AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3-9-88
Vol. 53 No. 46
Pages 7489-7722

federal register

Wednesday
March 9, 1988

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Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617-565-8123

Contents

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

Agricultural Marketing Service
RULES
Lemons grown in Arizona and California, 7490
PROPOSED RULES
Nuts, mixed, in shells; grade standards, 7531
Pickles; grade standards, 7532
NOTICES
Meetings:
Cotton Marketing Advisory Committee, 7545

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food Safety and Inspection Service; Forest Service
NOTICES
Agency information collection activities under OMB review, 7545

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exports:
Work at border ports, sea ports, and airports, 7489
Work at laboratories, border ports, ocean ports, and airports, 7492

Arms Control and Disarmament Agency
NOTICES
Meetings:
General Advisory Committee, 7547

Army Department
See Engineers Corps

Centers for Disease Control
NOTICES
Meetings:
Vital and Health Statistics National Committee; correction, 7575
(2 documents)

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Ohio, 7547

Commerce Department
See Export Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings, 7555

Defense Department
See Engineers Corps; Navy Department

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Entrade Energy Corp., 7560

Education Department
NOTICES
Grants; availability, etc.:
Endowment challenge grant program, 7557
Rehabilitation long-term training program; correction, 7630

Energy Department
See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Environmental statements; availability, etc.:
Savannah River Plant, Aiken, SC, 7557

Energy Research Office
NOTICES
Meetings:
Basic Energy Sciences Advisory Committee, 7560

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Gills Creek, Richland County, SC; flood control project, 7555
Patent licenses, exclusive:
Cor-A-Vent, Inc., 7556

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Continuous emission rate monitoring systems specifications and test procedures, 7514
Hazardous waste:
Boilers and industrial furnaces; burning of hazardous, 7516
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Emission certification procedures, 7676
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Definitions and interpretations, etc.—
Onions and green onions, 7540
Fluazifop-butyl, 7543
Permethrin, 7539
Ultramarine blue, 7541
Water pollution control:
National pollutant discharge elimination system—State sewage sludge management program, 7642
NOTICES
Pesticide, food, and feed additive petitions:
Hoechst Celanese Corp. et al., 7569
Pesticide programs:
Endangered species protection program, 7716
Pesticides; emergency exemptions, etc.:
Avermectin B1, 7568
Pesticides; emergency exemptions:
Tricyclazole, 7570
Pesticides; experimental use permits, etc.:
E.I. duPont deNemours & Co., Inc., et al., 7571

Superfund program:
Computerized public data base containing toxic chemical release inventory; meeting, 7567

Executive Office of the President
See Presidential Commission on the Human Immunodeficiency Virus Epidemic

Export Administration
NOTICES
Export privileges, actions affecting:
Buccolier, Andre A., 7547
Buel Electronic Connectors, Inc., 7549

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 7629

Farmers Home Administration
RULES
Program regulations:
Rural housing—
Section 515 rental loan policies, procedures and authorizations, 7491
PROPOSED RULES
Program regulations:
Construction and repair—
Planning and performing construction and other developments, 7532

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Ceiling prices—
Old gas pricing structure; correction, 7503
Purchased gas adjustment; revisions, 7495
NOTICES
Electric rate and corporate regulation filings:
Public Service Co. of New Mexico et al., 7561
Environmental statements; availability, etc.:
D.J. Pitman International Corp. et al., 7562
Natural gas certificate filings:
Energy Development Corp. et al., 7564
Natural Gas Policy Act:
OCS leases; blanket determinations, 7562, 7564 (2 documents)
Small power production and cogeneration facilities; qualifying status:
Riverhead Cogeneration Corp. et al., 7565
Applications, hearings, determinations, etc.:
Delta Canal Co. et al., 7566 (2 documents)
Equitable Gas Co., 7566
Equitrans, Inc., 7567
North Penn Gas Co., 7567

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Wake County, NC, 7626

Federal Maritime Commission
RULES
Marine carriers and related activities in foreign commerce:
Conference service contract authority, 7520
NOTICES
Agreements filed, etc., 7572 (2 documents)
Complaints filed:
Delhi Petroleum Pty. Ltd. et al., 7572

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
National Railroad Passenger Corp. (Amtrak), 7627

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 7573
Applications, hearings, determinations, etc.:
Cahoone, Michael W., et al., 7573
Columbia Bancorp; correction, 7573
Farmers National Bancorp et al., 7573
Guaranty Bancshares Corp., 7574
Royal Bank of Canada, 7574

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 7702
NOTICES
Endangered and threatened species permit applications, 7579

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Levamisole, 7504
NOTICES
Medical devices:
Radiologic devices—
Magnetic resonance diagnostic device; reclassification petitions, recommendation and report, 7575

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Glucono delta-lactone as acidifier in meat and poultry products, 7493

Forest Service
NOTICES
Environmental statements; availability, etc.:
George Washington National Forest, VA, 7545

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 7560

Human Immunodeficiency Virus Epidemic Presidential Commission
See Presidential Commission on the Human Immunodeficiency Virus Epidemic

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service

Internal Revenue Service
RULES
Income taxes:
Real estate mortgage investment conduit and other administrative matters; election to be taxed, 7504
NOTICES
Advisory committees; report on closed meetings; availability:
Art Advisory Panel, 7628

International Trade Administration
See Export Administration

International Trade Commission
NOTICES
Import investigations:
3.5 inch microdisks and media from Japan, 7581
Programmable digital clock thermostats, 7581
Toggle clamps for clamping fixtures, processing, and original equipment manufacturing, 7582

Justice Department
NOTICES
Pollution control; consent judgments:
Air Products & Chemicals et al., 7582

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
Oregon, 7520
NOTICES
Survey plat filings:
Colorado, 7579

Mine Safety and Health Administration
NOTICES
Meetings:
Diesel-Powered Equipment in Underground Coal Mines Standards and Regulations Advisory Committee, 7583

National Bureau of Standards
NOTICES
Meetings:
OSI Implementors workshop, 7553

National Communications System
NOTICES
Meetings:
Federal Telecommunication Standards Committee, 7583

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

National Oceanic and Atmospheric Administration
RULES
Pacific Halibut Commission, International:
Pacific halibut fisheries, 7528
NOTICES
Fishery conservation and management:
Operational guidelines, 7554
Meetings:
Pacific Fishery Management Council, 7554
South Atlantic Fishery Management Council, 7554
Proprietary research program, implementation, 7555

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Allegheny Portage Railroad National Historic Site, PA, 7580
Environmental statements; availability, etc.:
Potomac Greens development, George Washington Memorial Parkway, VA, 7580
Meetings:
Gates of the Arctic National Park Subsistence Resource Commission, 7580

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 7629

Navy Department
NOTICES
Environmental statements; availability, etc.:
Naval Supply Center, Oakland, CA; commercial and maritime industrial development, 7556

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities, domestic licensing, etc.:
Nuclear power plant access authorization program; policy statement, 7534
Regulatory agenda
Quarterly report, 7534
NOTICES
Operating licenses, amendments; no significant hazards considerations:
Biweekly notices, 7583
Petitions; Director's decisions:
Cleveland Electric Illuminating Co. et al., 7615

Pennsylvania Avenue Development Corporation
NOTICES
Meetings; correction, 7630

Presidential Commission on the Human Immunodeficiency Virus Epidemic
NOTICES
Meetings, 7616

Public Health Service
See Centers for Disease Control; Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 7616
Philadelphia Stock Exchange, Inc., 7617
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 7616

Small Business Administration
NOTICES
Secondary participation guaranty and certification agreement (SBA Form 1086), 7618

State Department
NOTICES
Agency information collection activities under OMB review, 7626
Meetings:
Shipping Coordinating Committee, 7626

Transportation Department
See Federal Highway Administration; Federal Railroad Administration

Treasury Department
See also Internal Revenue Service
NOTICES
Agency information colloection activities under OMB review, 7628

Separate Parts In This Issue

Part II
Environmental Protection Agency, 7642

Part III
Environmental Protection Agency, 7676

Part IV
Department of the Interior, Fish and Wildlife Service, 7702

Part V
Environmental Protection Agency, 7716

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
354 7489
910 7490
1944 7491
1965 7491
Proposed Rules:
51 7531
52 7532
1924 7532

9 CFR
97 7492
317 7493
318 7493
381 7493

10 CFR
Proposed Rules:
Ch. 1 7534
50 7534
73 7534

18 CFR
154 7495
157 7503

21 CFR
524 7504

26 CFR
1 7504
602 7504

40 CFR
60 7514
266 7516
Proposed Rules:
86 7676
122 7642
123 7642
124 7642
180 (4 documents) 7639–7543
501 7642

43 CFR
Public Land Orders:
6666 7520

46 CFR
572 7520

50 CFR
301 7528
Proposed Rules:
20 7702

Rules and Regulations

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

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

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 88-011]

Overtime Work at Border Ports, Sea Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that establish charges for overtime work performed by Plant Protection and Quarantine inspectors of the U.S. Department of Agriculture at border ports, sea ports, and airports. The regulations are amended by: (1) Increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service; and (2) increasing the hourly rates charged a person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday or at any other time outside the employee's regular tour of duty. These increases reflect salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and Executive Order 12622 dated December 31, 1987.

EFFECTIVE DATE: March 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Director, National Administrative Planning and Operations Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act and Effective Date

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have 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 have a signficant 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.

We are amending the regulations by increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at any airport outside of the regularly established hours of service. The rates are increased by $0.56 per hour for services performed outside the regularly established hours on a Sunday and by $0.40 per hour for services performed outside of the regularly established hours on a holiday or any other period.

We are also amending the regulations by increasing the hourly rates charged a person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday or at any other time outside the regular tour of duty of the employee. The rates are increased by $0.64 per hour for services performed outside the regular tour of duty on a Sunday and by $0.48 per hour for services performed outside the regular tour of duty on a holiday or any other period.

Services of an employee of Plant Protection and Quarantine at an airport during regularly established hours and during a regular tour of duty are still provided free of charge to those requesting the service. Based on information compiled by the Department, we have estimated that Plant Protection and Quarantine provided an average of 9,467 hours per week of services for which charges were assessed during 1987, and these services were requested by thousands of entities. We do not expect that the number of hours of service for which charges will be imposed will increase significantly in 1988.

Under these circumstances, the Acting 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.

The hourly rate for services of an employee of Plant Protection and Quarantine depend entirely upon facts within the knowledge of the Department of Agriculture. The Department has no alternatives to raising the rates. By law, importers and exporters are required to reimburse the Department for its costs associated with services rendered. A cost analysis was performed to determine if fees for overtime are adequate to recover the cost of providing the services. Unless the rates are raised, the Department will not be able to recover the costs for providing services outside regularly established hours or outside regular tours of duty hours.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable, unnecessary, and contrary to the public interest; we also find good cause that this rule be made effective less than 30 days after publication of this document in the **Federal Register.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Papework Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.1(a)(1) is revised to read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and Subchapter D of Chapter I, Title 9 CFR, who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during the overtime or Sunday or holiday period, and shall pay the Government therefore at a rate of $33.28 per work-hour per employee on a Sunday and at the rate of $24.96 per work-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspection services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service on a Sunday will be $28.64 and for work performed outside of the regularly established hours of service for a holiday or any other period will be $21.48 per hour, which charges exclude administrative overhead costs.

* * * * *

Done at Washington, DC, this 4th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-5189 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 602, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to market during the period February 28, through March 5, 1988, from 335,000 cartons to 360,000 cartons. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulations 602, Amendment 1 (§ 910.902) is effective for the period February 28 through March 5, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

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

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

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

This regulation is issued under Marketing Order No. 910, as amended [7 CFR 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee conducted a telephone poll on February 26, 1988, and, upon considering the current and prospective conditions of supply and demand, voted 10-3 to recommend that the quantity of lemons deemed advisable to be handled during the specified week be increased from 335,000 cartons to 360,000 cartons. The committee reports that the market for lemons has improved beyond what was anticipated by the Board on February 23, 1988, when the 335,000 cartons recommendation was made.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponding the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.902 is revised to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.902 Lemon Regulation 602, Amendment 1.

The quantity of lemons grown in California and Arizona which may be handled during the period February 28, 1988, through March 5, 1988, is estalished at 360,000 cartons.

Dated: March 4, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–5124 Filed 3–8–88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1944 and 1965

Section 515 Rural Rental Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Section 515, Rural Rental Housing Loan Policies, Procedures, and Authorizations. This action is taken to incorporate a change mandated by the Housing and Community Development Act of 1987. The intended effect of this action is to change the maximum contribution by the borrower to equity from 5 percent to 3 percent.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Karen King, Senior Loan Officer, Multi-Family Housing Processing Division, USDA, Farmers Home Administration, Room 5331, South Agriculture Building, Washington, DC 20250, telephone 202–382–1620.

SUPPLEMENTARY INFORMATION: 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 in domestic or export markets. The Executive Order 12291 provision requiring submission to OMB 10 days prior to publication is waived due to the emergency situation created by the Act.

This action requries no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action.

The action is caused by an emergency situation exempt from the publication requirements of the Housing and Urban Rural Recovery Act of 1983.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking due to the emergency situation described below under Statutory authority.

Statutory Authority

The Housing and Community Development Act of 1987 has mandated that Section 515 of the Housing Act of 1949 be amended to require not more than a 3 percent contribution to equity by the borrower (the borrower currently has to supply a 5 percent contribution to equity).

Subpart E of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations is being amended to implement this change. The change is being published as a Final Rule under Section 534(c) of the Housing Act of 1949, Title V, on an emergency basis. The following paragraphs provide a justification for publishing as a Final Rule on an emergency basis.

The current Regulation requires that borrowers supply at least a 5 percent contribution to equity. This is in direct conflict with the Congressional mandate of Pub. L. 100–242 which limits FmHA ability to require applicant contribution to equity to not more than 3 percent. The discrepancy between FmHA Regulation and Pub. L. 100–242 must be resolved before new loans can be approved.

This amendment is very straightforward. There are no administrative decisions for the Agency to make in implementation; the Agency is simply putting a statutory requirement in place. Therefore, to minimize the adverse impact on the program, the proposed rule stage is being waived and public comment is not being sought.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an environmental impact statement is not required.

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).

List of Subjects

7 CFR Part 1944

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

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing-Rental, Mortgages and Rurals areas.

Therefore, 7 CFR Chapter XVIII, is amended 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.

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

§ 1944.205 [Amended]

2. In § 1944.205 paragraph (t) is amended by replacing "95 percent" with "97 percent".

§ 1944.211 [Amended]

3. In § 1944.211 paragraph (a)(4) is amended by replacing "5 percent" with "3 percent".

§ 1944.213 [Amended]

4. In § 1944.213 paragraph (a)(2) is amended by replacing "95" with "97" in both places it occurs.

5. In § 1944.213 paragraph (b)(11) is amended by replacing "5" with "3".

§ 1944.215 [Amended]

6. In § 1944.215 the introductory text of paragraph (l) is amended by replacing "5" with "3".

7. Section 1944.237 is amended by revising paragraphs (c)(1), (c)(2) and (d)(2) to read as follows:

§ 1944.237 Subsequent RRH loans.

* * * * *

(c) * * *

(1) If the applicant/borrower provided an initial investment greater than required under the initial FmHA loan, the excess may be credited toward the required 3 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 investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA loan, the applicant/borrower must provide the additional 3 and 2 percent amounts to cover the subsequent loan.

(d) * * *

(2) The applicant/borrower must provide the initial 3 percent investment unless it provided more than the required initial investment when the initial loan was made. When the applicant/borrower has more than the required amount invested in the initial loan, the excess may be credited toward the required 3 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.

