restr	A	.409	I-D
*Hexyl acetate	B	III	NR	PV	Restr	A	.409	I-D
Hydrochloric acid	D	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052	I-B [11]
*Hydrogen peroxide solutions (over 8% but not over 60%).	C	III	B/3	PV	Closed	NSR	.238(a), (c), .355, .409, .440(a) (1)&(2), .500, .933, .1004(a)(2), .1500.	NA
*Hydrogen peroxide solutions (over 60% but not over 70%).	C	II	B/3	PV	Closed	NSR	.238(a), (c), .355, .409, .440(a) (1)&(2), .500, .933, .1004(a)(2), .1500.	NA
2-Hydroxyethyl acrylate	B	II	B/3	PV	Closed	A	.408 .525, .526, .912(a)(1), .933, .1002(a), (b), .1004, .1020.	NA
Isophorone diamine	D	III	4m	PV	Restr	A	.236(b), (c), .526	NA
#Isophorone diisocyanate [12]	B	III	B/3	PV	Closed	C, D	.236(a), (b), .316, .500, .501 .526, .602, .1000, .1020	NA
Isoprene	C	III	4m	PV	Restr	B	.372 .440, .912(a)(1), .1002(a) (b), .1004	I-D
Isopropyl benzene see Cumene								
*Lactonitrile solution (80% or less)	B	II	B/3	PV	Closed	A, C, D	.316, .336, .408, .525, .526, .527, .1002, .1020, .1035.	I-D [15]
#Maleic anhydride [10]	D	III	4m	PV	Restr	A, C [10]	None	I-D [15]
Mercaptobenzothiazol, sodium salt see Sodium-2-mercaptobenzothiazol solution								
Mesityl oxide	D	III	4m	PV	Restr	A	.409, .526	I-D
Methacrylic acid	D	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	NA
*Methacrylonitrile	B	II	B/3	PV	Closed	A	.236(a), .316, .408, .525, .526, .527, .912(a)(1), .1002(a), .1004, .1020.	NA
#Methyl acrylate	C	II	4m	PV	Restr	B	.526, .527, .912(a)(1), .1002(a), (b), .1004	I-D
#Methylamine solution (42% or less)	C	II	B/3	PV	Closed	A,C,D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-D
*Methylamyl acetate	C	III	4m	PV	Restr	A	.409	I-D
*Methylamyl alcohol	C	III	4m	PV	Restr	A	.409	I-D
*Methylamyl ketone	C	III	4m	PV	Restr	A	.409	I-D
*Methyl butyrate	C	III	4m	PV	Restr	A	.409	I-D [15]

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
Methylene chloride see Dichloromethane								
2-Methyl-6-ethyl aniline	C	III	NR	Open	Open	B, C, D	None	NA
#2-Methyl-5-ethyl pyridine	B	III	NR	Open	Open	D	.236(b)	I-D
Methyl formate	D	II	B/3	PV	Restr	A	.372, .408, .440, .525, .526, .527, .1020	I-D
*Methyl heptyl ketone	B	III	4m	PV	Restr	A	.409	I-D [15]
#2-Methyl-2-hydroxy-3-butyne	III	III	4m	PV	Restr	A, C, D	.236(b), (d), (f), (g), .409, .526	I-D
Methyl methacrylate	D	II	4m	PV	Restr	B	.526, .912(a)(1), .1002(a), (b), .1004	I-D
*2-Methyl-1-pentene	C	III	4m	PV	Restr	A	.409	I-D
#2-Methyl pyridine	B	II	B/3	PV	Closed	A, C	.236(b), .408, .525(a), (c), (d), (e), .1020	I-D
*4-Methyl pyridine	B	II	B/3	PV	Closed	A, C, D	.236(b), .408, .440, .525(a), (c), (d), (e), .526, .908(b), .1020.	I-D
*N-Methyl-2-pyrrolidone	B	III	NR	Open	Open	A	None	I-D
*Methyl salicylate	B	III	NR	Open	Open	D	None	I-D
#alpha-Methyl styrene	A	II	4m	PV	Restr	D	.409, .526, .912(a)(1), .1002(a), (b), .1004	I-D
Morpholine	D	III	4m	PV	Restr	A	.236(b), (c)	I-C
Motor fuel anti-knock compounds (containing lead alkyls).	A	II	B/3	PV	Closed	B, C	.252, .316, .336, .408, .525, .526, .527, .933, .1020, .1025.	I-D
#Naphthalene (molten)	A	II	4m	PV	Restr	A, D	.409, .440, .908(b)	I-D [15]
*Neodecanoic acid	B	III	NR	Open	Open	A	None	NA
*Nitrating acid (mixture of Sulfuric and Nitric acids).	C	II	B/3	PV	Closed	NSR	.316, .408, .526, .527, .554, .555, .556, .559, .933, .1000, .1045.	I-B [11]
Nitric acid (70% or less)	C	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045	I-B [11]
#Nitrobenzene	B	II	B/3	PV	Closed	D	.316, .336, .408, 440, .525, .526, .908(b), .933, .1020	I-D
#o-Nitrochlorobenzene	B	II	B/3	PV	Closed	B, C, D	**.316, .336, .408, .440, .525, .526, .908(a), (b), .1020**	NA
#o-Nitrophenol (molten)	B	II	B/3	PV	Closed	A, C, D	**.440, .525, .526, .908(a), (b), .1020**	NA
1- or 2-Nitropropane [10]	D	III	4m	PV	Restr	A [10]	.526	I-C
*Nitropropane (60%), Nitroethane (40%) mixture [10].	D	III	4m	PV	Restr	A [10], C	.236(b) .526	I-C
#(o-, p-) Nitrotoluene	C	II	B/3	PV	Closed	B	.316, .408, .440, .525, .526, .908(b), .1020	I-D [15]
*Nonene	B	III	4m	PV	Restr	A	.409	I-D
*Nonyl alcohol	C	III	NR	Open	Open	A	None	I-D
*Nonyl phenol	A	II	NR	Open	Open	A	.409, .440, .908(a)	I-D
*Octanol (all isomers)	C	III	NR	Open	Open	A	None	I-D
*Octene (all isomers)	B	III	4m	PV	Restr	A	.409	I-D
*Octyl aldehydes	B	III	4m	PV	Restr	A	.409	I-C [15]
*Olefins, straight chain mixture	B	III	4m	PV	Restr	A	**.409, .440, .908(a), (b)**	NA
#Oleum	C	II	B/3	PV	Closed	NSR	.316, .408, .440, .526, .527, .554, .555, .556, .602, .908(a), .933, .1000, .1045, .1052.	I-B [11]
#Paraldehyde	C	III	4m	PV	Restr	A	.440, .908(b)	I-C
#Pentachloroethane	B	II	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	NA
1,3-Pentadiene	C	III	4m	PV	Restr	B	.526, .912(a)(1), .1002, .1004	I-D
*n-Pentane	C	III	4m	PV	Restr	A	.409	I-D
*Pentene (all isomers)	C	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
Perchloroethylene	B	III	4m	PV	Restr	NSR	.526	NA
#Phenol, or solutions with 5% or more Phenol.	B	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020	I-D [15]
*1-Phenyl-I-xylyl ethane	C	III	NR	Open	Open	B	None	NA
Phosphoric acid	D	III	NR	Open	Open	NSR	.554, .555, .558, .1045, .1052	I-B [11]
#Phthalic anhydride (molten)	C	III	4m	PV	Restr	D	.440, .908(b)	I-D [15]
Pinene	**B**	III	4m	PV	Restr	A	.409	I-D

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
#Polyethylene polyamines	C	III	NR	Open	Open	A	**.236(b), (c), .400, .440, .908(b)**	NA
Polymethylene polyphenyl isocyanate [12]	D	II	B/3	PV	Closed	C, D	.236 (a), (b), .409, .500, .501, .525, .526, .602, .1000, .1020.	NA
Potassium hydroxide solution see Caustic potash solution								
#iso-Propanolamine	C	III	NR	Open	Open	A	.236 (b), (c), .440, .526, .908(a)	NA
#n-Propanolamine	C	III	NR	Open	Open	A	.236 (b), (c), .440. .526, .908(b)	NA
Propionaldehyde	D	III	4m	PV	Restr	A	.316, .526, .527	I-C
Propionic acid	D	III	4m	PV	Restr	A	.238(a), .527, .554	I-D
#Propionic anhydride	C	III	4m	PV	Restr	A	.238(a), .526	I-D
*Propionitrile	C	II	B/3	PV	Closed	A, D	.316, .336, .408, .525, .526, .527, .1020	I-D
iso-Propylamine	C	II	B/3	PV	Closed	C, D	.236(b), (c), .372, .408, .440, .525, .526, .527, .1020	I-D
n-Propylamine	C	II	B/3	PV	Closed	C, D	.236(b), (c), .408, .500, .525, .526, .527, .1020	I-D
*Propylene dimer	C	III	4m	PV	Restr	A	.409	NA
Propylene oxide	D	II	B/3	PV	Closed	A, C	.372, .408, .440, .500, .526, .530, .1010, .1011	I-B
*Propylene trimer	B	III	4m	PV	Restr	A	.409	I-D
iso-Propyl ether	D	III	4m	PV	Restr	A	.409, .500, .515, .912(a)(1)	I-D
Pyridine	**D**	III	4m	PV	Restr	A	.236(b)	I-D
***Rosin oil**	**B**	III	NR	Open	Open	A	**.440, .908(b)**	I-D
*Rosin soap (disproportionated) solution	B	III	NR	Open	Open	A	None	NA
#Sodium borohydride (15% or less), Sodium hydroxide solution.	C	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(a) .933	NA
Sodium chlorate solution (50% or less)	III	III	NR	Open	Open	NSR	.409, .933, .1065	NA
*Sodium dichromate solution (70% or less)	B	II	B/3	Open	Closed	NSR	.236(b), (c), .408, .525, .933, .1020	NA
*Sodium hydrogen sulfite solution (35% or less).	D	III	NR	Open	Open	NSR	None	NA
#Sodium hydrosulfide solution (45% or less)	B	III	4m	PV	Restr	NSR	.526, .440, .908(b), .933	NA
*Sodium hydrosulfide/Ammonium sulfide solution.	B	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .933, .1002, .1020.	NA
Sodium hydroxide solution see Caustic soda solution								
#Sodium hypochlorite solution (15% or less)	C	III	4m	PV	Restr	NSR	.236(a), (b)	NA
#Sodium-2-mercaptobenzothiazol solution	B	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(b), .933	NA
*Sodium thiocyanate (56% or less)	B	III	NR	Open	Open	NSR	.238(a)	NA
#Styrene	B	III	4m	PV	Open	B	.236(b), .409, .912(a)(1), .1002(a), (b), .1004	I-D
Sulfur (molten)	III	III	NR	Open	Open	NSR	.252, .440, .526, .545	I-C
#Sulfuric acid	C	III	NR	Open	Open	NSR	**.440, .554, .555, .556, .602, .908(a), (b), .933, .1000, .1045, .1046, .1052.**	I-B [11]
***Tall oil, crude and distilled**	**B**	III	NR	Open	Open	A	.440, .908(a)	NA
*Tall oil, fatty acid (resin acids less than 20%).	C	III	NR	Open	Open	A	None	NA
*Tall oil soap (disproportionated) solution	B	III	NR	Open	Open	A	.440, .908(a)	NA
1,1,2,2-Tetrachloroethane	B	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	NA
#Tetraethylenepentamine [13]	D	III	NR	Open	Open	A	.236(b), (c), (g)	I-C [15]
Tetrahydrofuran	D	III	4m	PV	Restr	A, D	.526, .912(a)(2), .1004	I-C
*Tetrahydronaphthalene	C	III	NR	Open	Open	A	None	I-D
*Toluene	C	III	4m	PV	Restr	A	.409	I-D
#Toluenediamine	C	II	B/3	PV	Closed	B, C, D	.236(a), (b), (c), (g) .316, .408, .440, .525, .526, .527, .908(b), .933, .1020.	

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Cargo containment system [3]	Vent height [4]	Vent [5]	Gauge [6]	Fire protection system [7]	Special requirements [8]	Electrical hazard class and group [9]
#Toluene diisocyanate [12]	C	II	4m	PV	Closed	C, D	.236(b), .316, .408, .440, .500, .501, .525, .526, .527, .602, .908(b), .1000, .1020.	I-D [15]
#o-Toluidine	C	II	B/3	PV	Closed	A, C	.316, .408, .525, .526, .933, .1020	I-D [15]
*Tributyl phosphate	B	III	NR	Open	Open	A	None	I-D
#1,2,4-Trichlorobenzene	B	II	4m	PV	Restr	C	.409, .440, .526, .908(b)	I-D
*1,1,1-Trichloroethane	B	III	NR	Open	Open	A	None	I-D
1,1,2-Trichloroethane	B	III	B/3	PV	Restr	NSR	.526	I-D
Trichloroethylene	B	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	I-D
1,2,3-Trichloropropane	B	II	B/3	PV	Closed	B, C, D	.316, .408, .525, .526, .1020	I-D
*1,1,2-Trichloro-1,2,2-trifluoroethane	C	III	NR	Open	Open	NSR	None	NA
*Tricresyl (tritolyl) phosphate (less than 1% of ortho isomer).	A	II	NR	Open	Open	A	.409, .440, .908(a)	I-D [15]
#Tricresyl (tritolyl) phosphate (1% or more of the ortho isomer).	A	I	4m	PV	Closed	B	.408, .440, .525(a), (c), (d), (e), .908(a), .1020	I-D [15]
*Tridecyl benzene	C	III	NR	Open	Open	NSR	None	I-D [15]
#Triethanolamine	D	III	NR	Open	Open	A	.236(a), (b), (c), (g)	I-C [15]
Triethylamine	C	II	B/3	PV	Restr	B	.236(b), (c), .525, .526, .527, .1020	I-C
*Triethylbenzene	A	II	NR	Open	Open	A	.409	I-D
#Triethylenetetramine	D	III	NR	Open	Open	A	.236(a), (b), (c)	I-C [15]
*Triethyl phosphite	—	III	B/3	PV	Restr	A, D	.526	NA
Trimethylacetic acid	D	III	4m	PV	Restr	A, C	.238(a), .266, .554	I-D
*1,2,4-Trimethyl benzene	B	III	4m	PV	Restr	A	.409	I-D
Trimethylhexamethylene diamine (2,2,4- and 2,4,4-isomers).	D	III	NR	Open	Open	A, C	.236 (a), (b), (c), (g), .409	NA
#Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-isomers) [12].	B	II	B/3	PV	Closed	A, C [12]	.316, .500, .501, .525, .526, .602, .1000, .1020	NA
*2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate.	C	III	NR	Open	Open	A	None	I-D
*Trimethyl phosphite	—	III	4m	PV	Restr	A, D	.409, .526, .1000	I-D
*Trixylenyl phosphate	A	I	NR	Open	Open	A	.408, .440, .908(a)	NA
*Turpentine	B	III	4m	PV	Restr	A	.409	I-D
*1-Undecene	B	III	NR	Open	Open	A	None	I-D
*Undecyl alcohol	B	III	NR	Open	Open	A	.440, .908(b)	I-D
Urea, Ammonium nitrate solution (containing more than 2% NH_3).	C	III	4m	PV	Restr	A	.236(b), .526	I-D
iso-Valeraldehyde	C	III	4m	PV	Restr	A	.500, .526	I-C
n-Valeraldehyde	D	III	4m	PV	Restr	A	.500, .526	I-C
Vinyl acetate	C	III	4m	PV	Open	A	.912(a)(1), .1002 (a), (b), .1004	I-C
#Vinyl ethyl ether	C	II	4m	PV	Closed	A	.236(b),(d),(f),(g), .372, .408, .440, .500, .515, .526, .527, .912(a)(1), 1002 (a), (b), .1004.	
Vinylidene chloride	B	II	4m	PV	Restr	B	.236 (a), (b), .372, .440, .550, .526, .527, .912(a)(1), .1002 (a), (b), .1004.	I-D
Vinyl neodecanate	C	III	NR	Open	Open	B	.912(a)(1), .1002 (a), (b), .1004	NA
Vinyl toluene	A	III	4m	PV	Restr	D	.236 (a), (b), (c), (g), 409, .912(a)(1), .1002(a), (b), .1004.	I-D
*White spirit (low (15–20%) aromatic)	B	II	4m	PV	Restr	A	.409	NA
*Xylenes [16]	C	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
#Xylenol	B	III	NR	Open	Open	B	**.440, .908(a), (b)**	NA

* denotes newly added products.

# denotes products which have had carriage requirements changed or added.
— under Annex II Pollution Category denotes pollution category not yet determined.

[Entries in **boldface** are cargoes whose requirements are less stringent than in the NPRM]

COLUMN HEADING FOOTNOTES:

[1] The cargo name must be as it appears in this column (see §§ 153.5, 153.900, 153.907).
[2] This column lists the IMO Annex II Pollution Category (III indicates the cargo is not a NLS).
[3] This column lists the type of containment system the cargo must have (see §§ 153.230 through 153.232).
[4] This column lists the height of any vent riser required (see §§ 153.350 and 153.351).
[5] This column lists any vent control valve required (see § 153.355).
[6] This column lists the type of gauging system required (see §§ 153.400 through 153.406).
[7] This column lists the type of fire protection system required. Where more than one system is li sted, any listed system may be used. A dry chemical system may not be substituted for either type of foam system unless the dry chemical system is listed as an alternative or the substitution is approved by Commandant (G-MTH) (§ 153.460). The types are as follows:

A is a foam system for water soluble cargoes (polar solvent foam).
B is a foam system for water insoluble cargoes (non-polar solvent foam).
C is a water spray system.
D is a dry chemical system.
NSR means there is no special requirement applying to fire protection systems.

[8] This column lists sections that apply to the cargo in addition to the general requirements of this part. The 153 Part number is omitted.
[9] This column lists the electrical hazard class and group used for the cargo when determining requirements for electrical equipment under Subchapter J (Electricial engineering) of this chapter.

FOOTNOTES OF SPECIFIC CARGOES:

[10] Dry chemical extinguishers should not be used on fires involving this cargo since some dry chemicals may react with the cargo and cause an explosion.
[11] The 1-B electrical hazard for acids does not apply to weather deck locations. See 46 CFR Part 111.
[12] Water is effective in extinguishing open air fires but will generate hazardous quantities of gas if put on the cargo in enclosed spaces.
[13] Aluminum is a questionable material of construction with this cargo since pitting and corrosion have been reported. The IMO Chemical Code prohibits aluminum as a material of construction for this cargo.
[14] Some tank pitting has been reported when this cargo is contaminated with water, including moisture in the air. The IMO Chemical Code requires that the vapor space over this cargo be kept dry.
[15] Electrical Hazard Class and Group based upon that which appears in "Classification of Gases, Liquids and Volatile Solids Relative to Explosion-Proof Electrical Equipment", Publication NMAB 353-5, National Academy Press, 1982, but not appearing in NFPA 497M, "Manual for Classification of Gases, Liquids and Dusts for Electrical Equipment in Hazardous Classified Locations." See also Subchapter J (Electrical Engineering) of this chapter.
[16] Special requirement .908(b) only applies to the para isomer.