* * * * *

Exhibit A-6 of Subpart E [Amended]

8. In Exhibit A-6 of Subpart E, paragraph I.A.(6) is amended by replacing the term "5 percent" with "3 percent".

PART 1965—REAL PROPERTY

9. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

10. In § 1965.65, the introductory text of paragraph (c)(10) is amended by removing the phrase "5 percent of the original loan amount" in the fourth sentence and replacing it with "the amount shown in the transferor's loan agreement/resolution".

11. In § 1965.65 paragraph (c)(10)(ii) is amended by inserting the phrase "(97% for loan agreements dated on or after March 11, 1988)" after the "95%".

12. In § 1965.65 paragraph (c)(10)(iii) is amended by inserting the phrase "(3% for loans approved on or after March 11, 1988)" after the "5%".

Dated: February 23, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-5125 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 88-010]

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that establish charges for overtime work performed by Veterinary Services inspectors of the U.S. Department of Agriculture at laboratories, border ports, ocean ports, and airports. The regulations are amended by: (1) Increasing the hourly rates charged an owner or opertor of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service; and (2) increasing the hourly rates charged a person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an employee of Veterinary Services on a Sunday or holiday or at any other time outside the employee's regular tour of duty. These increases reflect salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and Executive Order 12622 dated December 31, 1987.

EFFECTIVE DATE: March 13, 1988.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8511.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act and Effective Date

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have 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 have 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.

We are amending the regulations by increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service. The rates are increased by $0.56 per hour for service performed outside of the regularly established hours on a Sunday and by $0.40 per hour for services performed outside of the regularly established hours on a holiday or any other period.

We are also amending the regulations by increasing the hourly rates charged a person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of the employee of Veterinary Services on a Sunday or holiday or at any other time outside the regular tour of duty of the employee. The rates are increased by $0.64 per hour for services performed outside the regular tour of duty on a Sunday and by $0.48 per hour for services performed outside the regular tour of duty on a holiday or any other period.

Services of an employee of Veterinary Services at an airport during regularly established hours and during a regular tour of duty are still provided free of charge to those requesting the service. Based on information compiled by the Department, we have estimated that Veterinary Services provided an average of 979 hours per week of services for which charges were assessed during 1987, and these services were requested by thousands of entities. We do not expect that the number of hours of service for which charges will

be imposed will increase significantly in 1988.

Under these circumstances, the Acting 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.

The hourly rate for services of an employee of Veterinary Services depends entirely upon facts within the knowledge of the Department of Agriculture. The Department has no alternatives to raising the rates. By law, importers and exporters are required to reimburse the Department for its costs associated with services rendered. A cost analysis was performed to determine if fees for overtime are adequate to recover the cost of providing the services. Unless the rates are raised, the Department will not be able to recover the costs for providing services outside regularly established hours or outside regular tours of duty hours.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find for good cause that prior notice and other public precedure with respect to this rule are impracticable, unnecessary, and contrary to the public interest; we also find good cause that this rule be made effective less than 30 days after publication of this document in the **Federal Register.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

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 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 97

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

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. The first sentence of § 97.1(a) and the last sentence of § 97.1(b) are revised to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and Subchapter G of this Chapter, and who requires the services of an employee of Veterinary Services on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Veterinary Services provided in paragraph (b) of this section, shall pay the Government therefor at a rate of $33.28 per work-hour per employee on a Sunday and at the rate of $24.96 per work-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, that total amount payable shall not exceed $25 for all inspection services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. * * *

(b) * * * When services are performed outside of the regularly established hours of service on a holiday or Sunday or any other day, the rate to be charged owners or operators of aircraft shall be $28.64 per hour on a Sunday and $21.48 per hour on a holiday or any other day, which charges exclude administrative overhead costs.

* * * * *

Done in Washington, DC, this 4th day of March 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-5188 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 317, 318 and 381

[Docket No. 87-006F]

Glucono Delta-Lactone as an Acidifier in Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations and the poultry products inspection regulations to permit the use of glucono delta-lactone as an acidifier in meat food and poultry products. FSIS has also been petitioned to approve the use of glucono delta-lactone as an acidifier alternate to encapsulated lactic acid (lactic acid and calcium lactate) in the binder matrix containing sodium alginate and calcium carbonate used in the production of restructured meat food products. The Food Safety and Drug Administration has affirmed glucono delta-lactone as generally recognized as safe (GRAS) for use as a direct human food ingredient. FSIS has determined that it is now appropriate to add glucono delta-lactone to the tables of substances as an alternate acidifier in the aforementioned binder matrix, and to the list of acceptable acidifying agents in the Federal meat and poultry products inspection regulations. This action will provide for the use of an additional acidifier.

EFFECTIVE DATE: April 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret O'K. Glavin, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule would not be a major rule under Executive Order 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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 final rule provides for the use of glucono delta-lactone as an alternate acidifier in an approved meat binder, and as a general acidifier in various meat and poultry products. Industry may benefit from this action through the ability to use a wider variety of acidifying agents. Use of glucono delta-lactone is voluntary. Firms may choose to use this substance or they may use other acidifiers currently permitted in the regulations.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking would impose no new requirement on industry; rather, it would permit the meat and poultry industries to use a wider variety of acidifiers in formulating meat food and poultry products. The use of glucono delta-lactone would be voluntary.

Background

This is a final rule issued without prior proposal for public comment under authority of § 318.7(a) of the Federal meat inspection regulations (9 CFR 318.7(a)). Under that provision, the Administrator may approve new substances, new uses, or new levels of substances in meat or meat food products provided that (1) the substance has been previously approved by the Food and Drug Administration (FDA) for use in meat or meat food products as a food additive, color additive, or as a substance generally recognized as safe, and is listed in 21 CFR Parts 73, 74, 81, 172, 173, 179, 182, or 184, and (2) that its intended use would be in compliance with applicable FDA requirements. If these criteria are met, the Administrator may issue a final rule without prior proposal for public comment upon further finding that (1) the use of the substance will not render the product in which it is used adulterated, misbranded, or otherwise not in compliance with the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), and (2) that the substance is functional and suitable for the product and is permitted for use at the lowest level necessary to accomplish the stated technical effect.

FSIS is amending the Federal meat inspection regulations and the poultry products inspection regulations to permit the use of glucono delta-lactone as an acidifier in meat food and poultry products. In addition, FSIS has been petitioned by Finnsugar Biochemicals, Inc., to approve the use of glucono delta-lactone as an alternate acidifying agent to encapsulated lactic acid (lactic acid and calcium lactate) in the binder matrix containing sodium alginate and calcium carbonate for use in restructured meat food products. This request is a follow-up to the final rule approving a binder consisting of sodium alginate, calcium carbonate, lactic acid and calcium lactate for use in restructured meat food products published in the **Federal Register** on August 18, 1986 (51 FR 29456). Colorado State University researchers submitted supporting data for use of glucono delta-lactone in their original petition to FSIS for the aforementioned binder. However, glucono delta-lactone did not yet have GRAS affirmation by the FDA. Consequently, Colorado State researchers revised their petition by substituting encapsulated lactic acid for glucono delta-lactone in the binder matrix even though their data suggested that glucono delta-lactone performed better as the acidifying agent and was less expensive as an ingredient.

As an acidulant, glucono delta-lactone has unique functional properties. In the crystalline state, glucono delta-lactone is not an acid, but in the presence of water it slowly hydrolizes into gluconic acid. This is a very weak and bland tasting acid. Its rate of hydrolysis is temperature-dependent and virtually no acid is formed at refrigerated temperatures. This unique ability provides processors with greater flexibility during formulation and production. Data on the functions and properties of glucono delta-lactone are available free of charge from the Standards and Labeling Division at the address given under "For Further Information Contact."

Glucono delta-lactone was affirmed as GRAS by the FDA on September 24, 1986, for use as a direct human food ingredient (51 FR 33895). It is also listed in the Federal meat inspection regulations in 9 CFR 318.7(c)(4) as a color fixing accelerator permitted for use in cured, comminuted products and genoa salami. FDA advised FSIS on April 23, 1987, in an opinion letter that "the proposed use of glucono delta-lactone either as an acidifier in meat and poultry products or as an alternate acidifier to encapsulated lactic acid in restructured meat food products is consistent with the use as a 'pH control agent' listed in 21 CFR 170.3(o)(23)." FDA advised further that it saw no conflict between the provisions of 21 CFR 184.1318 and our proposed uses.

FSIS has determined, based on its technical review of available data and information, that these two uses of glucono delta-lactone are appropriate. FSIS has also determined that the following use levels will accomplish the desired technical effects: (1) Glucono delta-lactone as an acidifier—an amount sufficient for purpose (this amount is determined on a case-by-case basis during label review by the Standards and Labeling Division); (2) glucono delta-lactone as an acidifier alternate in the binder matrix—0.3 percent of product formulation in place of lactic acid and calcium lactate.

The Administrator concurs with FDA's conclusions regarding the safety and uses of the substance in meat food and poultry products. He further finds that information provided by petitioner and other data available to the Agency indicates that (1) the proposed use of this substance as described will be in compliance with applicable FDA requirements, (2) its use will be functional and suitable for the products intended, (3) the substance will be used at the lowest level necessary to accomplish the intended technical effect, and (4) the use of this substance will not render the products in which it is used, adulterated, misbranded, or otherwise not in compliance, with the Federal Meat Inspection Act.

Therefore, the FSIS is amending the tables of approved substances in the Federal meat and poultry products inspection regulations (9 CFR §§ 318.7(c)(4) and 381.147(f)(4)) to include the use of glucono delta-lactone as an acidifier in various meat food and poultry products and as an acidifier alternate in place of encapsulated lactic acid when used in the binder matrix containing sodium alginate and calcium carbonate for addition to restructured meat food products.

This approval of glucono delta-lactone as an acidifier alternate in the binder matrix containing sodium alginate and calcium carbonate necessitates a technical amendment to labeling provisions contained in § 317.8(b)(36) of the Federal meat inspection regulations (9 CFR § 317.8(b)(36)). This section requires that whenever this binder matrix is added to restructured meat food products, a statement indicating the use of these substances must appear contiguous to the product name. Therefore, § 317.8(b)(36) is being amended to reflect the approval of glucono delta-lactone as an acidifier alternate, which, when used in the matrix, requires its declaration contiguous to the product name.

List of Subjects

9 CFR Part 317

Meat inspection, Food labeling.

9 CFR Part 318

Food additives, Meat inspection.

9 CFR Part 381

Food additives, Food labeling, Poultry, Poultry products and inspection.

For the reasons set out in the preamble, Parts 317, 318 and 381 are amended as set forth below.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Paragraph (b)(36) of § 317.8 is revised to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(36) When sodium alginate, calcium carbonate, and lactic acid and calcium carbonate (or glucono delta-lactone) are used together in a dry binding matrix in restructured, formed meat food products, as permitted in Part 318 of this subchapter, there shall appear on the label contiguous to the product name, a statement to indicate the use of sodium alginate, calcium carbonate and lactic acid and calcium carbonate (or glucono delta-lactone).

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

4. Section 318.7(c)(4) is amended by adding the substance "glucono delta-lactone" to the chart of substances. This substance is placed in alphabetical order (1) under the class of substances entitled "Acidifiers," and (2) under the class of substances entitled "Binders" in the entry entitled "A mixture of sodium alginate, calcium carbonate, lactic acid and calcium lactate" as follows:

§ 318.7 Approval substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Glucono delta-lactone	do	do	Do.
Binders	A mixture of sodium alginate, calcium carbonate, and calcium lactate/lactic acid (or glucono delta-lactone).	To bind meat pieces	Restructured meat food products.	Sodium alginate not to exceed 1.0 percent; calcium carbonate not to exceed 0.2 percent; and lactic acid/calcium lactate (or glucono delta-lactone) not to exceed 0.3 percent of product formulation. Added mixture may not exceed 1.5 percent of product at formulation. Ingredients of mixture must be added dry.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted:

6. Section 318.147(f)(4) is amended to add the substance "glucono delta-lactone" to the chart of substances. This substance is placed in alphabetical order under the class of substances entitled "Acidifiers" as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Glucono delta-lactone	do	do	Do.

Done at Washington, DC, on: March 4, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 5126 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM86-14-001; Order No. 483-A]

Revisions to the Purchased Gas Adjustment Regulations

Issued March 2, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 483) on November 10, 1987, in Docket No. RM86-14-000, amending its regulations governing the procedures by which a natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers. (Revisions to

the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov. 17, 1987), III FERC Stats. & Regs., ¶ 30,788.)

This order grants rehearing of Order No. 483 in part and denies rehearing in part and clarifies in response to 18 requests for rehearing filed in response to the final rule.

EFFECTIVE DATE: This rule is effective April 8, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8020

For Further Technical Information Contact: Sherri L. Booye, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: The FERC Form No. 542-PGA (Form 542), although not published in this order, is currently available at the Division of Public Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, during regular business hours.

Order on Rehearing

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

I. Introduction

On November 10, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 483) amending its regulations governing the procedures by which a natural gas pipeline company (company or pipeline) passes through the cost of purchased gas to its jurisdictional customers.[1] In that rule, the Commission retained the existing PGA mechanism consisting of a current adjustment and surcharge rate adjustment to the base rates a pipeline establishes in a NGA section 4 general rate proceeding. The rule requires a pipeline to revise its projections of gas costs four times per year.

Under the rule, a pipeline submits a current adjustment that reflects three months of projected gas costs in an annual PGA filing and in three quarterly PGA filings which will track any changes in gas costs that occur after the annual filing becomes effective. The final rule established a schedule of annual and quarterly PGA effective dates for each pipeline that filed a PGA under the former PGA regulations. The final rule also permitted a pipeline to use its flexible PGA tariff as an optional cost tracking mechanism.

This order grants clarification and rehearing of Order No. 483 in part and denies rehearing in part in response to 18 requests for rehearing filed in response to the final rule.[2] [3]

II. Discussion

A. Projections of Gas Costs for the Current Adjustment

1. *Changes in Pipeline Supplier Rates.* Columbia Gas Transmission Corporation's (Columbia) and Columbia Gas Distribution Companies' (CDC) request the Commission to allow a pipeline to include in its current adjustment cost estimates based on a pipeline supplier's suspended rate which will come out of suspension during the PGA effective period.

The Commission agrees with Columbia and CDC. Under current Commission policy, when a pipeline supplier files a section 4(e) general rate increase, it is often suspended by the Commission to take effect, subject to refund, at a later date. In fact, the Commission suspends rate filings if a preliminary study leads the Commission to believe that the filing may be unjust, unreasonable or inconsistent with other statutory standards.[4]

The Commission is modifying its regulations. This change will result in a more accurate projection of the gas costs a pipeline will experience and should prevent the pipeline from undercollecting its gas costs when a pipeline supplier's rates increase during the effective period of the PGA.[5]

2. *Spot Market Projections.* Enron Interstate Pipeline (Enron) argue that it is unnecessary for a pipeline to provide additional detailed support in the PGA for projected spot market purchases. The Commission required the filing of additional information in the final rule because it was concerned that spot market transactions are typically of short duration and the cost of a spot market purchase is usually much lower than the cost of a long term supplement commitment.

However, the Commission no longer believes that detailed support for spot gas projections is necessary. As argued by Enron, the final rule's provisions relating to the assessment of past performance should provide an adequate oversight of the accuracy of a pipeline's projections of gas costs.[6] However, the Commission is still requiring a pipeline to project its spot purchases in accordance with the provisions for estimating supplier costs in § 154.305(c)(1) (i) and (ii), as amended by this order. Also, a pipeline will be required to support its spot market projections in conjunction with the assessment of past performance.

3. *Estimates of Contract Prices Undergoing Renegotiation.* In the final rule, the Commission permitted estimates of gas purchase prices to allow for known and measurable changes that occur during the PGA effective period based on contractual obligations. However, the Commission will not permit pipelines to estimate the price of contracts that are undergoing renegotiation, as requested by ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG) and Enron on rehearing. As the Commission recently noted,[7] projections of gas prices in contracts undergoing renegotiation are too speculative to accurately reflect future costs.[8]

---

[1] Revisions to the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov. 17, 1987), III FERC Stats. & Regs. ¶ 30,778

[2] *See* Appendix for complete listing of persons filing requests for rehearing or clarification.

[3] As a final background note, the Commission observes that Order No. 483 is a complex, 172 page document that does not lend itself to brief summarization. Therefore, this rehearing order proceeds on the assumption that the reader is already familiar with Order No. 483 and that the issues on rehearing may discussed here with a minimum of explanatory background.

[4] *See e.g.*, Great Lakes Gas Transmission Co., 12 FERC ¶ 61,292 (1980).

[5] Section 154.305(c)(1)(ii) provides that the projected rate for pipeline supplier costs will be the rate in effect as of the effective date of the PGA filing. Consolidated Gas Transmission Corp. (Consolidated) argues that this provision prevents a pipeline from estimating the rate of its pipeline supplier when both pipelines' rates are effective on the same date. Consolidated is incorrect. In fact, the pipeline may estimate the rate of an upstream pipeline supplier that will become effective on the same date as the estimating pipeline's PGA

[6] Section 154.306.

[7] Colorado Interstate Gas Company, 37 FERC ¶ 61,330 (1986).

[8] ANR/CIG's argument that many existing tariffs allow pipelines to include estimates of contract prices undergoing renegotiation is incorrect. The Commission recognizes that some pipeline that now file annual PGAs have tariffs that allow some

Continued

The Commission disagrees with ANR/CIG's interpretation that the final rule restricts a pipeline's ability to project market-out prices. The Commission is clarifying that a pipeline's plan to exercise its contractually authorized market-out rights in an upcoming PGA period, is a known and measurable change that the pipeline could include in its gas cost projections under § 154.305. Also, a pipeline may file an interim adjustment under § 154.309 on 24-hours' notice to reflect market-outs in its rates.

4. *Effect of 60-day Notice Period on Cost Projection in the Annual PGA.* The Commission agrees with the arguments that the annual PGA 60-day notice requirements makes it harder for a pipeline to project gas costs for the current adjustment accurately.[9] Therefore, the Commission will accept revisions to the original projections of gas costs contained in Schedule A–1 up to 30 days before the effective date of an annual PGA.[10] The revision to the cost projection will be optional, will be filed in the quarterly format specified by the FERC Form No. 542–PGA, and will not require a filing fee.

The Commission agrees with Panhandle/Trunkline that NGA section 4(d) requires a pipeline to provide a minimum 30-day notice before its rates can go into effect. However, the NGA does not preclude a pipeline from voluntarily providing more than 30-days notice in return for receiving a PGA mechanism.

B. Refunds

1. *Amounts Included in the Refund Subaccount.* Order No. 483 requires a pipeline to maintain a separate refund subaccount in Account No. 191 in which supplier refunds, billing adjustments, and revenue credits are recorded.[11] These amounts will be disbursed in lump sum to the pipeline's customers when the refund subaccount reaches a set amount.[12] A pipeline must record in the refund subaccount all past period credit billing adjustments that decrease gas costs, including meter or computation adjustments. However, all past period debit billing adjustments that increase gas costs must be recorded in the other subaccounts of Account No. 191 to be collected through the annual PGA surcharge adjustment.

Several pipelines argue on rehearing that the deferred gas costs in Account No. 191 will be distorted if past period amounts in settlement of gas purchase transactions are separated.[13] The Commission intends that the lump sum refund requirement will operate to ensure that a large credit balance in the deferred account does not accumulate so as to distort current rates. Accordingly, the Commission will require pipelines to offset the refund, billing adjustment, and revenue credit subaccount balance with past period debit billing adjustments.[14] However, a pipeline still will be prohibited from offsetting refunds against current period deferred purchased gas costs and a pipeline still must maintain a separate refund subaccount.

The Commission will require each component of the amount ultimately paid to a supplier to be separately identified in the refund subaccount. In other words, a pipeline may not "net" past period debit against past period credit billing adjustments before it records the remainder in the refund subaccount. Because credit billing adjustments are treated as refunds for purposes of computing carrying charges, they must be separately identified.

Some pipelines state that their accounting systems cannot report the discrete components of each gas purchase transaction.[15] Therefore, the Commission will consider a pipeline's request for waivers of the refund reporting requirements on a case-by-case basis.

A pipeline is required to record all out-of-period debit billing adjustments in the refund subaccount every month. If the resulting balance is a net debit balance, a pipeline must carry the refund subaccount balance forward to the next month. The next month's credit billing adjustments, refunds, and revenue credits would be offset against this net refund subaccount balance. At the end of the deferral period a net debit balance must be transferred to the current deferral subaccount.

If after a month's entries are recorded to the refund subaccount, the result is a net credit balance, and the refund disbursement level is reached, a pipeline must make a cash refund. If a net credit balance remains at the end of the deferral period the pipeline may either make a cash refund or transfer the balance to the current deferral subaccount.

When a refund subaccount debit or credit balance is transferred to the current deferral subaccount, a pipeline must treat the credit component as refunds for purposes of computing carrying charges. The pipeline must continue to treat these credits as refunds when computing carrying charges until the effective date of the surcharge rate that amortizes the current deferral subaccount balance.

2. *Pipeline Supplier Refunds.* The Commission will not allow a pipeline to credit its deferred purchase gas costs in Account No. 191 when it receives refunds from an upstream pipeline supplier. Columbia and Consolidated contend that a pipeline supplier's rates are generally higher than the rates ultimately determined through settlement and hearing to be just and reasonable. The Commission often suspends the effectiveness of a pipeline's rate change for up to five months. While the pipeline's rate change is suspended it cannot cause a significant buildup of the deferred account balance of a downstream pipeline.

3. *Refund Disbursement.* In response to arguments raised by ANR/CIG and El Paso, the Commission is amending the regulations [16] to require a pipeline to make cash refunds within 90 days after the month in which the refund subaccount balance reaches the disbursement level. Although the Commission required in the final rule that cash refunds be made within 30 days, monthly actual purchased gas costs are determined on a 60-day accounting cycle.[17] Therefore, a pipeline may not be able to determine the extent of all the transactions in the refund subaccount until 60 days after an accounting month.

latitude to estimate some costs during the 12-month PGA period. However, no tariff on file with the Commission gives a pipeline the authority cited by ANR/CIG.

[9] *See*, Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Panhandle/Trunkline) and Texas Eastern Transmission Corporation (TETCO).

[10] The Commission also will consider on a case-by-case basis allowing a pipeline to make an adjustment to the surcharge rate in effect during an annual PGA period should a pipeline experience a substantial unexpected gain or loss of sales load.

[11] Section 154.305(i).

[12] Under § 154.305(i)(1)(iii), this amount is the lesser of $2 million or one cent per MMBtu of a pipeline's most recent 12 months of sales.

[13] *See, e.g.*, El Paso Natural Gas Co. (El Paso), Enron, Panhandle/Trunkline, Tennessee Gas Pipeline Co. (Tennessee), and Transcontinental Gas Pipe Line Co. (Transco).

[14] Debit billing adjustments are defined as any pricing adjustments that are increases to a prior month's actual gas costs and are recorded outside the prior month's 60-day billing and payment cycle.

[15] El Paso claims that its purchase gas account settlement system can only retrieve the net amounts payable to a supplier. Northwest Pipeline Corporation (Northwest) states that it previously received special accounting and reporting relief in Docket No. SA82–31–001 because the company cannot separately track prior period adjustments and billing adjustments for purchases from unitized wells. The PGA refund accounting rules are not intended to terminate the relief given Northwest in Docket No. SA82–31–001.

[16] Section 154.305(i)(1)(iii). The Commission is also adding the term "billing adjustment" because it was inadvertently omitted from the regulations in Order No. 483.

[17] Section 154.305(g)(1)(iii).

The Commission is not changing the refund disbursement level or providing for semi-annual refunds as suggested by Panhandle/Trunkline. In fact, the lump sum refund requirement ensures that customers are actually provided with the benefits of the refunds a pipeline obtains. If a pipeline includes refunds in Account No. 191 and offsets refunded amounts against costs incurred, that pipeline may simply absorb the refund amounts by incurring additional gas costs or by delaying cost reductions. The Commission established the refund disbursement levels in the final rule based on the level of refunds and total system sales reported in the Annual Report of Major Natural Gas Companies (FERC Form No. 2) of several pipelines.[18] The Commission believes that the disbursement level it established will ensure that pipeline customers receive refunds as soon as possible. Furthermore, the Commission believes that a pipeline will want to reduce the amount in its refund subaccount as soon as possible because interest also is computed on the refund balances and disbursed to customers.

Arizona Direct Customers (Arizona) argue that pipelines should allocate cash refunds of past period overcharges by matching customers' purchases to actual sales levels during the period of overcharges.[19] The Commission declines to adopt Arizona's suggestion. To do so on a generic basis would be administratively burdensome. Instead, the Commission intends to consider requests for a special allocation of extraordinary prior period refunds on a case-by-case basis.

C. Storage Issues

1. *Effect of Storage Inventory Accounting on Quarterly Adjustments.* The Commission is not amending its regulations to allow pipelines to make annual estimates of their supply and requirements for the quarterly PGA adjustment, as requested by Consolidated, Columbia, and National Fuel Gas Supply Corporation (National Fuel). These pipelines have large gas storage operations and use the "Last In First Out" (LIFO) storage inventory costing methodology. They contend that the quarterly current adjustments will result in significant price swings, artificially inflated demand and commodity rates in winter, and artificially decreased demand rates in summer.[20]

In Order No. 483, the Commission noted that it had rejected an annual supply and requirements proposal of Consolidated's in 40 FERC ¶ 61,205 (1987). On rehearing, Consolidated states that the Commission ultimately approved its proposal. The Commission's approval of Consolidated's tariff revision under the former PGA regulations to use annualized supply and requirement estimates is not a precedent for this proceeding. The emphasis of the revised PGA regulations is on rapid transmission of market signals which is inconsistent with the annualization of current costs.

The Commission recognizes that pipelines with extensive storage operations that employ an annualized LIFO inventory costing methodology experience fluctuating commodity rates.[21] Therefore, the Commission will consider a company's allegation that storage accounting causes significant price swings between quarterly adjustments on case-by-case basis. However, the Commission believes that those costs as incurred and adjusted for storage are representative of the costs a pipeline will incur during the PGA period and should be passed through on a quarterly basis.

2. *Adjustment to the Carrying Charge Base for Estimates of Storage Costs.* Order No. 483 requires a pipeline to reduce its carrying charge base in Account No. 191 for computing interest to a cash basis if it uses estimates to compute storage costs. The carrying charge base must be adjusted for the difference between the estimated storage gas rates and storage gas rates computed using a rolling weighted average inventory costing methodology.[22]

Natural Gas Pipeline Company of America (Natural) requests that the Commission allow it to incorporate in its next general rate case an appropriate procedure to achieve the effect of a cash-based Account No. 191 and eliminate the use of estimated storage rates reflect a LIFO inventory allowance that was based on estimates. However, Natural's current LIFO credit does not result in a cash based Account No. 191 because storage inventory is considered as part of the rate base.

The Commission will require Natural to compute carrying charges only on the cash balances in Account No. 191. Even a pipeline with a current LIFO credit in its base rate must compare the difference between the cash-based Account No. 191 and the credit in its rate base and return any difference to its jurisdictional customers. However, the Commission will consider other suggestions as to how to compute a cash-based Account No. 191 for carrying charge purposes.

Enron requests clarification of whether a rolling weighted average inventory costing methodology would include the costs and volumes associated with cushion gas (Account No. 117) and those costs and volumes associated with cycle gas (Account Nos. 164.1 and 164.2). The rolling weighted average inventory costs should be determined using those volumes and costs that are part of the cycle gas because cycle gas is sold and replaced by the pipeline. However, a pipeline should not include cushion gas to determine its rolling weighted average inventory costs unless those volumes are withdrawn from storage for resale to its customers. Ordinarily, cushion gas is not sold and replaced by the pipeline.

Transco argues that the carrying charge base adjustment for LIFO storage estimates would require the company to maintain two sets of accounting records to differentiate between the LIFO valuation of storage costs and storage costs determined using a rolling weighted average inventory costing methodology. The Commission believes that most pipelines have all the data necessary to compute the rolling weighted average inventory costing methodology without keeping two sets of books. However, even if a company has to maintain two sets of books, the benefit to the customer and the pipeline of receiving the time value of funds out-of-pocket outweighs any additional accounting burden.

[18] *See* discussion in the Preamble to the Notice of Proposed Rulemaking (NOPR), Revisions to the Purchased Gas Adjustment Regulations, IV FERC Stats. & Regs. ¶ 32,443 at 33, 489 (1987).

[19] Under § 154.305(i)(2), a customer's share of the cash refund is determined by reference to the customer's purchases and the pipeline's actual sales during the 12-month period ending three months prior to the month that the disbursement level is reached

[20] When these pipelines inject gas into storage during summer, the injections are priced at an annualized LIFO rate and are treated as a credit to purchased gas costs. When the pipelines withdraw gas from storage during winter, the withdrawals are priced at the annualized LIFO rate and are treated as a debit to purchased gas costs. The annualized LIFO rate is equal to the estimated average annual purchased gas unit cost and may incldue demand costs if gas purchased from a pipeline with a two-part rate is in the storage inventory.

[21] National Fuel includes in Appendix A of its request for rehearing an illustration of the effect storage gas costs have on the quarterly commodity rates during the year.

[22] Order No. 483 defined "rolling weighted average inventory costing methodology," in § 154.302(s), as a way to price gas inventory where injections are priced at the month's jurisdictional system cost of purchase gas and withdrawals are priced by dividing the total purchase costs of the gas in storage by the quantity of gas in storage.

D. Schedule of Annual and Quarterly PGA Effective Dates

Three pipelines request the Commission to change the PGA effective dates established for them in Order No. 483.

Consolidated requests that its annual PGA effective date be changed from June 1 to September 1, in order to maintain a consistent amortization of its Account No. 191 balance. Consolidated states that its current annual surcharge is effective on September 1. National Fuel requests that its annual PGA effective date be changed from February 1 to January 1 because its largest pipeline supplier, Tennessee, has a January 1 annual PGA effective date. Neither pipeline requested a change of PGA effective dates in their comments filed in response to the NOPR.

Panhandle and its subsidiary Trunkline renew their request to have the same annual PGA effective date instead of Panhandle's March 1 date and Trunkline's September 1 date. They argue that this change would allow Panhandle to track Trunkline's rates without the need for special tracking filings. The Commission previously denied this request in Order No. 483.

The Commission is granting Consolidated's and National Fuel's requests. The Commission is persuaded that its transition procedures would prevent Consolidated from recovering nearly 20 months of its deferred purchased gas costs, until its second annual PGA filing to be effective June 1, 1989.[23] Similarly, the change of National Fuel's effective date will enable the company to track its major pipeline supplier's rates on a more current basis.