Appendix I—[Reserved]

51. By removing and reserving Appendix I and adding Table 2 to follow Table 1 to read as follows:

Table 2—List of Cargoes Not Regulated Under Subchapter D or Under Subchapter O of This Title when carried in Bulk

Ammonium nitrate solution (45% or less)
Ammonium nitrate, Urea solution (2% or less NH_3)
Ammonium phosphate solution
Ammonium phosphate, Urea solution
Ammonium polyphosphate
Ammonium sulfate solution (20% or less)
Apple juice
Calcium bromide solution
Calcium chloride solution
Chlorinated paraffin (C_{14}-C_{17}) with 52% Chlorine
Choline chloride solutions
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution
Ethylene-Vinyl acetate copolymer (emulsion)
Glucose or Dextrose solutions
Glycine, sodium salt solution
Hexamethylenediamine adipate
Kaolin clay slurry
Magnesium chloride solution
Magnesium hydroxide suspensions in water
Milk
Molasses
Pentasodium salt of Diethylenetriamine pentaacetic acid solution
Polyaluminum chloride solution
Sodium aluminosilicate slurry
Sodium carbonate solutions
Sodium silicate solution
Sorbitol solution
Tetrasodium salt of Ethylenediamine tetraacetic acid solution
Trisodium salt of N-Hydroxyethyl ethylenediamine triacetic acid solution
Urea solution
Water

52. By amending Appendix III by adding a new entry in proper alphabetical order to read as follows:

APPENDIX III—METRIC UNITS USED IN PART 153

Parameter	Metric (SI) Unit	Abbreviation	Equivalent to English or Common Metric.
* * *			
Viscosity	milli-Pascal second	mPa.sec	1.0 centipoise.

* * * * *

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

53. The authority citation for Part 172 is revised to read as follows:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306 and 5115; 49 CFR 1.46 (b) and (z).

54. By revising § 172.130(a) to read as follows:

§ 172.130 Calculations.

(a) Except as provided in § 153.7 of this chapter, each tankship must be shown by design calculations to meet the survival conditions in § 172.150 in each condition of loading and operation assuming the damage specified in § 172.133 for the hull type prescribed in Part 153 of this chapter.

* * * * *

55. By revising the introductory text of paragraph (b) and paragraph (d) of § 172.133 to read as follows:

§ 172.133 Character of damage.

* * * * *

(b) Except as provided in § 153.7 of this chapter, if a type II hull is required, design calculations must show that a vessel—

* * * * *

(d) A vessel described in paragraph (b)(2) or (c)(1) of this section need not be designed to survive damage to a main transverse watertight bulkhead bounding an aft machinery space. Except as provided in § 153.7 of this chapter, the machinery space must be calculated as a single floodable compartment.

Dated: March 4, 1987.

J.W. Kime,

RADM, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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Part III

Environmental Protection Agency

40 CFR Parts 52 and 81

State Implementation Plans for Visibility Long-Term Strategies, Integral Vistas, and Implementation, Control Strategies; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AD-FRL-3157-3]

State Implementation Plans for Visibility Long-Term Strategies, Integral Vistas, and Implementation Control Strategies

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, EPA proposes to disapprove the State implementation plans (SIP's) of 32 States for failing to comply with the provisions in EPA's existing regulations for visibility protection in mandatory Class I Federal areas dealing with impairment which can be reasonably attributed to a source. The EPA proposes Federal plans to be incorporated into the SIP's of these States to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306. The EPA proposes to codify the integral vistas for the Roosevelt Campobello International Park (RCIP) into 40 CFR 81.437 and to revise its visibility new source review program for the State of Maine to provide for the protection of integral vistas in that State. This action is, in part, the result of a settlement agreement with the Environmental Defense Fund (EDF) and the National Parks and Conservation Association (NPCA). Today's proposal does not address the requirements in sections 51.302 and 51.306 relating to existing visibility impairment which has been certified by the Federal land managers (FLM's). The EPA will propose those provisions after it has an opportunity to develop additional monitoring information to determine the sources of the impairment.

DATES: Comments on the proposed regulations and proposed diapprovals must be received by the Central Docket Section no later than May 11, 1987. Any request for a public hearing on this action must be received in writing no later than April 13, 1987.

ADDRESSES: Comments should be submitted (in duplicate if possible) to Central Docket Section (LE-131A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: Docket Number A-85-26.

Docket: The EPA has established a docket for this rulemaking, Docket Number A-85-26, in accordance with section 307(d) of the Clean Air Act (Act), 42 U.S.C. 7607(d). Materials related to the development of this rulemaking have been placed in this docket. Materials related to the development of the visibility protection program (40 CFR 51.300 *et seq.*) have been placed in Docket A-79-40. Materials related to the development of the visibility new source review and visibility monitoring strategies have been placed in Docket A-84-32. All dockets are available for public inspection and copying between 8:00 a.m. and 4:00 p.m. Monday through Friday at EPA's Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

Public Hearing: Any request for a public hearing should be submitted in writing to Janet Metsa, Standards Implementation Branch (MD-15), Control Programs Development Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: Janet C. Metsa, telephone (919) 541-5540 or FTS 629-5540.

SUPPLEMENTARY INFORMATION:

Background

A. Regulatory Requirements and Litigation Challenges

Section 169A of the Act, 42 U.S.C. 7491, sets as a national goal "the prevention of any future and remedying of any existing impairment of visibility in any mandatory Class I Federal area which impairment results from manmade air pollution." Mandatory Class I Federal areas are certain national parks, wildernesses, and international parks as described in section 162(a) of the Act, 42 U.S.C. 7472(a). Section 169A requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. On November 30, 1979, EPA identified 156 of these areas where visibility is an important air quality related value (see 44 FR 69122). Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their SIP's to provide for visibility protection for these 156 areas.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 *et seq.* The visibility regulations require 36 States listed in section 51.300(b) to (1) develop a program to assess and remedy visibility impairment from new and existing sources, (2) develop a long-term (10 to 15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area and considered by the FLM's to be critical to the visitor's enjoyment of the Class I areas) in all aspects of visibility protection. The regulations required the States to submit revised SIP's satisfying those provisions to EPA by September 2, 1981 [see 45 FR 80091, codified at 40 CFR 51.302(a)(1)].

These regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment or "plume blight." The EPA deferred action on the regulation or widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3).

Numerous parties sought judicial review of the visibility regulations in the United States Court of Appeals for the District of Columbia Circuit. These cases were consolidated as *Mountain States Legal Foundation v. EPA*, Number 80-2454. The D.C. Circuit Court stayed the consolidated litigation in March 1981 pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with EPA. To date, EPA has not responded to the petitions. On December 8, 1986, the court administratively terminated the Mountain States' case subject to later reopening by any party.

In December 1982 environmental groups, including EDF and NPCA, filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 States that had failed to submit SIP's to EPA (*EDF v. Gorsuch*, Number C82-6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and the plaintiffs negotiated a settlement agreement for the remaining States which the Court approved by order on April 20, 1984. For more information on details of the provisions of the settlement, including a schedule of actions by EPA, see EPA's announcement of the agreement at 49 FR 20647 (May 16, 1984).

B. Settlement Agreement

The settlement agreement required EPA to promulgate Federal visibility

SIP's, henceforth called Federal implementation plans (FIP's), on a specified schedule for those States that have not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to propose and promulgate FIP's which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States on October 23, 1984, at 49 FR 42670. The EPA promulgated its monitoring strategy for 23 States and its NSR provisions for 21 States (see 50 FR 28544, 51 FR 5504, and 51 FR 22937). In separate notices, EPA approved the SIP's of the other States with respect to monitoring and NSR.

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIP's on a specified schedule to remedy any deficiencies.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined the SIP's of 32 States were deficient with respect to the remaining visibility provisions. The EPA received 18 comments on the notice of deficiency. The few which directly address the propriety of the deficiency notice are discussed in the appropriate sections below. The remaining significant comments more directly address the issues in today's proposal. The EPA will respond to these comments when it takes final action on this proposal.

The EPA and the plaintiffs negotiated revisions to the settlement agreement which extended the deadlines for proposing FIP's to remedy the deficiencies. The court approved these revisions by its order of September 9, 1986. A copy of the settlement agreement and revisions is available in Docket A–85–26 at the address given at the beginning of this notice.

Under the revised agreement, EPA must propose and promulgate FIP's to address the deficiences relating to the general plan requirements and long-term strategies and can defer proposing and promulgating FIP's to remedy deficiencies related to impairment which the FLM's have certified to EPA. The States can avoid Federal promulgation of the FIP's if they submit SIP's to address these requirements by August 31, 1987. The EPA will propose FIP's by August 31, 1988, to address deficiencies related to certified visibility impairment.

In today's action, EPA is proposing to disapprove the SIP's for the following 32 States for failing to meet the general plan and long-term strategy requirements of 40 CFR 51.302 and 51.306:

Alabama	Nevada
Arkansas	New Hampshire
Arizona	New Jersey
California	New Mexico
Colorado	North Carolina
Florida	North Dakota
Georgia	Oklahoma
Hawaii	South Carolina
Idaho	South Dakota
Kentucky	Tennessee
Louisiana	Texas
Maine	Utah
Michigan	Virginia
Minnesota	Virgin Islands
Missouri	West Virginia
Montana	Wyoming

The EPA is proposing to disapprove the State of Maine's SIP for failing to meet the integral vista provisions of 40 CFR 51.302 through 51.307. The following is a discussion of the requirements of the visibility regulations and the provisions which EPA is proposing to adopt for the deficient States.

Today's notice is intended to describe the requirements of the regulations and the Federal programs to be incorporated into the SIP's of the deficient States. Although States developing their own visibility SIP's may find the discussions helpful in understanding the regulations, the programs described here do not supersede the visibility requirements or previous guidance issued to States concerning their SIP's.

General Plan Requirements

A. Requirements

The visibility regulations provide general plan requirements for the visibility SIP's. Section 51.302 sets specific State (and EPA in lieu of States) and FLM coordination requirements which must occur when developing a SIP. The general plan requirements of § 51.302(c) require that the SIP's include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal,
2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources,
3. Provisions to protect integral vistas identified pursuant to § 51.304,
4. Provisions to address any existing impairment certified by the FLM, and
5. A long-term (10–15) year strategy for making reasonable progress toward the national goal.

The regulations set the following process for developing control strategies to remedy existing impairment. First, the State or the FLM identifies the Class I areas where visibility impairment exists. The regulations define visibility impairment as "any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions." The regulations require the States to address in the SIP any impairment which has been certified at least 6 months prior to SIP submittal.