The Commission is affirming its denial of Panhandle/Trunkline's requests for a change in PGA effective date. As the Commission stated in Order No. 483, to do so would disrupt the balanced schedule of effective dates the Commission established because of the number of pipelines that track these companies' rates. The Commission recognizes that Panhandle must file its March 1 annual PGA 30 days before Trunkline's March 1 quarterly PGA is filed. However, Pandhandle can amend its current adjustment 30 days after filing to reflect Trunkline's March 1 PGA under new § 154.305(c)(4).

E. Accounting Cycle for Determining Monthly Actual Purchased Gas Costs

The Commission is clarifying in this order that pipelines must determine their monthly actual purchased gas costs using a 60-day billing and payment cycle.[24] As discussed in Order No. 483, the Commission's experience with gas purchase contracts and the terms of gas sales service agreements in pipeline tariffs indicates that the majority of gas purchase transactions anticipate the completion of a gas purchase transaction within 60 days.[25]

The Commission agrees with ANR/CIG and Transco that certain transactions involving marketing affiliate purchases and purchases at the tailgate of gas processing plants have extended billing and payment cycles. However, the Commission believes that a pipeline should determine the cost of its gas purchases as soon as possible. If it does so, it will be better able to compete. Therefore, a pipeline should shorten its billing and payment cycle for gas payments from its marketing affiliate or purchases behind the plant. The Commission notes that an extended billing and payment cycle is only important to a pipeline when it determines its actual costs under the assessment of past performance procedures. If the pipeline does not have the ability to change its billing and payment cycle, the pipeline will have the opportunity to explain why the exclusion of certain transactions caused the pipeline to exceed the three-percent margin for underrecoveries.[26]

F. Assessment of Past Performance

The Commission established procedures to review a pipeline's performance in projecting gas costs during the 12-month deferral period when the company files its annual PGA filing. Without prior Commission approval, a pipeline may include in its surcharge balance any underrecovered actual gas costs accumulated in each of its four test intervals, provided these underrecovered gas costs do not exceed, in each interval, three percent of the company's projeted gas costs. The Commission received requests to rehear several aspects of the procedures that relate to its assessment of past performance.

1. *Actual costs included in the Assessment of Past Performance.* The regulations require a pipeline to include all its valid actual gas supply costs. For purposes of the performance test, actual gas costs are those amounts known or paid within the 60-day accounting cycle (as determined in § 154.305(g)(1)). The Commission excluded from the test adjustments for exchange and transportation imbalances and all prior month adjustments (§ 154.306(d)). However, it included in the test actual amounts of Canadian gas costs, demand charges, pipeline supplier costs, and minimum bill costs if these costs were projected as gas costs during the test period.

ANG/CIG and El Paso request the Commission to clarify whether adjustments should be included in the assessment test. They explain that in certain situations a pipeline may not receive billings for gas purchases promptly. Therefore, they argue that their unadjusted gas costs will not be accurate.

The Commission recognizes that certain gas purchase transactions may involve accounting cycles beyond the 60-day billing and payment cycle established in the regulations. Therefore, the Commission is clarifying that a pipeline may use any out-of-period costs attributable to delayed billing transactions to justify why it exceeded the three-percent margin for underrecoveries during the test period. However, a pipeline must first compute the test without using out-of-period adjustments. Then, the Commission will permit the pipeline to recalculate the test by moving the adjustments from the month they were recorded into the applicable purchase month to satisfy the assessment. When it recalculates the test, the pipeline must separately identify the adjustments. Also, the Commission will not permit a pipeline to use only credit adjustments to bring its monthly deferrals within the appropriate level for surcharge recovery.[27]

In response to El Paso, the Commission is clarifying that a pipeline may include billing adjustments as actual gas costs for the assessment of past performance if they are attributable to quantities of gas purchased and received during a month, and if the billing adjustments are made or known within 60 days of that month. However, a pipeline must include billing adjustments in the refund subaccount even though they were made (or known) within 60 days after a purchase month if the credit adjustments are not related to

[23] In Order No. 483, the Commission granted Mountain Fuel Resources, Inc. a change in effective date so the company could maintain a consistent amortization of its surcharge balance.

[24] The Commission will continue to require a pipeline to record as an accrued expense (unpaid accrual) known amounts that remain unpaid after the 60-day billing and payment cycle, instead of 90 days as suggested by ANR/CIG.

[25] *See* ANR/CIG, Enron, Transco.

[26] This should alleviate Tennessee's concern over the accounting cycle for Plant Volume Reduction (PVR) credits it receives for volumes of purchased gas lost during plant processing operations.

[27] For example, a pipeline may not include only credit billing adjustments to lower a test interval's actual cost of gas if the pipeline also receives debit billing adjustments applicable to that test interval's purchase volumes.

gas purchased and received during the purchase month.[28]

The Commission agrees with arguments that pipeline supplier demand costs should not be included in the assessment of past performance if a pipeline has a two-part rate structure.[29] The purpose of the test is to ensure that customers receive the most accurate price signals for the gas they purchase. Unlike commodity costs, demand costs are charged to a pipeline and passed on to the pipeline's customers based on predetermined billing determinants. Neither a pipeline nor its customers, therefore, have any discretion to pay for these costs. Instead, customers make purchasing decisions on the basis of the relative variable costs amongst supply options. Since the assessment test's purpose is not served by reviewing demand costs, the Commission will exclude from the test any demand costs that are permitted to be passed through a pipeline's two-part rates on an "as billed" basis. However, pipelines with one-part rates may not adjust for demand costs because these costs are imbedded in the overall rate charged their customers and could impact the market signals sent by the commodity portion of the rate.

The Commission is requiring a pipeline to include the commodity portion of its pipeline supplier costs in the assessment review. This is because the pipeline has control over the amount of its pipeline supply purchases, even though it may not control the rates charged by its pipeline suppliers.

The Commission also received arguments that storage operations cause fluctuations in gas costs which are beyond the control of the pipeline.[30]

Since the Commission considers storage as legitimate gas supply costs, they must be included in the assessment of past performance as actual gas costs. The Commission recognizes that the seasonal storage cycle will give rise to cost fluctuations. These price fluctuations are caused, in part, by the LIFO accounting method because the demand costs embedded in the pipeline suppliers' rates are included in the LIFO rates and thus are treated as commodity costs.[31] Since the pipeline has the discretion to choose the methodology it uses to price its storage gas, the Commission does not agree that the price fluctuations are beyond the control of the pipeline. Also, if a cost item causes the pipeline to exceed the threshold of three percent during a particular test interval, it will have the opportunity to explain the overage in its annual PGA filing.

The Commission is not granting Northwest's request that the Commission list specific reasons a pipeline must file to justify its inability to meet the three-percent margin. A pipeline's argument that it is unable to meet the three-percent test must be considered on its own merits. This kind of review does not lend itself to a generic determination. The Commission expects a pipeline to cite the particular circumstances which led to its inability to control its costs within the threshold and to provide sufficient data to support the pipeline's position.

Great Lakes Transmission Company (Great Lakes) seeks rehearing of the Commission's decision in Order No. 483 to include Canadian gas costs in the assessment of past performance. Great Lakes believes that it should not be subject to the assessment, because it acts as a conduit for the purchase of Canadian gas by its resale customers and has no control over the price or the volumes of these supplies.[32] The Commission notes that Great Lakes continues to pass its purchased gas costs through a PGA clause. Therefore, the company must remain subject to the PGA regulations until such time as Great Lakes restructures its tariff to reflect its service obligations to its customers.

2. *The need for the assessment of past performance.* Several pipelines argue on rehearing that the assessment of past performance is not necessary, justified, or legal.[33] The Commission disagrees. The three percent margin for underrecoveries is not an arbitrary standard and was justified in Order No. 483. In the final rule, the Commission traced the history of the three-percent margin which had been applied in individual pipelines' flexible PGA rate proceedings. In fact, the Commission noted that its approved in individual proceedings not only pipelines' initial requests to adopt a three-percent margin for underrecoveries, but also pipelines' requests to continue using this margin after the mandatory one-year review period. Therefore, the Commission adopted this standard on a generic basis.

The assessment of past performance does not replace existing statutory standards under the NGA and the Natural Gas Policy Act (NGPA) for reviewing the passthrough of purchased gas costs. The Commission recognizes that the test does not give the Commission the authority to deny passthrough of gas costs automatically. Section 601(c)(2) of the NGPA [34] limits the Commission's ability to deny the passthrough of statutorily defined "just and reasonable" purchased gas costs unless the Commission finds that the amounts were excessive due to fraud, abuse, or similar grounds.

However, the Commission has the authority to suspend the effective date of rate filings pending review under section 4 of the NGA. As such, the Commission may suspend the effectiveness of that portion of a surcharge rate that reflects costs above the three-percent margin for up to five months. During the suspension period, the Commission may conduct an evidentiary hearing to determine if a pipeline violated the statutory tests under either the NGA or the NGPA. Alternatively, the Commission may permit the full surcharge to become effective after a one-day suspension, subject to further proceedings. Whether the Commission suspends the filing for up to five months will depend on the extent to which a pipeline shows that its incurred costs over the three-percent margin were beyond its control.

G. FERC Form No. 542–PGA

1. *Annual statement of purchasing policies.* The Commission is requiring a pipeline to submit an annual statement of the purchasing policies that gave rise to the pipeline's actual and projected gas costs contained in Schedule A–1 of the FERC Form No. 542–PGA (Form 542). However, while the Commission recognizes that the pipeline may deviate from the plan due to operating conditions, it expects the pipeline to follow its purchasing policies as much as possible. Furthermore, the Commission will not require pipelines to disclose confidential information as argued by Enron. The Commission only requires a pipeline to make a general statement about its past and future purchasing policies. In particular, the Commission expects a pipeline to explain why its projected or actual costs include purchases above the prevailing market rates, and if the pipeline is

[28] This is consistent with the Commission's regulations at § 154.305 (g)(1)(iii) and (g)(2).

[29] Columbia, Consolidated, and National Fuel.

[30] Columbia, Consolidated, and National Fuel.

[31] *See*, Request of National Fuel for rehearing, page 7, n. 2.

[32] Great Lakes argues that the Commission issued orders on December 9, 1987, in Docket No. TA86–6–51–004 and TA87–1–51–002 which found that its resale customers negotiate directly with the company's Canadian supplier, TransCanada PipeLines Limited, concerning the price and other terms and conditions relative to the importation of Canadian gas.

[33] Consolidated, Panhandle/Trunkline, Northwest, TETCO, and Williams Natural Gas Company (Williams).

[34] 15 U.S.C. 3431(c) (2) (1982).

taking any steps to reduce its high cost purchases.

2. *Reporting of Order No. 451 negotiations.* Enron and Panhandle/Trunkline claim that the reporting of negotiated contracts under Order No. 451[35] will require a pipeline to disclose properietary information and may hamper negotiations with other producers. Collection of this information is necessary for the Commission to review the impact of Order No. 451 on the pipelines' purchased gas costs. However, a pipeline may file a request for confidential treatment of the data if the company believes that its ongoing negotiation efforts would be at risk.

3. *Report of actual purchase data in Schedule A1.* The Commission denies Transco's request that pipelines gradually phase in the computerized reporting of actual purchase data in Schedule A1. Transco states that it will need additional time to develop this capability because the level of detail in Schedule A1 was not necessary for compliance with the prior PGA Regulations. The Commission believes that most pipelines will be ready to comply with this reporting requirement when they file their first annual PGA. However, the Commission will consider individual pipelines' requests for a waiver on a case-by-case basis.

4. *Revisions to the Form 542.* In respsonse to Transco's petition, the Commission will not require pipelines to submit the transmittal letter, form of notice, and service list for a PGA filing on nine-track magnetic computer tape. Submitting these documents in a computerized format will not enhance the Commission's ability to review the data submitted with a PGA filing.

The Commission will adopt Natural's suggestion to add a column in Schedule C2—"Carrying charges on Account No. 191", to report the storage inventory cost adjustments required by the regulations.[36] Also, added to Schedule C2 is a column for "other adjustments" because pipelines may need additional adjustments to the carrying charge base.

Finally, the revised Form 542 reflects corrections of typographical errors; conforming changes to reflect amendment of the regulations; corrections to the computerized format; and clarifications of the instructions.

On March 15, 1988, the Commission Staff will conduct a technical conference in the offices of the Commission.[37] The Commission Staff will be present to answer questions concerning the revised Form 542.

H. Miscellaneous Issues and Clarifications

1. *General comments to the PGA revisions.* The Commission disagrees with the arguments of several pipelines[38] that the Commission failed to justify the revisions to the PGA mechanism mandated in this proceeding. In both the NOPR and in Order No. 483, the Commission fully discussed the pipelines' requests for waivers of the existing PGA regulations on a case-by-case basis to allow them to compete in an unstable gas market. Therefore, based on the large number of waiver requests the Commisison received, it was reasonable for the Commission to conclude that a more flexible PGA mechanism was necessary.

Also, the Commission discounts claims that the quarterly filing schedule is burdensome because it now receives numerous PGA filings from pipelines in addition to their scheduled annual or semi-annual filings.[39] Therefore, the Commission will maintain a schedule of quarter PGA filings for all pipelines that elect a PGA clause under the regulations.

Finally, the Commission is not persuaded by arguments that the new PGA regulations make it difficult for pipelines to compete with unregulated sellers of gas. An unregulated seller of gas must absorb the cost of any gas it purchases and is unable to sell. However, the passthrough provision in NGPA section 601(c) gives the jurisdictional pipeline an advantage over the unregulated seller because, in most cases, it guarantees the pipeline's right to make up any underrecovered costs in the surcharge rate.

2. *Application of Opinion No. 256.* The Commission intends to apply its Canadian gas "as billed" policy expressed in *Natural Gas Pipeline Company of America,*[40] and review the appropriate classification of imported natural gas demand costs in both PGA filings and section 4 general rate proceedings. However, the Commission denies Producer Association's request to delay a pipeline's inclusion of Canadian supplier purchases in its PGA until the Commission reviews the underlying contracts. To conduct such a review would intrude on the jurisdiction of the Department of Energy's Economic Regulatory Administration.

3. *Concurrent exchange transactions.* In response to Columbia's request for clarification, there are no gas costs associated with concurrent exchange transactions. The assignment of a weighted average cost of gas to exchange imbalances under § 154.305(i) is intended to remove the rate impact of the imbalances for pipelines that compute their monthly deferred costs on a unit-of-sales basis.

4. *Unpaid accruals.* The regulations permit a pipeline to include suspended payable (SP)[41] unpaid accruals as a gas cost in the PGA. To prevent the possibility that a pipeline would be unjustly enriched if SP accruals are never paid, the Commission requires that a pipeline list and describe in its annual PGA filing each unpaid accrual if it has remained unpaid for three or more years from the month it was originally recognized as a gas cost. The Commission agrees with Transco that the separate tracking and listing of unpaid accruals may impose a burden on some pipelines. However, the Commission believes that this burden is justified because the regulations allow a pipeline to collect for gas costs that the pipeline has not paid. If a pipeline finds the tracking and reporting requirements overly burdensome the pipeline will not be required to list its outstanding SP accruals. However, the pipeline must forgo collection of the accrued gas costs until it makes payment.

5. *Transition rules.* Although requested by ANG/CIG, the Commission will not delay implementation of Order No. 483 until a pipeline files its first PGA scheduled six months after this order on rehearing is effective. The Commission established a uniform effective date of June 1, 1988, to ensure that pipelines do not gain a competitive advantage over others during the transition. However, the Commission agrees with ANR/CIG that the transition procedures may create a hardship for certain pipelines. Therefore, the Commission will consider requests for waivers of certain provisions of the transition rules on a case-by-case basis.

In response to a request by El Paso, the Commission is clarifying that only the purchased gas costs a pipeline projects to occur after June 1, 1988 will be tested in the assessment of past

[35] Specifically, the good faith negotiation provisions in 18 CFR 270.201 (1987).

[36] Section 154.305(h) (3) (D).

[37] Notice of Technical Conference issued January 27, 1988; 53 FR 2826 (Feb. 2, 1988).

[38] ANC/CIG, Enron, TETCO, Panhandle/Trunkline, and Williams.

[39] Pipelines submit out-of-cycle PGA filings and interim adjustments under their flexible PGA tariffs.

[40] Natural Gas Pipeline Company of America, Opinion No. 256, 37 FERC ¶ 61,215 (1986); Opinion No. 256–A, 39 FERC ¶ 61,218 (1987). The Commission codified the specific cost classification and rate design principles embodied in these opinions in Order No. 483.

[41] These are known amounts that are not paid because some impediment of payment.

performance in the pipeline's first annual PGA effective after June 1, 1988.

III. Paperwork Reduction Act and Effective Date

The Paperwork Reduction Act [42] and the Office of Management and Budget's (OMB) regulations [43] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this order on rehearing have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357-5311). Comments on the provisions of this order on rehearing can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This order on rehearing is effective on April 8, 1988. In the event OMB has not approved this order, the Commission will issue a notice postponing the effective date.

List of Subjects in 18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 154, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriation Act, 31 U.S.C. 9701 (1970).

2. In § 154.304, paragraph (c) is revised to read as follows:

§ 154.304 Scheduled annual and quarterly PGA filings.

* * * * *

(c) *Effective dates.* A pipeline must file its annual and quarterly PGA filings with the Commission to be effective as follows:

Annual Date: January 1

(Quarterly Dates: April 1, July 1, October 1)

Alabama-Tennessee Natural Gas Company
Granite State Gas Transmission, Inc.
East Tennessee Natural Gas Company
Northern Natural Gas Company
Sea Robin Pipeline Company
Tennessee Gas Pipeline Company
National Fuel Gas Supply Corporation

Annual Date: February 1

(Quarterly Dates: May 1, August 1, November 1)

Lawrenceburg Gas Transmission Corporation
Texas Eastern Transmission Corporation
Texas Gas Transmission Corporation

Annual Date: March 1

(Quarterly Dates: June 1, September 1, December 1)

Algonquin Gas Transmission Company
Natural Gas Pipeline Company of America
North Penn Gas Company
Panhandle Eastern Pipe Line Company

Annual Date: April 1

(Quarterly Dates: July 1, October 1, January 1)

Arkla Energy Resources, A Division of Arkla, Inc.
Commercial Pipeline Company, Inc.
Midwestern Gas Transmission Company, Southern Division
Northwest Pipeline Corporation
Southern Natural Gas Company

Annual Date: May 1

(Quarterly Dates: August 1, November 1, February 1)

ANR Pipeline Company
Columbia Gas Transmission Company
Florida Gas Transmission Company
Kentucky-West Virginia Gas Company
MIGC, Inc.
Williams Natural Gas Company

Annual Date: June 1

(Quarterly Dates: September 1, December 1, March 1)

Mississippi River Transmission Corporation
Mountain Fuel Resources, Inc.
Pacific Interstate Transmission Company
Valero Interstate Transmission Company

Annual Date: July 1

(Quarterly Dates: October 1, January 1, April 1)

Distrigas of Massachusetts Corporation
El Paso Natural Gas Company
Gas Gathering Corporation
South Georgia Natural Gas Company
Transwestern Pipeline Company

Annual Date: August 1

(Quarterly Dates: November 1, February 1, May 1)

Bayou Interstate Pipeline System
Transcontinental Gas Pipe Line Company
Western Gas Interstate Company
Williston Basin Interstate Pipeline Company

Annual Date: September 1

(Quarterly Dates: December 1, March 1, June 1)

CNG Transmission Corporation
Carnegie Natural Gas Company
Equitable Gas Company
Locust Ridge Gas Company
Mid Louisiana Gas Company
Trunkline Gas Company

Annual Date: October 1

(Quarterly Dates: January 1, April 1, July 1)

Colorado Interstate Gas Company
Raton Gas Transmission Company
Reliance Pipeline Company
Southwest Gas Corporation
United Gas Pipeline Company
West Texas Gas, Inc.

Annual Date: November1

(Quarterly Dates: February 1, May 1, August 1)

Eastern Shore Natural Gas Company
Great Lakes Gas Transmission Company
Inter-City Minnesota Pipeline, Ltd., Inc.
Texas Gas Pipe Line Corporation
Valley Gas Transmission
Midwestern Gas Transmission Company, Northern Division

Annual Date: December 1

(Quarterly Dates: March 1, June 1, September 1)

KN Energy, Incorporated
Louisiana-Nevada Transit Company
Western Transmission Corporation.

3. In § 154.305, paragraphs (c)(1)(ii), (h)(3)(i), (i)(1)(i), (i)(1)(ii), (i)(1)(iii), and (i)(3) are revised and a new paragraph (c)(4) is added to read as follows:

§ 154.305 Annual PGA filing.

* * * * * * *

(c) *Determining the current adjustment.*

(1) *Method for projecting cost of purchased gas.* * * *

(ii) Known and measurable changes in the rate, for all but pipeline supplier rates, based on contractual obligations that are in existence on the date the PGA is filed. The rate to be used for each projected purchase of pipeline supply will be the rate in effect as of the effective date of the PGA or a rate which will come out of suspension during the PGA effective period. The rate for producer supply may be adjusted, if applicable, by the monthly ceiling price escalations allowed under the Natural Gas Policy Act of 1978; and

* * * * *

(4) *Revision to the current adjustment.* A pipeline may file a revision to the current adjustment filed with its annual PGA. The revision must be filed with the Commission and posted under § 154.16, at least 30 days before a pipeline's annual PGA effective date, as established in § 154.304(c). At the same time, the pipeline must serve its jurisdictional customers and interested state commissions with a copy of the filing as described in paragraph (a) of

[42] 44 U.S.C. 3501-3520 (1982).

[43] 5 CFR Part 1320 (1987).

this section. The revision must conform to the following:

(i) The filing must contain tariff sheets as specified in paragraph (a)(1) of this section.

(ii) This report must contain detailed computations that clearly show the derivation of the revision to the current adjustment. The format in which this report must be submitted and the information that the report must contain should conform to the format for the quarterly PGA filing as set forth in FERC Form No. 542-PGA, Purchased Gas Adjustment (PGA) Filing.

(iii) The current adjustment must be determined as described in paragraphs (b) and (c) of this section. A pipeline must not make an adjustment to the surcharge rate in this filing.

* * * * *

(h) *Carrying charges.* * * *

(3) *Carrying charge base.* (i) The carrying charge base for the refund, revenue credits and billing adjustments subaccount will be the prior month's ending refund, revenue credit and billing adjustment subaccount balance of Account No. 191 adjusted for any applicable deferred income taxes recorded consistent with § 154.303(c)(3) and reduced for unpaid accruals, if any.

* * * * *

(i) *Refunds.* (1) *General rule.* * * *

(i) Establishing a separately identified refund subaccount of Account No. 191. During a deferral period a pipeline must:

(A) Credit the subaccount with the jurisdictional portion of all refunds, revenue credits, and the related interest received;

(B) Debit the subaccount with the out-of-period billing adjustments; and,

(C) Debit if the subaccount balance is a debit balance or credit if the subaccount balance is a credit balance with the carrying charges computed under paragraph (h) of this section.

(ii) If the refund subaccount balance is a credit balance, disbursing to its jurisdictional customers in cash the total refund subaccount balance when the total refund subaccount balance equals or exceeds an amount which is the lesser of:

(A) $2 million, or

(B) 1 cent per MMBtu, determined by dividing X by Y where:

X = The monthly ending refund balance, and
Y = The quantity of a pipeline's most recent 12 months of actual jurisdictional sales.

(iii) The disbursement must be made by the pipeline within 90 days of the end of the month in which a pipeline receives a refund, revenue credit, or billing adjustment which causes the refund subaccount balance to reach the level stated in paragraph (1)(ii)(A) or (l)(ii)(B) of this section.

* * * * *

(3) *Debiting refund subaccount.* * * *

(i) If the balance is a credit balance, disburse the amounts in cash in the manner described in paragraphs (h)(2)(i) or (h)(2)(ii) of this section; or

(ii) If the balance is a debit balance or the pipeline elects not to make a cash disbursement under paragraph (h)(3)(i) of this section, transfer the amounts to the current deferral subaccount balance determined under paragraphs (e) and (g) of this section.

* * * * *

4. In § 154.306, paragraphs (d)(1) and (d)(2) are revised and paragraph (d)(3) is added to read as follows:

§ 154.306 Assessment of past performance.

* * * * *

(d) *Actual cost of gas purchased.* * * *

(1) Less adjustments for exchange transactions and transportation imbalances;

(2) Including only the gas cost components that were used to compute the projected average cost of gas that is compared in a test interval; and

(3) Excluding any demand costs permitted to be passed through a pipeline's two-part rates on an as-billed basis under § 154.305(b) (2) and (3).

Note: This appendix will not be published in the *Code of Federal Regulations.*

Appendix—Petitions for Rehearing Filed by:

Arizona Direct Customers
ANR Pipeline Company/Colorado Interstate Gas Company
Columbia Gas Distribution Companies
Columbia Gas Transmission Corporation
Consolidated Gas Transmission Corporation
El Paso Natural Gas Company
Enron Interstate Pipelines
Great Lakes Transmission Company
Natural Gas Pipeline Company of America
National Fuel Gas Supply Corporation
Northwest Natural Gas Company
Northwest Pipeline Corporation
Panhandle Eastern Pipe Line Company/Trunkline Gas Company
Producer Associations
Tennessee Gas Pipeline Company
Texas Eastern Transmission Corporation
Transcontinental Gas Pipe Line Corporation
Williams Natural Gas Company.

[FR Doc. 88-4966 Filed 3-8-88; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 157

[Docket Nos. RM86-3-003 through -068, Order No. 451-A]

Ceiling Prices; Old Gas Pricing Structure; Correction

Issued March 1, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing; correction.

SUMMARY: Order No. 451-A, issued December 15, 1986, revised the due date for reports of sales made under the authority of the blanket certificate granted by 18 CFR 157.301 (1987) from March 1 to April 1 (51 FR 46762 at 46805 (Dec. 24, 1986)). This notice corrects the text of § 157.301 to reflect the April 1 deadline for such reports.

EFFECTIVE DATE: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Darrell Blakeway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8224.

SUPPLEMENTARY INFORMATION: In Order No. 451 (51 FR 22168 (June 18, 1986)), the Commission promulgated 18 CFR 157.301, granting certificates of public convenience and necessity to authorize sales of natural gas abandoned under the good faith negotiation precedures of 18 CFR 270.201. Section 157.301(c) required first sellers who make sales under such certificates to file reports with the Commission by March 1 of each year providing certain information with respect to sales initiated during the preceding calendar year. In Order No. 451-A, granting rehearing in part and clarifying the final rule, the Commission revised the deadline for filing such reports from March 1 to April 1 (51 FR 46762 at 46805 (Dec. 24, 1986)). However, the text of § 157.301 was not amended accordingly. This correction notice is issued, as a ministerial action, to incorporate the revised deadline in the text of the *Code of Federal Regulations.*

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 157, Chapter I, Title 18, *Code of Federal*

Regulations, is corrected at set forth below.

Lois D. Cashell,

Acting Secretary

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act 1978, 15 U.S.C. 3301–3432 (1982).

Subpart G—Natural Gas Producer Blanket Authority for Sales and Abandonment

§ 157.301 [Amended]

2. In § 157.301, paragraph (c) introductory text is amended by removing the word "March", and inserting in lieu thereof the word "April".

[FR Doc. 88–4776 Filed 3–8–88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs not Subject to Certification; Levamisole

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. providing for use of levamisole as a pour-on liquid for treating cattle for stomach, intestinal, and lung worm infestation.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Division, Wayne, NJ 07470, filed NADA 140–844 providing for the use of a 200-milligram-per-milliliter leamisole pour-on liquids (TRAMISOL*) for treatment of cattle for stomach worm, intestinal worm, and lung worm infections. Levamisole is currently approved as a bolus, drench, gel, injectable, and pour-on liquid to treat cattle for stomach worm, intestinal worm, and lung worm infections. Based on the data in the NADA and additional information, the NADA is approved and 21 CFR 524.1240(b) is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 is revised to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1240 [Amended]

2. Section 524.1240 *Levamisole* is amended in paragraph (b) by inserting the phrase "010042 and" before sponsor number "011716".

Dated: March 2, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–5115 Filed 3–8–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8186]

Income Tax, Taxable Years Beginning After December 31, 1953; Election To Be Taxed as a Real Estate Mortgage Investment Conduit and Other Administrative Matters; and OMB Control Numbers Under the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to real estate mortgage investment conduits. The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1986. These regulations prescribe the manner in which an entity elects status as a real estate mortgage investment conduit (REMIC) for Federal income tax purposes and the procedures to be followed when filing a Federal income tax return as a REMIC. The regulations also require a REMIC to file information returns with the Internal Revenue Service and to provide notice to holders of interests in the REMIC of income and certain allocable expenses attributable to their interests.

DATES: The temporary regulations are effective after December 31, 1986, and, with respect to certain reporting requirements contained in §§ 1.67–3T (f)(3)(ii), 1.67–3T (f)(5)(i)(B), 1.860F–4T (e)(1)(i)(D) and (E), 1.6049–7T (f)(2)(ii) (C), (D), and (G), and 1.6049–7T (f)(3), for calendar quarters and calendar years after 1987.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202–566–3297), with respect to the allocation of expenses by REMICs and Laura Ann M. Lauritzen (202–566–3829), with respect to all other matters, of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T).

SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulations to the Income Tax Regulations (26 CFR Part 1) under sections 67, 860D, 860F, and 6049 (d)(7) of the Internal Revenue Code of 1986 (Code), relating to real estate mortgage investment conduits. Section 671 of the Tax Reform Act of 1986 (the 1986 Act)

added to the Code new sections 860A through 860G to provide rules relating to real estate mortgage investment conduits, or REMICs, while section 674 of the 1986 Act amended section 6049 to impose certain information reporting requirements with respect to REMIC interests and certain other debt instruments. In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The temporary regulations under section 860D prescribe the manner in which an entity elects status as a REMIC. The temporary regulations under section 860F govern the filing of a REMIC's income tax return and, together with the temporary regulations under section 6049, require that the REMIC provide notice of income and other information to its investors and the Internal Revenue Service.

Section 132 of the 1986 Act added to the Code new section 67 which disallows certain miscellaneous itemized deductions in computing the taxable income of an individual to the extent that the aggregate of those deductions does not exceed 2 percent of the individual's adjusted gross income section 67(c) directs that regulations be issued to prohibit the indirect deduction through pass-through entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual. Section 67(c) also directs that regulations provide any necessary reporting requirements. The temporary regulations under section 67 that are contained in this document fulfill the requirements of section 67(c) as it applies to REMICs.