Second, the State identifies the existing facilities which cause or contribute to the visibility impairment. The regulations require the State to adopt control strategies only to remedy impairment which have been reasonably attributed to a specific source or group of sources. Reasonably attributable is determined "by visual observation or other technique the State deems appropriate." Although the FLM's may provide the States with a list of sources suspected of causing any existing impairment in the certification, the regulations assign the responsibility of identifying sources to the State [see 45 FR 80086 col. 3 and § 51.302(c)(4)(i)].

Third, the State is required to perform a BART analysis for any existing stationary facility which has been identified as causing impairment in a mandatory Class I Federal area. The State determines BART on a case-by-case basis taking into account the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, the remaining useful life of the source, and the degree of improvement that can be anticipated to result from the use of the controls. The State must adopt emission limitations representing BART which must be installed as expeditiously as practical but no later than 5 years from SIP approval.

The State is not required to adopt emission limitations representing BART if, for example, retrofit controls do not exist or are not anticipated to result in improvements in visibility (see 45 FR 80087 col. 1). However, if a source has not been subject to BART because control technologies do not exist and if the Administrator determines that new technologies are available which would more effectively control that pollutant, the State must reanalyze for BART at that time [see § 51.302(c)(4)(v)].

Section 51.303 allows sources to apply for exemptions from BART if they can demonstrate that their emissions do not cause "significant" visibility impairment. Significant impairment is defined as "impairment which, in the judgment of the Administrator,

interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory Class I area." This determination is made on a case-by-case basis, and the concurrence of the State and the FLM must be obtained before an exemption is granted.

The regulations do not specify methods, other than visual observation, for characterizing visibility impairment. However, if a State is to adequately and timely address existing visibility impairment, a thorough characterization may be necessary. Initially, the certification of visibility impairment should include information regarding the type of impairment (i.e., coherent plume or layered haze) the location of both the observer and the observed impairment, the meteorological conditions when the impairment was observed, and the time(s) of day or year of occurrence. In some cases, this information, compared with the emission inventory near the Class I area, may be sufficient for the State to identify the source(s) of impairment. However, in other cases, the State may need to rely on other techniques, such as a characterization of the aerosols, simulation modeling of the plume(s) from the suspected source(s), or land or aerial based photography, to identify specific sources or the pollutant of concern. The EPA is aware that it, or States, may find that the impairment cannot be attributed to specific sources and therefore cannot be addressed under the existing visibility regulations.

A thorough characterization is important when a BART analysis is conducted. Because this analysis may include a balancing of the costs and effectiveness of controls against the expected benefits of remedying existing impairment, it requires that documentation be available on the frequency and severity of existing impairment episodes so that the anticipated improvements in visibility by be estimated. The State or EPA may find that the impairment is attributable to minor stationary sources or to emissions from prescription fires. In these cases, the need for a control strategy to remedy the impairment is assessed as part of the long-term strategy rather than BART.

B. Federal Remedies

1. EPA/FLM Coordinaton

The EPA began the FIP development process in April 1985 by formally requesting the FLM's to identify visibility impairment and integral vistas. The FLM's responded in late 1985 and early 1986. All materials relevant to the certification of impairment have been placed in Docket A–85–26. This material was used to determine the initial deficiencies in SPS's announced in the January 23, 1986, notice.

The Department of the Interior (DOI) stated in its certification of impairment that the results from the National Part Service (NPS) visibility monitoring program indicate that scenic views are affected by uniform haze at all NPS monitoring locations within the lower 48 States. Furthermore, the DOI identified nine Class I areas where impairment in the park may be traceable to specific sources. In some cases, the DOI listed sources which it believed could be causing or contributing to the impairment.

In addition, the Fish and Wildlife Service (FWS) and NPS provided EPA with copies of the surveys which were used in determining existing visibility impairment. These surveys generally supported the existence of visibility impairment based on the observation of the field staff over a number of years, but did not contain specific documentation of impairment episodes. The NPS provided a videotape documenting a visibility impairment episode which covered an area extending from Bryce Canyon National Park to the Grand Canyon on January 19 and 20, 1986. The NPS also provided slides of uniform haze in NPS-managed lands.

The DOI proposed a list of integral vistas in 43 Class I areas on January 15, 1981, at 46 FR 3646. Although DOI declined to promulgate a final list, in its certification of Class I impairments DOI had indicated five Class I areas where impairment was noted in a potential integral vista of the park rather than within the park boundaries. The NPS believes that in these cases the impairment may also exist within the park, but the NPS has not yet documented this to be the case. The NPS provided copies of the surveys used to determine impairment in vistas and slides of impairment taken from Mesa Verde National Park looking to Navajo Mountain outside of the park.

The Department of Agriculture, Forest Service (FS), initially identified 14 wildernesses where visibility impairment is suspected to exist and may be traceable to specific sources. The FS commented on March 18, 1986, that its initial response did not constitute a certification under § 51.302(c)(1). The FS informed EPA that it believed that it is premature to certify visibility impairment without more quantitative documentation. The FS declined to name any integral vistas.

The RCIP Commission stated that impairment exists within the park. Integral vistas for the park which extend into the State of Maine were declared in the **Federal Register** at 46 FR 22707 on April 20, 1981.

2. Assessment of Visibility Impairment.

The EPA reviewed the information provided by the DOI to determine if the impairment (1) appeared to occur in the Class I area, and (2) if the impairment was a type which may be traceable to specific sources. The EPA did not conduct a detailed review of the information provided by the FS because of its withdrawal of the certification. For five Class I areas—Bryce Canyon, Carlsbad Caverns, Isle Royale, Pinnacles, and Mesa Verde National Parks—the documentation is not sufficient to determine if the impairment is within the park boundaries. The EPA is aware that some of the States containing these Class I areas may wish to identify and protect integral vistas under their own authority and may wish to develop their own assessment of this information. They are, however, not required to do so, and thus EPA did not address the impairment in the potential integral vistas of these five areas in today's notice.

The EPA reviewed the slides provided by the NPS to illustrate uniform haze in NPS managed lands. For the most part, EPA could not determine that the impairment was reasonably attributable. Accordingly, since the regulations are not designed to address uniform or regional haze, the EPA is proposing that BART requirements or other control measures are unnecessary at this time in the FIP's for 28 States.

The EPA is aware that the FLM's may in the future provide additional information on this impairment which would allow EPA or a State to attribute it to a specific source. In such cases, the information would be reviewed under the procedures described above and addressed in the periodic review of the long-term strategy discussed below.

The information provided by DOI and RCIP Commission indicated that the following 10 Class I areas in 7 States are experiencing visibility impairment within the park boundaries which may be traceable to specific sources:

Tuxedni Wilderness—Alaska
Brigantine Wilderness—New Jersey
Cape Romain Wilderness—South Carolina
Moosehorn Wilderness—Maine
Roosevelt Campbello International Park—Maine
Voyageurs National Park—Minnesota
Grand Canyon National Park—Arizona
Canyonlands National Park—Utah

Petrified Forest National Park—Arizona
Saguaro Wilderness—Arizona

The EPA's Regional Offices surveyed the emission inventories near these areas. Copies of these surveys which discuss the location of existing sources near the Class I areas, the meteorology and other factors, have been placed in Docket A–85–26. The information for each of the Class I areas and EPA's proposed actions concerning the impairments are discussed below.

3. Discussion of Impairments

a. *Tuxedni Wilderness, AK.* The FWS survey noted the existence of a brownish-yellow layered haze. The field staff noted that the haze occurs in the wilderness area when the winds are from the northeast and believes that the source(s) are four refineries located north of the wilderness.

The State of Alaska has a fully approved visibility DIP. At the time the SIP was developed, and approved, the FLM had not certified the existence of visibility impairment and thus the SIP does not contain any BART provisions. However, the regulations require the State to address any future certifications of impairment in the periodic review of the long-term strategy (see discussion below). The EPA has sent a copy of the information provided by the DOI to the State of Alaska and requested that it be addressed in its first periodic review. Therefore, EPA did not conduct a detailed review of the emissions inventory near this Class I area.

b. *Brigantine Wilderness Area, NJ.* The FWS survey noted that visibility impairment has occurred on occasion. A yellowish plume has been seen when looking in the direction of a particular power plant at midday with southwesterly winds. However, this plume is not necessarily entering the refuge, and no record has been kept to document impairment episodes.

In addition, EPA received copies of the results of an air quality assessment of the impact of a proposed modification to the B. L. England Generating Station from the FLM and commenters on the SIP deficiency notice. The assessment indicates that the plume from the proposed modification may be detectable from Brigantine, but the impact on the entire field of view would be small and would occur infrequently. The assessment concluded that the modification would result in no significant differences from existing conditions. Commenters also noted that an FWS report to the State of New Jersey indicated that the impairment was typically seen in a vista associated with the Class I area rather than within the Class I area.

The EPA reviewed the emission inventory near Brigantine Wilderness. There are 85 sources of particulate matter (PM), 40 sources of sulfur dioxide (SO_2), and 27 sources of oxides of nitrogen (NO_x) in the vicinity of Brigantine Wilderness. In addition, there are several urban areas near the area. These include Atlantic City [20 kilometers (km) to the south], Winslow (40 km to the west-northwest), Burlington (70 km to the northwest), Philadelphia (80 km to the west-northwest), and Camden (75 km to the west-northwest). The prevailing winds are from the west or west-northwest in the winter months and southerly during the summer.

In EPA's judgment, although the impairment in Brigantine Wilderness may indeed be within the Class I area, there is not sufficient documentation to indicate that this is the case. In any event, due to the number of urban, major, and minor sources in the vicinity of Brigantine Wilderness, it is unlikely that any single source can be shown to cause impairment in the Class I area. As mentioned above, the visibility regulations were not intended to address impairments caused by urban plumes or regional haze. Therefore, EPA considers BART provisions or any other control requirements unnecessary in the FIP for the State of New Jersey at this time. The EPA is soliciting comment on this determination.

c. *Cape Romain Wilderness, SC.* The FWS survey for this area has noted a "uniform haze, which when it does occur, however, is difficult to tell which source is producing the problem. . . ." The survey listed several sources which the field staff believed may be contributing to the haze. No record has been kept to document the impairment episodes.