Under section 675(a) of the 1986 Act, new sections 860A through 860G of the Code and the conforming amendments made to other sections are effective for taxable years beginning after December 31, 1986. Section 106(v)(1) of the Technical Corrections Bill would amend section 675(a) of the 1986 Act so that all provisions relating to REMICs take effect as of January 1, 1987. Accordingly, the Service has announced that it will apply these provisions to any holder of an interest in a REMIC as of January 1, 1987, regardless of the holder's taxable year. See Notice 87–41, 1987–24 I.R.B. 17 (June 15, 1987).

Explanation of Provisions

Treatment of a REMIC as a Partnership

Section 860F(e) provides that, for purposes of Subtitle F of the Code (Procedure and Administration), a REMIC is treated as a partnership and any holder of a residual interest is treated as a partner. Thus, the rules relating to the tax treatment of partnership items (Subchapter C of Chapter 63 of Subtitle F) generally apply to a REMIC. For example, under § 1.860F–4T(d), a REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner under § 301.6231(a)(7)–1T. If there is only one holder of the REMIC residual interest, however, § 1.860F–4T(a) provides an exception to the application of those rules.

REMIC Income Tax Return and Election

Section 1.860F–4T(b) generally requires a REMIC to file an income tax return annually with the Internal Revenue Service. The Service has developed new Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, for this purpose. As required by section 860F(e), the return must include the amount of the daily accruals determined under section 860E(c). The due date and any extensions for filing the REMIC's annual return are determined as if the REMIC were a partnership that uses the calendar year. Form 1066 may be signed by any one of the holders of a residual interest during that taxable year or, as provided in section 6903, by a fiduciary as defined in section 7701(a)(6).

As provided in § 1.860D–1T(a), an entity or a segregated pool of assets within an entity elects to be treated as a REMIC by furnishing certain information and by computing its taxable income (or net loss) as a REMIC in accordance with section 860C(b) and the regulations thereunder. This election is made on the Form 1066 for the first taxable year of the entity's existence. Once made, the election is irrevocable for that taxable year and all succeeding taxable years.

Section 1.860D–1T(b) requires that the REMIC provide certain information with its income tax return for the year of the election. That information includes the REMIC's employer identification number (a REMIC may apply for an EIN on Form SS–4, "Application for Employer Identification Number"), information concerning the terms of each class of regular interest and the designated residual interest, and any other information that is required by the form. The REMIC must also provide on its first return a description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6). Finally, under § 1.860D–1T(c), an entity or segregated pool of assets that elects to be a REMIC must keep sufficient records concerning investments and other assets to be able to show that it is in compliance with the provisions of sections 860A through 860G during each taxable year.

Notice to Residual Interest Holders

At the close of each calendar quarter, a REMIC is required under § 1.860F–4T(e)(1) to provide to each person who held a residual interest in the REMIC during the quarter notice on Schedule Q (Form 1066) of certain information. That information includes (a) the residual holder's share of REMIC taxable income or net loss for the calendar quarter, (b) the amount of the excess inclusion with respect to the holder's residual interest, (c) in the case of certain holders, the allocable investment expenses for the quarter, (d) for calendar years after 1987, certain information with respect to the percentage of the REMIC's assets that are qualifying real property loans under section 593, assets of a domestic building and loan association (as described in section 7701(a)(19)), and real estate assets under § 1.860F–4T(e)(1)(ii)(C). The requirements concerning real estate assets under section 856 anticipate certain provisions of the Technical Corrections Bill amending the 1986 Act.

Generally, § 1.860F–4T(e)(2) requires that Schedule Q be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter no later than the last day of the month following the close of the calendar quarter. Under § 1.860F–4T(e)(2)(ii), however, the notice for each of the four calendar quarters of 1987 must be mailed (or otherwise delivered) to each holder no later than March 28, 1988. Finally, § 1.860F–4T(e)(4) provides that a copy of Schedule Q for each person who was a residual interest holder at any time during a REMIC's taxable year and for each quarter in which that person was a residual interest holder must be attached to the REMIC's income tax return for that taxable year. Quarterly notice to the Internal Revenue Service is not required.

Reporting to Regular Interest Holders

Section 6049 of the Code requires that certain returns of information be made regarding payments of interest. Under section 6049(d)(7) and § 1.6049F–7T(a), the term "interest" includes amounts includible in the gross income of any holder of a REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies. In accordance with Notice 87–41, this expanded definition of the term "interest" is effective, for purposes of section 6049(a), with respect to any REMIC regular interest or any other debt instrument to

wich section 1272(a)(6) applies that is issued after December 31, 1986.

As required by § 1.6049–7T(b)(1), an information return must be made with respect to any amount aggregating $10 or more that is includible as interest under § 1.6049–7T(a). This return must be made by any REMIC or other issuer of a debt instrument to which section 1272(a)(6) applies and by any broker or middleman who holds as a nominee any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies. Under § 1.6049–7T(c), information returns are not required to be made with respect to amounts includible as interest by certain holders.

In the case of an amount includible as interest, other than original issue discount, § 1.6049–7T(b)(3)(i) requires that the information return be made on Form 1099 for each calendar year showing the aggregate amount includible, the name, address, and taxpayer identification number of the person in whose income this amount is includible, and such other information as is required by the form. Section 1.6049–7T(b)(3)(ii) requires similar information with respect to amounts of original issue discount includible by any holder of a REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies.

The information returns required under § 1.6049–7T are to be filed annually in the manner prescribed in paragraph (e) of that section. Generally, § 1.6049–7T(f) requires that the same information that is provided to the Service also be furnished to each person in whose income amounts are includible as interest. Under § 1.6049–7T(f)(3), certain information regarding REMIC assets must be also be provided to investors. The additional information specified in §§ 1.67–3T(f)(3)(ii), 1.6049–7T(f)(2)(ii) (C), (D) and (G), and 1.6049–7T(f)(3) shall be furnished to investors for calendar years after 1987.

The Service is interested in comments on possible alternatives that would simplify the reporting requirements to holders of REMIC regular interests by brokers and middlemen who hold as nominees. These comments should address the cost and administrability of any suggested alternative methods.

Information Required on Debt Instrument

Under § 1.6049–7T(g), the issuer of any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies is required to set forth certain information on the face of the regular interest or other debt instrument. This requirement is effective, however, only with respect to any regular interest or other debt instrument that is issued after April 8, 1988.

Treatment of Allocable Investment Expenses

Section 1.67–3T(a)(1) requires a REMIC to allocate to each of its pass-through interest holders the holder's proportionate share of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter. In general, a pass-through interest holder (as defined in § 1.67–3T(a)(2)(i)(A)) is any holder of a residual interest that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as in the case of an individual, or a pass-through entity, interests in which are owned by either an individual or a person that computes its taxable income in the same manner as in the case of an individual.

The term "pass-through interest holder" includes, pursuant to §1.67–3T(a)(3)(i), a grantor trust, a partnership, an S corporation, a common trust fund, a regulated investment company, and a REMIC. It does not include an estate, a nongrantor trust, a cooperative, a real estate investment trust, or other entities such as a qualified pension plan, an individual retirement account, or an insurance company holding assets in a separate asset account to fund certain variable contracts. The term "allocable investment expenses" (as defined in § 1.67–3T(a)(4)) means the aggregate amount of the expenses paid or accrued in the calendar quarter for which a deduction is allowable under section 212 in determining the taxable income of the REMIC for the calendar quarter.

Pursuant to § 1.67–3T(b)(1) a pass-through interest holder is treated both as having received or accrued income and as having paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company) in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC.

Under § 1.67–3T(b)(1)(i), a pass-through interest holder whose taxable year is the calendar year or ends with a calendar quarter takes into account such amounts in those calendar quarters that fall within the holder's taxable year. Separate inclusion rules apply under § 1.67–3T(b)(1)(ii) to a holder whose taxable year does not end with a calendar quarter. An interest holder in a REMIC that is not a pass-through interest holder does not take into account in computing its taxable income any amount of its proportionate share of allocable investment expenses. Under § 1.67–3T(c)(1), a REMIC generally computes a pass-through interest holder's proportionate share of its allocable investment expenses by determining the daily amount of such expenses and allocating this daily amount to the pass-through interest holder in proportion to its respective holdings on that day. Generally, a pass-through interest holder's proportionate share of the daily amount of the allocable investment expenses is determined by taking into account all holders of a REMIC residual interest, whether or not pass-through interest holders.

A REMIC is required under § 1.67–3T(f)(1) to provide written notice to each pass-through interest holder to whom an allocation of expenses is required to be made. Except in the case of notice to a regular interest holder in a single-class REMIC (as described in § 1.67–3T(a)(2)(ii)(B)), notice is furnished quarterly on Schedule Q (Form 1066). The notice must list the aggregate amount of expenses paid or accrued during each calendar quarter for which the REMIC is allowed a deduction under section 212 and the interest holder's proportionate share of these expenses for the calendar quarter. This information must also be furnished annually by the REMIC to the Internal Revenue Service pursuant to § 1.67–3T(f)(3)(i).

If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may provide the written notice to the nominee and make the information return to the Internal Revenue Service with respect to the nominee. Section 1.67–3T(f)(5) provides reporting requirements for nominee to which a REMIC provides notice.

In the case of a single-class REMIC, the term "pass-through interest holder" is defined more broadly to include any regular or residual interest holder that is either an individual (other than certain nonresident aliens), a person that computes its taxable income in the same manner as in the case of an individual, or a pass-through entity, interests in which are owned by certain types of holders. Under § 1.67–3T(c)(3), a single-class REMIC allocates its investment expenses for a calendar quarter to each holder in proportion to the amount of income that accrues to the holder for that quarter.

As required under § 1.67–3T(f) for all other REMICs, a single-class REMIC must report to pass-through interest holders and the Internal Revenue Service the holder's proportionate share of allocable investment expenses. Such

a REMIC is required to report this information quarterly to pass-through interest holders who hold residual interests on Schedule Q (Form 1066) and annually to the Internal Revenue Service as required in § 1.860F–4T(e)(4). A single-class REMIC is required to report the information quarterly to pass-through interest holders who hold regular interests on a separate statement and annually to the Internal Revenue Service on information return Form 1099.

Special Analyses

The Commissioner of Internal Revenue has determined that these temporary regulations do not constitute a major rule as defined in Executive Order 12291 and, therefore, a regulatory impact analysis is not required.

No general notice of proposed rulemaking is required by 5 U.S.C. 553(d) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

The collection of information requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal authors of these temporary regulations are Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service and Michel A. Dazé, formerly of that office. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.851–1 through 1.860F–4T

Income taxes, Investment companies, Real estate investment trusts, Real estate mortgage investment conduits.

26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements. *Adoption of amendments to the regulations.*

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * § 1.67–3T also issued under 26 U.S.C. 67(c). * * * § 1.860F–4T also issued under 26 U.S.C. 860G(c)(3). * * * § 1.6049–7T also issued under 26 U.S.C. 1275(c) and 27 U.S.C. 6049(d)(7)(D). * * *

Par. 2. New § 1.67–3T is added immediately following § 1.63–2 and reads as set forth below:

§ 1.67–3T Allocation of expenses by real estate mortgage investment conduits (temporary).

(a) *Allocation of allocable investment expenses*—(1) *In general.* A real estate mortgage investment conduit or REMIC (as defined in section 860D) shall allocate to each of its pass-through interest holders that holds an interest at any time during the calendar quarter the holder's proportionate share (as determined under paragraph (c) of this section) of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter.

(2) *Pass-through interest holder*—(i) *In general*—(A) *Meaning of term.* Except as provided in paragraph (a)(2)(ii) of this section, the term "pass-through interest holder" means any holder of a REMIC residual interest (as definition in section 860G(a)(2)) that is—

(*1*) An individual (other than a nonresident alien whose income with respect to his or her interest in the REMIC is not effectively connected with the conduct of a trade or business within the United States),

(*2*) A person, including a trust or estate, that computes its taxable income in the same manner as in the case of an individual, or

(*3*) A pass-through entity (as defined in paragraph (a)(3) of this section) if one or more of its partners, shareholders, beneficiaries, participants, or other interest holders is (*i*) a pass-through entity or (*ii*) a person described in paragraph(a)(2)(i)(A) (*1*) or (*2*) of this section.

(B) *Examples.* The provisions of this paragraph(a)(2)(i) may be illustrated by the following examples:

Example (1). Corporation X holds a residual interest in REMIC R in its capacity as a nominee or custodian for individual A, the beneficial owner of the interest. Because the owner of the interest for Federal income tax purposes is an individual, the interest is owned by a pass-through interest holder.

Example (2). Individual retirement account 1 holds a residual interest in a REMIC. Because an individual retirement account is not a person described in paragraph (a)(2)(i)(A) of this section, the interest is not held by a pass-through interest holder.

(ii) *Single-class REMIC*—(A) *In general.* In the case of a single-class REMIC, the term "pass-through interest holder" means any holder of either—

(*1*) A REMIC regular interest (as defined in section 860G(a)(1)), or

(*2*) A REMIC residual interest, that is described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section.

(B) *Single-class REMIC.* For purposes of paragraph (a)(2)(ii)(A) of this section, a single-class REMIC IS either—

(*1*) A REMIC that would be classified as an investment trust under § 301.7701–4(c)(1) but for its qualification as a REMIC under section 860D and § 1.860D–1T, or

(*2*) A REMIC that—

(*i*) Is substantially similar to an investment trust under § 301.7701–4(c)(1), and

(*ii*) Is structured with the principal purpose of avoiding the requirement of paragraph (a)(1) and (2)(ii)(A) of this section to allocate allocable investment expenses to pass-through interest holders that hold regular interests in the REMIC.

For purposes of this paragraph (a)(2)(ii)(B), in determining whether a REMIC would be classified as an investment trust or is substantially similar to an investment trust, all interests in the REMIC shall be treated as ownership interests in the REMIC, without regard to whether or not they would be classified as debt for Federal income tax purposes in the absence of a REMIC election.

(C) *Examples.* The provisions of paragraph (a)(2)(ii) of this section must be illustrated by the following examples:

Example (1). Corporation M transfers mortgages to a bank under a trust agreement as described in Example (2) of § 301.7701–4(c)(2). There are two classes of certificates. Holders of class C certificates are entitled to receive 90 percent of the payment of principal and interest on the mortgages; holders of class D certificates are entitled to receive the remaining 10 percent. The two classes of certificates are identical except that, in the event of a default on the underlying mortgages, the payment rights of class D certificates holders are subordinated to the rights of class C certificate holders. M sells the class C certificates to investors and retains the class D certificates. The trust would be classified as an investment trust under § 301.7701–4(c)(1) but for its qualification a REMIC under section 860D, the class C certificates represent regular interests in the REMIC and the class D certificates represent residual interest in the REMIC. The REMIC is a single-class REMIC within the meaning of paragraph (a)(2)(ii)(B)(*1*) of this section and, accordingly,

holders of both the class C and class D certificates who are described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section are treated as pass-through interest holders.

Example (2). Assume that the facts are the same as in Example (1) except that M structures the REMIC to include a second regular interest represented by class E certificates. The principal purpose of M in structuring the REMIC to include class E certificates is to avoid allocating allocable investment expenses to class C certificate holders. The class E certificate holders are entitled to receive the payments otherwise due the class D certificate holders until they have been paid a stated amount of principal plus interest. The fair market value of the class E certificate is ten percent of the fair market value of the class D certificate and, therefore, less than one percent of the fair market value of the REMIC. The REMIC would not be classified as an investment trust under § 301.7701–4(c)(1) because the existence of the class E certificates is not incidental to the trust's purpose of facilitating direct investment in the assets of the trust. Nevertheless, because the fair market value of the class E certificates is de minimis, the REMIC is substantially similar to an investment trust under § 301.7701–4(c)(1). In addition, avoidance of the requirement to allocate allcoable investment expenses to regular interest holders is the principal purpose of M in structuring the REMIC to include class E certificates. Therefore, the REMIC is a single-class REMIC within the meaning of paragraph (a)(2)(ii)(B)(*2*) of this section, and, accordingly, holders of both residual and regular interests who are described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section are treated as pass-through interest holders.

(3) *Pass-through entity*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, for purposes of this section, a pass-through entity is—

(A) A trust (or any portion thereof) to which Subpart E, Part 1, Subchapter J, Chapter 1 of the Code applies,

(B) A partnership,

(C) An S corporation,

(D) A common trust fund described in section 584,

(E) A nonpublicly offered regulated investment company (as defined in paragraph (a)(5)(i) of this section),

(F) A REMIC, and

(G) Any other person—

(*1*) Which is not subject to income tax imposed by Subtitle A, Chapter 1, or which is allowed a deduction in computing such tax for distributions to owners or beneficiaries, and

(*2*) The character of the income of which may affect the character of the income recognized with respect to that person by its owners or beneficiaries.

Entities that do not meet the requirements of paragraphs (a)(3)(i)(G) (*1*) and (*2*), such as qualified pension plans, individual retirment accounts, and insurance companies holding assets in separate asset accounts to fund variable contracts defined in section 817(d), are not described in this paragraph (a)(3)(i).

(ii) *Exception.* For purposes of this section, a pass-through entity does not include—

(A) An estate,

(B) A trust (or any portion thereof) not described in paragraph (a)(3)(i)(A) of this section,

(C) A cooperative described without regard to subparagraphs (A) and (C) thereof, or

(D) A real estate investment trust.

(4) *Allocable investment expenses.* The term "allocable investment expenses" means the aggregate amount of the expenses paid or accrued in the calendar quarter for which a deduction is allowable under section 212 in determining the taxable income of the REMIC for the calendar quarter.

(5) *Nonpublicly offered regulated investment company*—(i) *In general.* For purposes of this section, the term "nonpublicly offered regulated investment company" means a regulated investment company to which Part I of Subchapter M of the Code applies that is not a publicly offered regulated investment company.

(ii) *Publicly offered regulated investment company.* For purposes of this section, the term "publicly offered regulated investment company" means a regulated investment company to which Part I of subchapter M of the Code applies, the shares of which are—

(A) Continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(B) Regularly traded on an established securities market, or

(C) Held by or for no fewer than 500 persons at all times during the taxable year.

(b) *Treatment of allocable investment expenses*—(1) *By pass-through interest holders*—(i) *Taxable year ending with calendar quarter.* A pass-through interest holder whose taxable year is the calendar year or ends with a calendar quarter shall be treated as having—

(A) Received or accrued income, and

(B) Paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company), in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC for those calendar quarters that fall within the holder's taxable year.

(ii) *Taxable year not ending with calendar quarter.* A pass-through interest holder whose taxable year does not end with a calendar quarter shall be treated as having—

(A) Received or accrued income, and

(B) Paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company), in an amount equal to the sum of—

(C) The pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC for those calendar quarters that fall within the holder's taxable year, and

(D) For each calendar quarter that overlaps the beginning or end of the taxable year, the sum of the daily amounts of the allocable investment expenses allocated to the holder pursuant to paragraph (c)(1)(ii) of this section for the days in the quarter that fall within the holder's taxable year.

(2) *Proportionate share of allocable investment expenses.* For purposes of paragraph (b) of this section, a pass-through interest holder's proportionate share of the allocable investment expenses is the amount allocated to the pass-through interest holder pursuant to paragraph (a)(1) of this section.

(3) *Cross-reference.* See § 1.67–1T with respect to limitations on deductions for expenses described in section 212 (including amounts treated as such expenses under this section).

(4) *Interest income to holders of regular interests in certain REMICs.* Any amount allocated under this section to the holder of a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall be treated as interest income.

(5) *No adjustment to basis.* The basis of any holder's interest in a REMIC shall not be increased or decreased by the amount of the holder's proportionate share of allocable investment expenses.

(6) *Interest holders other than pass-through interest holders.* An interest holder of a REMIC that is not a pass-through interest holder shall not take into account in computing its taxable income any amount of income or expense with respect to its proportionate share of allocable investment expenses.

(c) *Computation of proportionate share*—(1) *In general.* For purposes of paragraph (a)(1) of this section, a REMIC shall compute a pass-through interest holder's proportionate share of the REMIC's allocable investment expenses by—

(i) Determining the daily amount of the allocable investment expenses for the calendar quarter by dividing the

total amount of such expenses by the number of days in that calendar quarter.

(ii) Allocating the daily amount of the allocable investment expenses to the pass-through interest holder in proportion to its respective holdings on that day, and

(iii) Totaling the interest holder's daily amounts of allocable investment expenses for the calendar quarter.

(2) *Other holders taken into account.* For purposes of paragraph (c)(1)(ii) of this section, a pass-through interest holder's proportionate share of the daily amount of the allocable investment expenses is determined by taking into account all holders of residual interests in the REMIC, whether or not pass-through interest holders.

(3) *Single-class REMIC*—(i) *Daily allocation.* In lieu of the allocation specified in paragraph (c)(1)(ii) of this section, a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall allocate the daily amount of the allocable investment expenses to each pass-through interest holder in proportion to the amount of income accruing to the holder with respect to its interest in the REMIC on that day.

(ii) *Other holders taken into account.* For purposes of paragraph (c)(3)(i) of this section, the amount of the allocable investment expenses that is allocated on any day to each pass-through interest holder shall be determined by multiplying the daily amount of allocable investment expenses (determined pursuant to paragraph (c)(1)(i) of this section) by a fraction, the numerator of which is equal to the amount of income that accrues (but not less than zero) to the pass-through interest holder on that day and the denominator of which is the total amount of income (as determined under paragraph (c)(3)(iii) of this section) that accrues to all regular and residual interest holders, whether or not pass-through interest holders, on that day.

(iii) *Total income accruing.* The total amount of income that accrues to all regular and residual interest holders is the sum of—

(A) The amount includible under section 860B in the gross income (but not less than zero) of the regular interest holders, and

(B) The amount of REMIC taxable income (but not less than zero) taken into account under section 860C by the residual interest holders.

(4) *Dates of purchase and disposition.* For purposes of this section, a pass-through interest holder holds an interest on the date of its purchase but not on the date of its disposition.

(d) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) During the calendar quarter ending March 31, 1989, REMIC X, which is not a single-class REMIC, incurs $900 of allocable investment expenses. At the beginning of the calendar quarter, X has 4 residual interest holders, who hold equal proportionate shares, and 10 regular interest holders. The residual interest holders, all of whom have calendar-year taxable years, are as follows:

A, an individual,

C, a C corporation that is a nominee for individual I,

S, an S corporation, and

M, a C corporation that is not a nominee.

(ii) Except for A, all of the residual interest holders hold their interests in X for the entire calendar quarter. On January 31, 1989, A sells his interest to S. Thus, for the first month of the calendar quarter, each residual interest holder holds a 25 percent interest (100%/4 interest holders) in X. For the last two months, S's holding is increased to 50 percent and A's holding is decreased to zero. The daily amount of allocable investment expenses for the calendar quarter is $10 ($900/90 days).

(iii) The amount of allocable investment expenses apportioned to the residual interest holders is as follows:

(A) $75 ($10 × 25% × 30 days) is allocated to A for the 30 days that A holds an interest in X during the calendar quarter. A includes $75 in gross income in calendar year 1989. The amount of A's expenses described in section 212 is increased by $75 in calendar year 1989. A's deduction under section 212 (including the $75 amount of the allocation) is subject to the limitations contained in section 67.

(B) $225 ($10 × 25% × 90 days) is allocated to C. Because C is a nominee for I, C does not include $225 in gross income or increase its deductible expenses by $225. Instead, I includes $225 in gross income in calendar year 1989, her taxable year. The amount of I's expenses described in section 212 is increased by $225. I's deduction under section 212 (including the $225 amount of the allocation) is subject to the limitations contained in section 67.

(C) $375 (($10 × 25% × 30 days) + ($10 × 50% × 60 days)) is allocated to S. S includes in gross income $375 of allocable investment expenses in calendar year 1989. The amount of S's expenses described in section 212 for that taxable year is increased by $375. S allocates the $375 to its shareholders in accordance with the rules described in sections 1366 and 1377 in calendar year 1989. Thus, each shareholder of S includes its pro rata share of the $375 in gross income in its taxable year in which or with which calendar year 1989 ends. The amount of each shareholder's expenses described in section 212 is increased by the amount of the shareholder's allocation for the shareholder's taxable year in which or with which calendar year 1989 ends. The shareholder's deduction under section 212 (including the allocation under this section) is subject to the limitations contained in section 67.

(D) No amount is allocated to M. However, M's interest is taken into account for purposes of determining the proportionate share of those residual interest holders to whom an allocation is required to be made.

(iv) No allocation is made to the 10 regular interest holders pursuant to paragraph (a) of this section. In addition, the interests held by these interest holders are not taken into account for purposes of determining the proportionate share of the residual interest holders to whom an allocation is required to be made.

(e) *Allocable investment expenses not subject to backup withholding.* The amount of allocable investment expenses required to be allocated to a pass-through interest holder pursuant to paragraph (a)(1) of this section is not subject to backup withholding under section 3406.

(f) *Notice to pass-through interest holders*—(1) *Information required.* For each calendar quarter, a REMIC shall provide to each pass-through interest holder to which an allocation of allocable investment expenses is required to be made pursuant to paragraph (a)(1) of this section notice of—

(i) The aggregate amount of expenses paid or accrued during the calendar quarter for which the REMIC is allowed a deduction under section 212, and

(ii) The proportionate share of these expenses allocated to that pass-through interest holder for the calendar quarter, as determined under paragraph (c) of this section.

(2) *Statement to be furnished*—(i) *To residual interest holder.* For each calendar quarter, a REMIC shall provide to each pass-through interest holder who holds a residual interest during the calendar quarter the notice required under paragraph (f)(1) of this section on Schedule Q (Form 1066), as required in § 1.860F-4T(e).

(ii) *To regular interest holder—(A) In general.* For each calendar quarter, a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) generally shall provide to each pass-through interest holder who holds a regular interest during the calendar quarter the notice required under paragraph (f)(1) of this section on a separate statement mailed (or otherwise delivered) in a separate mailing to the regular interest holder's last known address no later than the last day of the month following the close of the calendar quarter. No promotional or advertising information may be included on the statement. The information required to be included in the notice for the last calendar quarter of the calendar year may, however, be separately stated on the statement described in § 1.6049-

7T(f) instead of on a separate statement provided in a separate mailing. See § 1.6049–7T(f) (4) and (6)(i)(A).

(B) *Special rule for 1987.* The statement required under paragraph (f)(2)(ii)(A) of this section for any calendar quarter of 1987 shall be mailed (or otherwise delivered) to each pass-through interest holder who holds a regular interest during that calendar quarter no later than March 28, 1988.

(3) *Returns to the Internal Revenue Service*—(i) *With respect to residual interest holders.* Any REMIC required under paragraphs (f) (1) and (2)(i) of this section to furnish information to any pass-through interest holder who holds a residual interest shall also furnish such information to the Internal Revenue Service as required in § 1.860F–4T(e)(4).

(ii) *With respect to regular interest holders.* A single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall make an information return on Form 1099 for each calendar year beginning after December 31, 1987, with respect to each pass-through interest holder who holds a regular interest to which an allocation of allocable investment expenses is required to be made pursuant to paragraphs (a) (1) and (2)(ii) of this section and for which the REMIC is required to make an information return to the Internal Revenue Service pursuant to section 6049 and § 1.6049–7T(b)(2)(i) (or would be required to make such information return but for the $10 threshold described in section 6049(a)(1) and § 1.6049–7T(b)(1)). The REMIC shall state on the information return—

(A) The sum of—

(*1*) The aggregate amounts includible in gross income as interest (as defined in § 1.6049–7T(a)(2) (i) and (ii)), for the calendar year, and

(*2*) The sum of the amount of allocable investment expenses required to be allocated to the pass-through interest holder for each calendar quarter during the calendar year pursuant to paragraph (a) of this section, and

(B) Such other information as may be specified by the form or its instructions.

(4) *Pass-through interest holder's interest held by a nominee.* If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may make the information return described in paragraphs (f)(3) (i) and (ii) of this section with respect to the nominee in lieu of the pass-through interest holder and may provide the written statement described in paragraphs (f)(2 (i) and (ii) of this section to such nominee in lieu of the pass-through interest holder.

(5) *Nominee reporting*—(i) *In general.* In any case in which a REMIC provides, pursuant to paragraph (f)(4) of this section, a written statement to the nominee of the pass-through interest holder for a calendar quarter—

(A) The nominee shall furnish each pass-through interest holder with a written statement described in either paragraph (f)(2) (i) or (ii) of this section, whichever is applicable, for the calendar quarter showing the information described in paragraph (f)(1) of this section, and

(B) If—

(*1*) The nominee is a nominee for a pass-through interest holder who holds a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section), and

(*2*) The nominee is required to make an information return pursuant to section 6042 and § 1.6049–7T (b)(1) and (2)(ii) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(2) and § 1.6049–7T(b)(1)) with respect to the pass-through interest holder,

the nominee shall make an information return on Form 1099 for each calendar year beginning after December 31, 1987, with respect to the pass-through interest holder and state on this information return the information described in paragraph (f)(3)(ii) (A) and (B) of this section.

(ii) *Time for furnishing statement.* The statement required by paragraph (f)(5)(i)(A) of this section to be furnished by a nominee to a pass-through interest holder for a calendar quarter shall be furnished to this holder no later than 30 days after receiving the written statement described in paragraph (f)(2) (i) or (ii) of this section from the REMIC.

(6) *Special rules*—(i) *Time and place for furnishing returns.* The return required by paragraphs (f)(3)(ii) and (5)(i)(B) of this section for any calendar year shall be filed at the time and place that a return required under section 6049 and § 1.6049–7T(b) is required to be filed. See § 1.6049–4(g) and § 1.6049–7T(e).

(ii) *Duplicative returns not required.* The requirements of paragraphs (f)(3)(ii) and (5)(i)(B) of this section for the making of an information return shall be met by the timely filing of an information return pursuant to section 6049 and § 1.6049–7T(b) that contains the information required by paragraph (f)(3)(ii) of this section.

Par. 3. New §§ 1.860D–1T and 1.860F–4T are added immediately following § 1.860–5. These new sections are set forth below.

§ 1.860D–1T Election to be treated as a real estate mortgage investment conduit (temporary).

(a) *In general.* An entity, or a segregated pool of assets within an entity, shall elect to be treated as a REMIC by complying with the requirements of paragraph (b) of this section and computing taxable income as a REMIC on its return (as prescribed in §1.860F–4T(b)) for the first taxable year of its existence. Once made, this election is irrevocable for that taxable year and all succeeding taxable years.

(b) *Required information.* When electing to be treated as a REMIC, the entity, or segregated pool of assets within an entity, shall provide either on its return or in a separate statement attached to its return—

(1) The REMIC's employer identification number, which shall not be the same as the identification number of any other entity,

(2) Information concerning the terms and conditions of the regular interests and the designated residual interest of the REMIC, or a copy of the offering circular or prospectus containing such information,

(3) A description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6) and the regulations thereunder, including a statement supporting the selection of the prepayment assumption,

(4) The form of the electing entity under State law or, if an election is being made with respect to a segregated pool of assets within an entity, the form of that latter entity under State law, and

(5) Such other information as the Commissioner may by form or revenue procedure require.