The State of South Carolina commented on the notice of deficiency that the FLM's information was outdated. The State contended that the sources listed by the FWS's survey had recently installed controls which brought the sources into attainment. The State contended that additional controls on these or other sources were unnecessary in the SIP for South Carolina at this time.

The EPA Regional Office staff reviewed the State's comments and emissions inventory near Cape Romain Wilderness. There are approximately 35 major sources of PM, SO_2, and NO_x within 100 km of the center of Cape Romain Wilderness. There are two urban areas within 50 km of the wilderness; Georgetown, South Carolina, which is 40 km to the north and Charleston, South Carolina, which is 40 km to the west southwest of the southern end. The most visited section of the wilderness is at the southern end of the wilderness. The prevailing winds are from the south-southwest and north-northwest, depending on the season.

In EPA's judgment, this impairment is most likely caused by the combination of the major, minor, and urban sources near Cape Romain Wilderness. For this reason, it is not likely that additional monitoring programs or modeling efforts will result in an attribution to any specific source. Since the visibility regulations were not intended to address this type of impairment, EPA is proposing that BART provisions or any other control strategy are not required in the FIP for South Carolina at this time. The EPA is soliciting comments on this determination.

d. *Moosehorn Wilderness and Roosevelt Campobello International Park, ME.* The Moosehorn Wilderness has a northern and southern section approximately 20 km apart. The RCIP is about 15 km east of the southern section. Some of the integral vistas of RCIP face toward the Moosehorn Wilderness.

The FWS survey noted the existence of elevated layered hazes of differing colors in Moosehorn wilderness. The FWS believes a pulp and paper mill may be responsible for the white haze and an asphalt plant for the black haze. The FWS has also noted that burning at local dumps may also be a problem. The RCIP Commission has also noted that local sources may be affecting visibility in the park and associated vistas. No record has been kept to document impairment episodes.

This part of Maine is sparsely populated. Only a few sources are within 100 km of the Class I areas. There are two sources within 5 km of the northern section of Moosehorn Wilderness as mentioned by the FWS. One source does not currently meet reasonably available control technology (RACT) but is now pursuing a permit for a new boiler. This may bring the control technology to RACT. The other source has installed control technology before 1980 which is estimated to be 99.9 percent efficient for PM. According to the State this source has intermittently been in noncompliance with State visible emission regulations.

Due to the rural nature of this section of Maine and the proximity of the sources to the Class I areas, the EPA believes that these sources may, in part, be causing visibility impairment in Moosehorn Wilderness and RCIP or its vistas. Although there is reason to

suspect these sources, EPA does not have adequate data to positively identify these sources or to complete a BART analysis. The EPA, in cooperation with the FLM, is planning to install photographic monitoring equipment in Moosehorn to develop a data base for regulatory decision making. The EPA is deferring a decision on the necessity for BART and other control measures in Maine's FIP at this time. The EPA intends to propose a decision no later than August 31, 1988, as allowed by the revised settlement agreement.

e. *Voyageurs National Park, MN.* The DOI identified elevated layered haze, ground-based layered haze, and uniform haze as types of visibility impairment in Voyageurs National Park. The NPS survey noted that the elevated layered haze occurs with westerly or northwesterly winds which is the predominant wind pattern. Ground-based hazes were believed to be produced locally by wood burning stoves primarily from private "in holders" and "leaseback" cabins within the park. Uniform haze occurs periodically when the winds are westerly. No record has been kept to document the frequency, duration, time of day or year of these episodes.

The emission inventory near this Class I area indicates that there are two major point sources about 30 km to the west of the western border of the Class I area. One of these sources is in neighboring Canada. Other smaller sources are also within 50 km of the Class I area.

The EPA believes that due to the proximity of the sources to the Class I area and the prevailing wind patterns, it is possible that the impairment may be attributable, at least in part, to these sources. However, neither EPA nor NPS have sufficient documentation which would support an attribution decision at this time. The EPA, in cooperation with the NPS, has installed photographic monitoring equipment in Voyageurs National Park in order to develop the type of information necessary to make this decision. In addition, the EPA needs information on the frequency and severity of the impairment episodes to determine whether to attribute the impairment to either of the facilities. The EPA is deferring a decision on the necessity of BART requirements and other control measures in the FIP for Minnesota at this time. The EPA intends to propose a decision no later than August 31, 1988, as allowed by the revised settlement agreement.

f. *Grand Canyon National Park, AZ and Canyonlands National Park, UT.* The DOI submitted photographic documentation of a visibility impairment episode which occurred on January 19, 1986. The impairment also was recorded in vistas associated with Bryce Canyon National Park. Due to the placement of the cameras, it is not clear whether the impairment is within the boundaries of Bryce Canyon National Park.

This type of impairment episode is believed to occur during winter inversion conditions which frequently occur. Although NPS has documented impairment in Grand Canyon, Canyonlands, and Bryce Canyon area for a number of years, it believes that only the winter episodes may be attributable to a specific source. Summertime impairment is believed to be caused by regional haze.

There are a number of major point sources and small urban sources near these Class I areas but EPA is not able to identify any specific source which is causing the impairment from the information provided by the NPS. The NPS and other interested parties are implementing a major research program in an attempt to better characterize and identify the sources of this impairment. The EPA is, therefore, deferring a decision on the necessity of BART and other control measures in the FIP's for Arizona and Utah in order to evaluate the results of this study. The EPA recognizes that this is a research program and may not provide definitive answers to its regulatory questions. Nevertheless, EPA believes that NPS should have the opportunity to complete this study before making any decision regarding the necessity for BART and other control measures in the FIP for Arizona. The EPA will propose a decision on the necessity for BART or other control requirements no later than August 31, 1988, as the provisions of the settlement agreement allow. The EPA is soliciting comments on this approach.

g. *Saguaro Wilderness and Petrified Forest National Park, AZ.* Saguaro National Monument consists of two sections; one is east of, and one is west of, the city of Tucson. The NPS survey noted the existence of an elevated haze seen both within the Class I area and within the vistas associated with the Class I area. Although no record has been kept to document this impairment, the survey note the occurrence of a uniform haze during stagnant meteorological conditions in the winter when looking toward the city of Tucson.

The NPS survey noted the occurence of a yellowish-brown layered haze in the Petrified Forest National Park. The NPS believes this may be attributable, at least in part, to emissions from power plants in the area. The field personnel have kept a record of impairment episodes.

The emission inventory for Arizona indicates the existence of two power plants within 50 km of Petrified Forest. There are a number of power plants and smelter operations within 100 km of Saguaro Wilderness. There are also several urban areas, including the City of Tucson, near these two Class I areas.

The EPA is deferring a decision on the necessity of BART requirements and other control measures for the State of Arizona because although the impairment in Petrified Forest may be attributable, at least in part, to emissions from sources near the park, additional information is necessary before decisions on the necessity for BART requirements or other control measures are made. The EPA in cooperation with the NPS is working to develop a monitoring program including the installation of a camera in Petrified Forest National Park to further document the impairment in Petrified Forest and Saguaro Wilderness. In addition, EPA and the NPS are evaluating the record associated with Petrified Forest.

4. Summary of Impairments

Several commenters on the notice of deficiency stated that EPA had incorrectly listed certain States as having reasonably attributable impairment. In today's action, EPA is proposing that BART requirements and other control measures are not necessary in the SIP's of 28 States including the SIP's mentioned by the commenters because visibility impairment in those States cannot be attributed to specific sources with the information currently available. The EPA is deferring a decision on the necessity of BART and other control measures in four States: Arizona, Maine, Minnesota, and Utah in order for EPA to gain better monitoring information regarding the sources of impairment in those States. The settlement agreement allows EPA to defer such actions until August 31, 1988. The EPA is soliciting comments on this assessment.

The revised settlement agreement requires the States to address in their SIP's all remaining visibility requirements by August 31, 1987, in order to avoid promulgation of a Federal plan. Therefore, each State must develop an assessment of visibility impairment in their Class I areas and determine if BART is necessary in their own SIP's. Since the regulations give the States discretion in methods for attributing impairment, the States may choose methods different from those described here. In addition, the State's long-term strategies may contain

schedules for making reasonable progress toward the natural goal including schedules for remedying existing impairments.

Long-Term Strategy

A. Requirements

The regulations require that the long-term strategy be a 10- to 15-year plan for making reasonable progress toward the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLM's have declared at least 6 months before plan submission. A long-term strategy must be developed which covers each Class I area within the State and each Class I area in another State that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLM's. (A single comprehensive plan is not precluded.) The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The long-term strategy and SIP must provide for the review of the impact of new sources as required by sections 51.307 and Subpart I.[1] The State must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs.
2. Additional emission limitations and schedules for compliance.
3. Measures to mitigate the impacts of construction activities.
4. Source retirement and replacement schedules.
5. Smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes, and
6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or *were not* addressed in developing the long-term strategy.

The State must commit to periodic review of the SIP on a schedule not less frequent than every 3 years. A periodic report must be developed in consultation with the FLM's and must contain the following:

1. Progress achieved in remedying existing impairment;
2. The ability of the long-term strategy to achieve reasonable progress toward the national goal;
3. Any change in visibility conditions since the last report or since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal;
5. The progress achieved in implementing BART and meeting other schedules laid out in the long-term strategy;
6. The impact of any exemption granted 51.303; and
7. The need for BART to remedy existing impairment in an integral vista declared since plan approval.

B. SIP Disapproval

The EPA is proposing to disapprove the SIP's of 32 States listed above for failing to meet the long-tem strategy requirements of section 51.306. The EPA is aware that many of these States are working to revise their SIP's. In accordance with the revised settlement agreement, in *EDF v. Thomas*, today's action will not be made final if States submit acceptable SIP's by August 31, 19897. The EPA will then review and take final action on the submittals according to its usual procedures, again as provided in the settlement agreement.

The EPA is proposing to disapprove the SIP's of the States of Arkansas and Oklahoma although they were not listed in the January 1986 notice of deficiency. Arkansas submitted visibility SIP revisions in final form on July 23, 1985, which incorporated visibility new source review, a monitoring strategy, and some elements of the long-term strategy. The EPA approved the Arkansas' visibility new source review and monitoring strategy on February 10, 1986, at 51 FR 4910. The EPA's review of Arkansas' SIP indicates deficiencies in the periodic review requirements of Arkansas' existing SIP and in its July 23, 1985, submittal. The EPA today proposes to disapprove the deficient portions of the Arkansas' SIP.

The State of Oklahoma submitted a visibility SIP in final form on July 12, 1985, which incorporates the visibility new source review, monitoring strategy, and long-term strategy requirements. On April 17, 1986, at 51 FR 13029, EPA proposes to disapprove the SIP for Oklahoma for failing to meet adequately the visibility new source review and monitoring strategy requirements. Subsequently, the State asked EPA to hold any other actions regarding that submittal to allow the State to submit additional materials to remedy deficiencies in the new source review and monitoring strategy. Today, EPA is proposing to disapprove the Oklahoma SIP for failing to meet the visibility long-term strategy requirements while recognizing that the State is preparing revisions to its SIP. These actions will not be made final if either of these States submits revisions to EPA by August 31, 1987.

The EPA is not proposing to disapprove the SIP's of the States of Oregon and Vermont although they were listed in the notice of deficiency. These two States have since submitted revisions designed to address the visibility regulations. The EPA proposed approval of Vermont's SIP on December 2, 1986, at 51 FR 43389, and is currently reviewing Oregon's submittal, again according to the provisions of the revised settlement agreement.

C. Federal Remedies

The existing visibility regulations are designed to address impairment which can be traced to specific sources and EPA is deferring action on such existing impairment. Therefore, the Federal long-term strategy which EPA is proposing today is limited to the prevention of future impairment and establishes a mechanism to address any additional impairment which may be certified in the future. Because many of the requirements in the long-term strategy are descriptive in nature, EPA believes that the following sections will meet these requirements for the deficient States. Although EPA intends for these discussions to be the Federal remedy, each of the States must develop their own long-term strategy when developing their visibility SIP's. The individual strategies may vary from the national approach and will be reviewed on their ability to meet the visibility requirements discussed above.

1. Ongoing Air Pollution Control Programs

The regulations require that each long-term strategy provide for the review of the potential impact on visibility of new major stationary sources or major modifications in accordance with § 51.307 and new Subpart I. The regulations further require that each SIP contain a discussion of the effect of on-going air pollution control programs on remedying existing and preventing future impairment of visibility.

The EPA has met this requirement by approving State new source review programs or promulgating Federal programs for all 36 States required to develop visibility SIP's. A listing of the status of State programs is available through Docket A–85–26. The EPA believes that these programs will be adequate to prevent future impairment

[1] The sections referring to new source review procedures, old § 51.18 and 51.24 were recodified on November 7, 1986 at 51 FR 40656.

in mandatory Class I Federal areas from new stationary sources or major modifications.

2. Smoke Management Practices

The FLM's have not specifically identified smoke from prescribed fires as a cause of impairment in the mandatory Class I areas. Nonetheless, EPA believes that this could be a significant cause of impairment in certain Class I areas. Many Federal, State, and private land managers use prescription fires on lands that are near or surround Class I areas where visibility is an important value. Although most States have administrative systems to control such activities, the potential for visibility impairment in Class I areas is not always considered before permission is granted for such burns.

The EPA believes that coordination between the agencies responsible for land management, the State air quality agencies, and the FLM's of Class I areas must occur to address this potential source of visibility impairment. Accordingly, EPA is establishing the framework for this coordination. The EPA has established working contacts which will assist in incorporating air quality and visibility considerations in the plans of the land managing agencies and land management concerns in air quality planning activities. This effort is being coordinated through the National Wildfire Coordinating Group (which contains State, local, Federal, and private representatives) and a working group between the FS, DOI, and EPA. In addition, EPA is working with the FS to develop better emission inventories and emission factors for use in air quality planning. The EPA/FS working group has not yet set goals and timeframes for these activities.

Although EPA is working at a national level to develop program to address smoke management, it solicits comment on the adequacy of existing State or local programs to address visibility impairment in the Class I areas caused by smoke from prescription burns. States which are developing their own visibility SIP's should review the adequacy of the smoke management plans in their States for their ability for making reasonable progress toward the national goal.

3. Future Certifications of Impairment

Under the revised settlement agreement, EPA must address existing deficiencies in SIP's. Thus, in this notice, EPA is only addressing the certifications of impairment in Class I areas made by the FLM's prior to June 1, 1986. The EPA is aware, however, that information may become available which indicates the existence of additional visibility impairment within the Class I areas or which may allow EPA or the States to attribute impairment to a specific source which could not be addressed at this time. The following is a discussion of how any future impairment will be addressed.

Under § 51.302(c)(1), the FLM's may certify the existence of visibility impairment at any time. Section 51.306(c)(4) requires the States to consider the need for periodic SIP revisions that may be necessary to assure reasonable progress toward the national visibility goal. Therefore, the State, or EPA in lieu of the State, may need to reassess the need for BART or other control measures to remedy impairment which has been certified after the initial SIP revision. This BART assessment would follow the same procedures as outlined in the General Plan Requirements section above and decisions regarding the need for BART requirements would be made in the periodic report required by § 51.306(c). Any emission limitation would be announced in a rulemaking action in the **Federal Register**. Any future certifications of impairment should be made directly to the State if the State has an approved visibility SIP and to EPA if the State has a federally promulgated program.

The initial certifications made by the FLM's consisted mostly of general knowledge of visibility conditions. Although the regulations do not prohibit a certification on this basis, it is difficult for the regulatory authority to proceed in a timely fashion on such general information. Therefore, as discussed above, EPA is requesting that the FLM's provide more specific documentation of visibility conditions when making future certifications under § 51.302(c)(1). This documentation should at least answer the following questions: what was observed, where was it observed, when did it occur, and what were the general weather conditions when it occurred. It would also be helpful if the documentation included technical characterization of the impairment or the results of any simulation modeling. This information can be used by the regulatory authority to compare to the emission inventory to determine if any nearby source could be causing the impairment.

4. Additional Discussions

Since the EPA deferring action on the requirements to address existing visibility impairment, discussions related to additional emission limitations, source retirement and replacement, construction activities, and enforceability of emission limitations are not required in the FIP's of the States at this time. The EPA will prepare appropriate discussions when EPA addresses the requirements pertaining to existing impairment.

5. Periodic Review

The EPA is proposing to create a new section in Part 52, § 52.29, which incorporates the periodic review requirements of the long-term strategy of § 51.302(c). The EPA is proposing to incorporate this new section into the SIP's of the deficient States. This new section commits the Administrator to review, and revise if necessary, the long-term strategy no less frequently than every 3 years. During this review, the Administrator will consider the results of any monitoring programs, consult with the FLM's, and will prepare a report which discusses the progress toward the national goal. The EPA solicits comments on this approach.

Integral Vistas

A. Requirements

An integral vista is defined as "a view perceived from within a mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area." Section 51.304 of the regulations gave the FLM's until December 31, 1985, to declare integral vistas for their Class I areas. The States may also identify and protect integral vistas on their own authority (45 FR 80095 col. 1). The States of Alaska and Washington have identified and protected integral vistas under their State-submitted and approved SIP's (see 48 FR 30623 and 51 FR 17208). Where the FLM has adopted an integral vista under § 51.304, the regulations require the State to (1) analyze for BART any facility where impairment in an integral vista has been reasonably attributed to that facility, (2) consider any integral vistas established 12 months prior to SIP submittal in its long-term strategy, and (3) coordinate with the FLM's on any permit application under the prevention of significant deterioration (PSD) program where the proposed facility or modification may affect visibility in an integral vista. This coordination consists of timely notification of the FLM when a permit application has been received or when a preapplication meeting will occur, consideration of the potential impact of the facility on visibility in an integral vista, and consideration of the FLM's recommendations on the effect of the proposed facility on visibility. Unlike

the PSD program where the permit application is denied when an adverse impact on visibility will result from the proposed facility, the regulations concerning integral vistas allow the States to balance economic factors and progress toward the national goal in decisions regarding the disposition of the permit application [see § 51.307(c)].

B. SIP Disapproval

As we mentioned earlier, only the RCIP Commission identified any integral vistas. These vistas extend over land in Maine; therefore, EPA is proposing to disapprove only the State of Maine's SIP for failing to provide for the protection of integral vistas.

C. Federal Remedies

The EPA promulgated a Federal visibility new source review program (§ 52.27) for Maine on July 12, 1985, at 50 FR 28544. Under this program, EPA would only take authority to issue a permit to construct where the State fails to follow the procedures in §§ 51.307 and 52.27.

In today's action, EPA is proposing to codify the integral vistas into § 81.437 listing for RCIP. The EPA is also proposing to amend § 52.27 to provide for the review of new sources or major modifications affecting visibility in an integral vista. Accordingly, EPA is proposing to incorporate § 52.27 into the SIP for Maine.

This amended section will ensure that the proper coordination procedures are followed for a permit which affects visibility within Class I areas in Maine or within the integral vistas for RCIP. If a proposed source or modification will cause an adverse impact on visibility in a Class I area, the State must deny the permit in accordance with the PSD provisions of section 165 of the Act. However, the State is allowed to balance progress toward the national goal in decisions regarding permits affecting integral vistas (See 45 FR 80088 col. 2 and 45 FR 80095 col. 3). The EPA believes such decisions are best made by the State and does not believe that any other regulatory changes are necessary to provide for the consideration of integral vistas in Maine's SIP. The State of Maine is aware that it must provide for the coordination with the FLM on any permit affecting the Class I areas and integral vistas in Maine and has committed to such notification.

The EPA has also considered the integral vistas for RCIP in its long-term strategy. The EPA is deferring action on provisions that relate to existing visibility impairment for the State of Maine as discussed earlier in this notice. The EPA will address the integral vista requirements relating to existing visibility impairment when EPA gains better monitoring information regarding existing impairment in the Class I areas and integral vistas in Maine and addresses the impairment provisions for Maine. The EPA is soliciting comments on this mechanism.

Solicitation of Comments

The EPA solicits comments on the proposed rules. In particular, the public is invited to comment on the SIP disapprovals, the proposed long-term strategy, and the revised §§ 52.27 and 52.29.

The EPA has established a docket for this rulemaking, Docket Number A–85–26. The docket is an organized and complete file of all significant information submitted to or otherwise considered by EPA during this proceeding. This docket will serve as the record in the case of judicial review under section 307(b) of the Act, 42 U.S.C. 7607(b).

Because EPA held public hearings on the visibility requirements in 1980, and because these proposed programs are procedural in nature, EPA has not scheduled public hearings on today's action. If an individual wishes to present oral testimony in addition to written comments, a request for a public hearing should be made in writing to Janet Metsa by April 13, 1987. If EPA receives such a request, it will publish a notice in the **Federal Register** announcing the time and place of the hearing.

Classification

The Administrator certifies pursuant to the provisions of 5 U.S.C. 605(b) that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The proposed rules do not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.*

The proposed rules implement part of Subpart P (40 CFR 51.300 through 51.307) which was promulgated on December 2, 1980. An economic impact assessment was made for promulgation of Subpart P and can be found in Docket Number A–79–40.

The proposed rules have been submitted to the Office of Management and Budget for review under Executive Order 12291. Any comments from that office on the proposal and any EPA responses have been placed in the Docket Number A–85–26. These proposed rules are not major within the meaning of Executive Order 12291.

List of Subjects in 40 CFR Part 52

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

Dated: February 28, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

It is proposed to amend Part 52, Chapter 1 of Title 40, Code of Federal Regulations as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.29 is added to read as follows:

§ 52.29 Visibility long-term strategies.

(a) *Plan Disapprovals.* The provisions of this section are applicable to any State implementation plan which has been disapproved for not meeting the requirements of 40 CFR 51.306, regarding the development, periodic review, and revisions of visibility long-term strategies. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated into the applicable implementation plan for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For the purposes of this section, all terms shall have the meaning as ascribed to them in Clean Air Act, or in the protection of visibility program (40 CFR 51.301), as in effect on [date of publication of the final rule].

(c) *Long-Term Strategy.* (1) A long-term strategy is a 10 to 15-year plan for making reasonable progress toward the national goal specified in § 51.300(a). This strategy will cover any existing impairment certified by the Federal land manager and any integral vista which has been adopted according to § 51.304.

(2) The Administrator shall review, and revise if appropriate, the long-term strategies developed for each visibility protection area. The review and revisions will be completed no less frequently than every 3 years from (date of adoption of long-term strategy).

(3) During the long-term strategy review process, the Administrator shall consult with the Federal land managers responsible for the appropriate mandatory Class I Federal areas, and will coordinate long-term strategy development for an area with existing

plans and goals, including those provided by the Federal land managers.

(4) The Administrator shall prepare a report on any progress made toward the national visibility goal since the last long-term strategy revisions. A report will be made available to the public not less frequently than 3 years, [from the adoption of the long-term strategy]. This report must include an assessment of:

(i) The progress achieved in remedying existing impairment of visibility in any mandatory Class I Federal areas;

(ii) The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I Federal area;

(iii) Any change in visibility since the last such report, or in the case of the first report, since plan approval;

(iv) Additional measures, includng the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;

(v) The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy;

(vi) The impact of any exemption granted under § 51.303;

(vii) The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report or, in the case of the first report, since plan approval.

(d) *Delegation of Authority.* The Administrator may delegate with respect to a particular visibility protection area any of his functions under this section to any State or local air pollution control agency of any State whose boundaries encompass that area.

3. In § 52.27 paragraph (d)(2) is revised and paragraphs (d)(3), (4), and (5) are added to read as follows:

§ 52.27 Protection of visibility from sources in attainment areas.

* * * * *

(d) * * *

(2) The reviewing authority must consider any analysis performed by the Federal land managers, provided within 30 days of the notification required by paragraph (d)(1) of this section, that shows that such proposed new major stationary source or major modification may have:

(i) An adverse impact on visibility in any Federal Class I area, or

(ii) An impact on visibility in an integral vista codified in Part 81 of this title.

(3) Where the reviewing authority finds that such an analysis does not demonstrate to the satisfaction of the reviewing authority that the effect in Paragraph (d)(2)(i) of (ii) will occur, either an explanation of its decision or notification as to where the explanation can be obtained must be included in the notice of public hearing.

(4) Where the reviewing authority finds that an adverse impact on visibility will result in any mandatory Class I Federal area, the permit shall not be issued.

(5) Where the reviewing authority finds that an impact on visibility in an integral vista will result, the reviewing authority will issue permits to those applicants whose emissions will be consistent with the national goal of preventing any future and remedying any existing impairment of visibility. In making this decision, the reviewing authority may take into account the costs of compliance, the time necessary for compliance, the energy nonair quality environmental impacts of compliance, and the useful life of the source.

* * * * *

§§ 52.145, 52.281, 52.344, 52.543, 52.633, 52.690, 52.936, 52.1031, 52.1183, 52.1236, 52.1488, 52. 1531, 52.1606, 52.1636, 52.1831, 52. 1933, 52.2133, 52.2179, 52.2234, 52.2304, 52.2383, 52.2452, 52.2533, 52.2632 [Amended]

4. Sections 52.145(AZ), 52.281(CA), 52.344(CO), 52.543(FL), 52.633(HW), 52.690(ID), 52.936(KY), 52.1031(ME), 52.1183(MI), 52.1236(MN), 52.1488(NV), 52.1531(NH), 52.1606(NJ), 52.1636(NM), 52.1831(ND), 52.1933(OK), 52.2133(SC), 52.2179(SD), 52.2234(TN), 52.2304(TX), 52.2383(VA), 52.2452(VI), 52.2533(WV), 52.2632(WY) are revised by adding paragraph (c) to read as follows:

§ 52.____ Visibility protection.

* * * * *

(c) Long-term strategy. The provision of § 52.29 are hereby incorporated and made part of the applicable plan for the State of ____.

§§ 52.61, 52.183, 52.583, 52.989, 52.1339, 52.1386, 52.1782, 52.2247 [Amended]

5. Sections 52.61(AL), 52.183(AR), 52.583(GA), 52.989(LA), 52.1339(MO), 52.1386(MT), 52.1782(NC), 52.2247(UT) are added to read as follows:

§ 52.____ Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures for protection of visibility in mandatory Class I Federal areas.

(b) *Long-term strategy.* The provisions of § 52.29 are hereby incorporated into the applicable plan for ____.

PART 81—[AMENDED]

It is proposed to amend Part 81, Chapter 1 of Title 40, Code of Federal Regulations as follows:

1. The authority for Part 81 continues to read as follows:

Authority: Secs. 101(b)(1), 110, 169(a)(2), and 301(a), Clean Air Act as amended (42 U.S.C. 7401(b), 7410, 7491(a)(2), 7601(a)).

2. Section 81.437 is revised to read as follows:

§ 81.437 New Brunswick, Canada.

TABLE 1

Area name	Acreage	Public law establishing	Federal land manager
Roosevelt Campobello International Park	2,721	88-363	(1)

[1] Not applicable.

TABLE 2—INTEGRAL VISTAS ASSOCIATED WITH MANDATORY CLASS I AREAS

Park	Observation point	View angle	Key features	Also viewed from
Roosevelt Campobello International Park.	Roosevelt Cottage and Beach Area	244°–56°	Estes Head	Portions from Friar's Head.
			Finar's Head	
			Eastport	
			North Lubec	
			Cobscook Bay	
			Shackford Head	
			St. Andrews	
			Friar's Head	
			Treat's Island	
			Passamaquoddy Bay	
			Deer Island	
			Indian Island	
			Rouen Island	
			Cherry Island	
			Thrumcap Island	
			Owen House	
			Welshpool	
	Friar's Head	154°–94°	Roosevelt Cottage	
			Campobello Island	
			Weis	
			Friar's Bay	
			Welshpool	
			North Road	
			Head Harbour Passage	
			Casco Island	
			Green Island	
			Pope Island	
			Thrumcap Island	
			Cherry Island	
			Rouen Island	
			Indian Island	
			Deer Island	
			Passamaquoddy Bay	
			Old Sow Whirlpool	
			St. Andrews	Portions Viewed From Roosevelt Cottage and Beach Area.
			Eastport	
			Friar Roads	
			Estes Head	
			Perry	
			Shackford Head	
			Pembroke	
			Cobscook Bay	
			Treat's Island	
			Major's Island	
			North Lubec	
			Passamaquoddy Dam, portion of.	
			Roger's Island	
			Dudley Island	
			Johnson's Bay	
			Pope's Folly	
			Cutler Naval Radio Station	
			Lubec	
			Mulholland Point Lighthouse	
			FDR Memorial Bridge	
			South Lubec	
			Grand Manan Island	

TABLE 2—INTEGRAL VISTAS ASSOCIATED WITH MANDATORY CLASS I AREAS—Continued

Park	Observation point	View angle	Key features	Also viewed from
	Con Robinson's Point	308°—150°	Herring Cove Beach Provincial Park Eastern Head Herring Cove Mainland New Brunswick Point La Preau Wolf Islands Atlantic Ocean	Portions Viewed From Con Robinson's Point
	Liberty Point	34°—236°	Ragged Point Mainland New Brunswick Atlantic Ocean Wolf Islands Grand Manan Island Sail Rock West Quoddy Head Lighthouse. South Lubec	Portions Viewed From Con Robinson's Point

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federal register

Thursday
March 12, 1987

Part IV

Administrative Conference of the United States

1 CFR Ch. III

Federal User Fees; Notice of Public Hearing; Request for Comments

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Federal User Fees

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Administrative Conference has under consideration draft reports on the establishment and implementation of user fees by the federal government. Marshall J. Breger, Chairman of the Administrative Conference, and Betty Jo Christian, Chairman of the Administrative Conference's Committee on Regulation, will chair a public hearing on Thursday, April 2, 1987, to hear the views of interested persons on a draft recommendation that has been tentatively adopted by the committee and on other user fee issues. Interested persons also are invited to submit written comments on the draft recommendation and those issues.

DATES: The public hearing will be held on April 2, 1987 at 1:30 p.m. Written comments must be received on or before April 14, 1987.

ADDRESSES: The public hearing will be held in Washington, DC (site to be determined).

Written comments should be sent to Michael W. Bowers, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037; telephone: 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference began its study of federal user fees last year with the cooperation of the Office of Management and Budget and the support of eight federal agencies. The Conference's study covers programs established under the Government's general user fee statute, 31 U.S.C. 9701, as well as programs established under other authority whereby fees are collected from persons who specially benefit from the provision of government goods or services. The study does not focus on fee levels for particular programs, but rather on general principles that should apply in establishing and implementing such programs.

The Administrative Conference has received a draft report from Professor Clayton P. Gillette, Boston University School of Law, and Thomas D. Hopkins, Consulting Economist, which analyzes user fee issues. In addition, the Conference has received a draft survey of existing user fee programs from Eastern Research Group, Inc., an Arlington, Massachusetts research firm retained by the Conference. Copies of the draft reports may be obtained from contact person given in this notice.

Committee Draft Recommendation

The Conference's Committee on Regulation met on February 27, 1987 to consider the draft reports and recommendations based on them. The Committee tentatively adopted the following draft recommendation and now seeks comments on it and other issues listed below.

Public Hearing

A number of public officials and other persons with an interest in the subject have been invited to present their views on the draft recommendation and other issues at the April 2 public hearing. Other persons wishing to testify should apply to the Conference (through the contact person) outlining their proposed testimony, relevant experience, or other interest. Brief initial statements of views will be followed by opportunities for questioning by the chairpersons and Conference members in attendance and, time permitting, for witnesses to exchange views and reactions.

Committee on Regulation—Draft Recommendation on User Fees

There is widespread interest in Congress and the Executive Branch in instituting user fees[1] in certain government programs. Although a general user fee statute (Title V of the Independent Offices Apropriations Act) dates back to 1952, recent studies (including a report of the President's Private Sector Survey on Cost Control) have urged expanded application of such fees. The Administrative Conference, with the support of the Office of Management and Budget and eight Federal agencies,[2] has undertaken a broad look at the implementation of the user fee concept.

In this draft recommendation, the Committee on Regulation provides guidance on how user fees should be established and implemented, taking into account principles of economic efficiency, fairness, and the need to fulfill program goals. The Committee recognizes that the decision whether to institute a user fee for a particular service or goods will normally be a policy decision, for Congress and the Executive Branch to determine.

Draft Recommendation

A. Basic Considerations for Establishing Fees

1. *Costs of providing service.* When Congress or an agency establishes a user fee for a service or goods provided by an agency, the fee should (subject to the considerations in 2) cover the agency's service costs, including all related processing costs and that portion of agency overhead clearly attributable to the service or goods provided.

2. *Considerations other than cost of service in setting fees*—a. *Grants of exclusive use.* A higher fee may be warranted where exclusive use is being granted (*e.g.*, aircraft landing rights or grazing rights); in this situation, the fee should take into account the market value of the service.

b. *Fairness or program considerations.* In addition to economic efficiency, other criteria—such as program goals and fairness—may influence the establishment of fees, the costs that are included in fees, or the granting of waivers or reduction in fees. In such cases, the agency should provide a statement of its reasons for departing from efficiency principles.

c. *Previously-incurred expenditures.* Previously-incurred capital and other costs (*e.g.*, dam construction) normally should not be included in user fees. However, fees may be set at a level that covers anticipated capital replacement or repair costs related to provision of the service.

3. *Consideration of benefit in establishing fees.* A government service for which a user fee is charged will normally directly benefit fee payers; it also may benefit the customers, employees or owners of fee payers, and otherwise uninvolved third parties or the general public.

a. *Benefit to the fee payer.* In the provision of certain regulatory services (*e.g.*, inspections or environmental impact statement preparation), fee payers sometimes object that they receive no benefit from the

[1] The Committee recognizes the difficulty of precisely defining the term "user fee." As used in this Recommendation, the term means a price charged to identifiable individuals or firms by a government agency for a service or goods whose availability it controls.

[2] Agencies providing support for the study are the Customs Service, Environmental Protection Agency, Federal Communications Commission, Federal Energy Regulatory Commission, Nuclear Regulatory Commission, Small Business Administration, and the Departments of Interior and Transportation.

government's action or that they do not voluntarily utilize the service for which they have been charged. This objection should normally not be grounds for completely avoiding a user fee, so long as such regulatory requirements lessen the fee payers' imposition of costs or risks on others or on society as a whole, and the fee payers are granted the benefit of continued pursuit of the commercial or other activity.

b. *Benefits to owners, customers, or employees of fee payers.* The fee level may be set without regard to the distribution of benefits among the customers, employees and owners of the fee payers. However, selection of the point of collection should take into account the costs of administration.

c. *Benefits to the general public or third parties.* Where the general public or third parties benefit significantly from a governmental service, user fees should not be expected to recover fully the cost of providing that service. The proportion of service costs to be recovered by user fees (as opposed to alternative financing mechanisms such as taxation, borrowing or asset sales) should be determined taking into account (i) the practicability of allocating costs between fee payers and others, (ii) potential adverse effects on agency program goals caused by fees that are unduly high with respect to fee payers, and (iii) the relative advantages and disadvantages of alternative financing mechanisms.

B. Disposition of Fee Receipts

The Conference takes no position on whether fee receipts should be deposited in the Treasury general fund or earmarked to a specific program fund. In either event, Congress should provide agencies that administer programs that collect fees with appropriations sufficient to provide adequate service to the fee payers.

C. Implementation of Principles

Congress in enacting user fee legislation, and the Office of Management and Budget in providing implementation guidance and other information on user fees to agencies, should incorporate the principles set out in Part A. Agencies should review their statutory user fee authorities, to determine whether changes are necessary to implement these principles.

In addition to seeking comments on the above Recommendation, the Committee on Regulation invites interested persons to address the following issues.

1. *Statutory Impediments.* Are changes needed to the general user charge statute, 31 U.S.C. 9701, or OMB Circular A–25 to enable agencies to administer user fees effectively and in accordance with the principles set forth in this Recommendation?

2. *Administration of Fee Programs.* Are there problems or issues related to the administration of user fee programs that the Conference should address (*e.g.*, are the procedures currently employed by agencies to establish and revise fees fair and efficient)?

3. *Disposition of Fee Receipts.* Should the Conference take a position with respect to disposition of fee receipts? If so, do approaches exist that will provide for both political accountability and a link between user fees and service provision?

March 10, 1987.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87–5500 Filed 3–11–87; 9:14 am]

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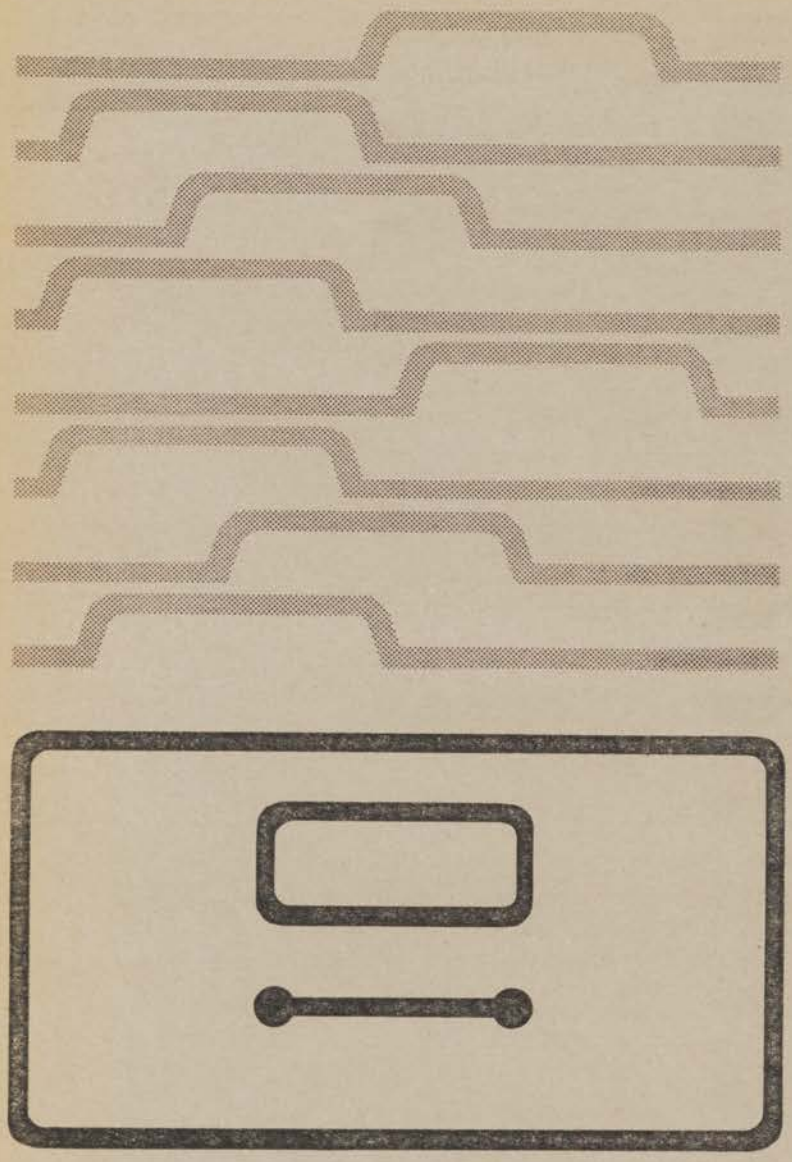
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