(c) *Determination of status.* An entity, or segregated pool of assets within an entity, that elects to be a REMIC shall keep sufficient records as to investments and other assets to be able to show that it has complied with the provisions of sections 860A through 860G and the regulations thereunder during each taxable year.

§ 1.860F–4T REMIC reporting requirements and other administrative rules (temporary).

(a) *In general.* For purposes of Subtitle F of the Code, a REMIC shall be treated as a partnership and any holder of a residual interest in the REMIC shall be treated as a partner. A REMIC shall not be subject, however, to the rules of Subchapter C of Chapter 63 of Subtitle F, relating to the treatment of partnership items, for a taxable year, if there is at no time during the taxable year more than one holder of a REMIC residual interest.

(b) *REMIC tax return*—(1) *Return of income.* To satisfy the requirement under section 6031 to make a return of income for each taxable year, a REMIC shall file the return required by paragraph (b)(2) of this section. The due date and any extensions for filing the REMIC's annual return shall be determined as if the REMIC were a partnership.

(2) *Income tax return.* Because a REMIC, unlike a partnership, may be liable for taxes imposed under Subtitle A of the Code (for example, the tax imposed under section 860F(a) on net income from prohibited transactions), the REMIC shall make a return, as required by section 6011(a), for each taxable year on Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return. The return shall include—

(i) The amount of principal outstanding on each class of regular interests as of the close of the taxable year,

(ii) The amount of the daily accruals determined under section 860E(c),

(iii) The REMIC's employer identification number, and

(iv) Such other information as the Commissioner may by form or revenue procedure require.

(c) *Signing of REMIC return.* For purposes of section 6063, a REMIC's income tax return for any taxable year may be signed by any one of the holders of a residual interest during that taxable year or, as provided in section 6903, by a fiduciary as defined in section 7701(a)(6) who is acting for the REMIC and who has furnished adequate notice in the manner prescribed in § 301.6903–1(b).

(d) *Designation of tax matters person.* A REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner under § 301.6231(a)(7)–1T. For purposes of applying that section, all holders of a residual interest in the REMIC are treated as general partners.

(e) *Notice to holders of residual interests*—(1) *Information required*—(i) *In general.* At the close of each calendar quarter, a REMIC shall provide to each person who held a residual interest in the REMIC during that quarter notice on Schedule Q (Form 1066) of all the information required by the form and the information required by paragraphs (e) (1) (i) (A) Through (F) of this section.

(A) The REMIC shall provide to a residual interest holder that person's share of the taxable income or net loss of the REMIC for the calendar quarter.

(B) The REMIC shall provide to a residual interest holder the amount of the excess inclusion (as defined in section 860E and the regulations thereunder), if any, with respect to that person's residual interest for the calendar quarter.

(C) If the holder of a residual interest is also a pass-through interest holder (as defined in § 1.67–3T (a) (2)), the REMIC shall provide to that holder the allocable investment expenses (as defined in § 1.67–3T (a) (3)) for the calendar quarter.

(D) For calendar quarters after 1987, if the percentage of the REMIC's assets, computed on the basis of the average fair market value of the assets held during the calendar quarter (as described in paragraph (e) (1) (ii) (A) of this section), represented by each of the following categories:

(*1*) Qualifying real property loans under section 593,

(*2*) Assets of a domestic building and loan association (as described in section 7701 (a) (19)), and

(*3*) Real estate assets as defined in paragraph (e) (1) (ii) (C) of this section,

is at least 95 percent, the REMIC shall provide a statement for each category for which the REMIC met this test, specifying that at least 95 percent of the REMIC's assets were represented by that category. If the REMIC fails to meet the 95 percent test for any category, the percentage of the REMIC's assets represented by that category shall be provided.

(E) For calendar quarters after 1987, if less than 95 percent of the assets of the REMIC are real estate assets (as defined in paragraph (e) (1) (ii) (C) of this section), the REMIC shall also provide to any real estate investment trust (REIT) that holds a residual interest the following information:

(*1*) The percentage of the REMIC's assets described in section 856 (c) (5) (A), excluding from real estate assets any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, computed on the bases of the average fair market value of the assets of the REMIC during the calendar quarter (as described in paragraph (e) (1) (ii) (A) of this section), and

(*2*) The percentage of the REMIC's gross income (as defined in paragraph (e) (1) (ii) (B) of this section) described in section 856 (c) (3) (A) through (F), computed as of the close of the calendar quarter. For purposes of this paragraph, the term "foreclosure property" contained in section 856 (c) (3) (F) shall have the meaning specified in section 860G (a) (8).

In determining whether a REIT satisfies the limitations of section 856 (c) (2), all gross income shall be deemed to be derived from a source specified in section 856 (c) (2).

(F) For calendar quarters in 1987, the percentages of assets required in paragraph (e) (1) (i) (D) and (E) of this section may be computed on the basis of the fair market value of the assets of the REMIC as of the close of the calendar quarter, instead of on the basis of the average during the calendar quarter.

(ii) *Special provisions.* For purposes of this paragraph (e) (1) (ii) and paragraph (e) (1) (i) (D), (E), and (F) of this section:

(A) The average fair market value of the assets during each calendar quarter is determined by making the appropriate computation as of the close of each month, week, or day, and by using the quarterly average of the monthly, weekly or daily percentages. The monthly, weekly, or daily computation period shall be applied uniformly during the calendar quarter to all categories of assets and gross income, and may not be changed in succeeding calendar quarters without the consent of the Commissioner.

(B) Gross income shall mean gross income excluding gross income from prohibited transactions defined in section 860F (a) (2).

(C) Real estate assets shall mean real estate assets and defined in section 856 (c) (6) (B) excluding any property (not otherwise a real estate asset) attributable to the temporary investment of new capital.

(2) *Quarterly notice required*—(i) *In general.* Schedule Q shall be mailed (or otherwise delivered) to each holder of a residual interest during a calendar quarter no later than the last day of the month following the close of the calendar quarter.

(ii) *Special rule for 1987.* Notice to any holder of a REMIC residual interest of the information required in paragraph (e) (1) of this section for any of the four calendar quarters of 1987 shall be mailed (or otherwise delivered) to each holder no later than March 28, 1988.

(3) *Nominee reporting*—(i) *In general.* If a REMIC is required under paragraphs (e) (1) and (2) of this section to provide notice to an interest holder who is a nominee of another person with respect to an interest in the REMIC, the nominee shall furnish such notice to the actual owner or owners.

(ii) *Time for furnishing statement.* Under paragraph (e) (3) (i) of this section, the nominee shall furnish the required notice to the actual owner or owners of a REMIC interest no later than 30 days after receiving such information.

(4) *Reports to the Internal Revenue Service.* A copy of Schedule Q for each

person who was a residual interest holder at any time during a REMIC's taxable year and for each quarter in which that person was a residual interest holder shall be attached to the REMIC's income tax return for that taxable year. Quarterly notice to the Internal Revenue Service is not required.

Par. 4. New § 1.6049–7T is added immediately after § 1.6049–6 and reads as set forth below.

§ 1.6049–7T Returns of information with respect to REMIC regular interests and certain other debt instruments (temporary).

(a) *Definition of interest*—(1) *In general.* For purposes of section 6049(a) in taxable years beginning after December 31, 1986, the term "interest" includes amounts includible in the gross income of any holder (other than a holder described in paragraph (c) of this section) of—

(i) A REMIC regular interest (as defined in section 860G(a)(1)), or

(ii) Any other debt instrument to which section 1272(a)(6) applies.

(2) *Amounts includible.* Amounts includible in gross income as interest under paragraph (a)(1) of this section may consist of—

(i) Interest actually paid to the holder,

(ii) Interest accrued, but not paid, with respect to the REMIC regular interest or other debt instrument, or

(iii) Original issue discount accrued with respect to the REMIC regular interest or other debt instrument.

(b) *Requirement of reporting*—(1) *In general.* Except as provided in paragraph (c) of this section, an information return shall be made by any person described in paragraph (b)(2) of this section with respect to any amount aggregating $10 or more includible as interest under paragraph (a)(1) of this section by any other person during a calendar year.

(2) *Person required to make reports.* The persons required to make an information return under section 6049(a) of this section are—

(i) The REMIC or other issuer of a debt instrument to which section 1272(a)(6) applies, and

(ii) Any broker or middleman who holds as a nominee any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies.

(3) *Information to be reported*—(i) *Amounts other than original issue discount.* In the case of an amounts includible as interest, other than original issue discount treated as interest, an information return on Form 1099 shall be made for the calendar year showing the aggregate amount includible, the name, address, and taxpayer identification number of the person in whose income these amounts are includible, and such other information as is required by the forms.

(ii) *Original issue discount.* In the case of original issue discount, an information return on Form 1099 shall be made for each calendar year of any holder of a REMIC regular interest, or any other debt instrument to which section 1272(a)(6) applies, with respect to which there is original issue discount includible in gross income aggregating $10 or more (as determined under section 1272(a)(6) and the regulations thereunder). The information return shall show—

(A) The name, address, and taxpayer identification number of each record holder for whom an amount of original issue discount is includible in gross income,

(B) The account or serial number, or other identifying number or information, of each REMIC regular interest or other debt instrument with respect to which a return is being made,

(C) The aggregate amount of original issue discount includible in the gross income of each holder for the period during the calendar year for which the return is made,

(D) The name and address of the person filing the return, and

(E) Such other information as is required by the form.

(iii) *Cross-reference.* See § 1.67–3T(f)(3)(ii) for additional information required to be included on an information return on Form 1099 with respect to certain holders of regular interest in REMICs described in § 1.67–3T(a)(2)(ii).

(c) *Information returns not required.* An information return shall not be required under section 6049(a) and this section with respect to amounts includible as interest by the holder of a REMIC regular interest, or any other debt instrument to which section 1272(a)(6) applies, if the holder is—

(1) An organization exempt from taxation under section 501(a) or an individual retirement plan,

(2) The United States or a State, the District of Columbia, a possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing,

(3) A foreign government, a political subdivision thereof, or an international organization,

(4) A foreign central bank of issue (as defined in § 1.895–1(b)(1) to be a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency), or

(5) Any trust which is described in section 4947(a)(1) (relating to certain charitable trusts).

(d) *Special rules*—(1) *Incorporation by reference.* Except as provided in paragraph (d)(2) of this section, the special rules of § 1.6049–4(d) are incorporated in this section, as applicable.

(2) *Exception.* Sections 11.6049–4(d)(2) and 1.6049–5(c) shall not apply to any REMIC regular interest or any other debt instrument to which section 1272(a)(6) applies until such time as the Commissioner determines that the broader reporting of amounts includible as interest required by this section is not sufficient for an accurate accounting for those amounts by the holder of any such interest. At that time, the Commissioner may by ruling or other announcement require the submission of Form 8281 (or similar form) to the Internal Revenue Service with respect to any such interest.

(e) *Time and place for filing a return with respect to amounts includible as interest.* The returns required under this section for any calendar year with respect to amounts includible as interest to which this section applies shall be filed after September 30 of that year, but not before the payor's final payment to the payee for the year, and on or before February 28 of the following year. These returns shall be filed with the appropriate Internal Revenue Center, the address of which is listed in the instructions for Form 1099. For extensions of time for filing returns under this section, see § 1.6081–1. For magnetic media filing requirements, see § 301.6011–2.

(f) *Requirement of furnishing statement to recipient*—(1) *In general.* Every person filing a Form 1099 under section 6049(a) and this section shall furnish to the person whose identifying number is required to be shown on the form a written statement showing the information required by paragraph (f)(2) of this section.

(2) *Form of statement*—(i) *Amounts other than original issue discount.* With respect to amounts includible as interest (other than original issue discount) in the gross income of any person during a calendar year, the written statement required to be furnished under paragraph (f)(1) of this section shall show—

(A) The aggregate amounts shown on Form 1099 to be included in income by that person,

(B) The name and address of the person filing the form, and

(C) A legend, including a statement that the amount is being reported to the

Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient.

(ii) *Original issue discount.* With respect to original issue discount includible in the gross income of a holder, during the calendar year, of a REMIC regular interest or other debt instrument to which section 1272(a)(6) applies, the written statement required to be furnished under paragraph (f)(1) of this section shall show—

(A) The aggregate amount of original issue discount includible in gross income by (or on behalf of) the holder for the calendar year with respect to the regular interest or other debt instrument,

(B) The information required by paragraph (b)(3)(ii)(B) of this section,

(C) For calendar years after 1987, the daily portion of original issue discount that is allocated to each day of an accrual period as determined under section 1272(a)(6) and the regulations thereunder,

(D) For calendar years after 1987, the length of the accrual period,

(E) All other items shown on Form 1099 for the calendar year,

(F) A legend, including a statement that the information required under paragraphs (f)(2)(ii) (A), (B), and (E) of this section is being reported to the Internal Revenue Service, that conforms to the legend on Form 1099, Copy B, For Recipient,

(G) For calendar years after 1987, the adjusted issue price (as defined in section 1275(a)(4)(B)(ii)) of the regular interest at the beginning of each accrual period with respect to which interest income is required to be reported on Form 1099–OID, and

(H) Information necessary to compute accrual of market discount. [Reserved.]

(3) *Information with respect to REMIC assets*—(i) *95 percent asset test.* For calendar years after 1987, the statement required by paragraph (f) of this section with respect to any REMIC regular interest shall also specify for each calendar quarter during which the percentage of the REMIC's assets, computed on the basis of the average fair market value of assets held during the calendar quarter (as described in § 1.860F–4T(e)(1)(ii)(A)), represented by each of the following categories:

(A) Qualifying real property loans under section 593,

(B) Assets of a domestic building and loan association (as described in section 7701(a)(19)), and

(C) Real estate assets as defined in § 1.860F–4T (e)(1)(ii)(C) is at least 95 percent, that, for each category for which the REMIC meets this test, at least 95 percent of the REMIC's assets were represented by that category for that calendar quarter. If the REMIC fails to meet the 95 percent test for any category in any calendar quarter, the percentage of the REMIC's assets represented by that category for that calendar quarter shall be provided.

(ii) *Additional information required if the 95 percent test not met.* For calendar years after 1987, if for any calendar quarter less than 95 percent of the assets of the REMIC are real estate assets (as defined in § 1.860F–4T(e)(1)(ii)(C)), the REMIC shall also report for each such calendar quarter to any real estate investment trust (REIT) that holds a regular interest the following information:

(A) The percentage of the REMIC's assets described in section 856(c)(5)(A), excluding from real estate assets any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, computed on the bases of the average fair market value of the assets of the REMIC during the calendar quarter (as described in § 1.860F–4T(e)(1)(ii)(A)), and

(B) The percentage of the REMIC's gross income (as defined in § 1.860F–4T(e)(1)(ii)(B)) described in section 856(c)(3)(A) through (F), computed as of the close of the calendar quarter. For purposes of this paragraph, the term "foreclosure property" contained in section 856(c)(3)(F) shall have the meaning specified in section 860G(a)(8). In determining whether a REIT satisfies the limitations of section 856(c)(2), all gross income shall be deemed to be derived from a source specified in section 856(c)(2).

(4) *Cross-reference.* See § 1.67–3T(f)(2)(ii) for additional information that may be separately stated on the statement required by paragraph (f) of this section with respect to certain holders of regular interest in REMICs described in § 1.67–3T(a)(2)(ii).

(5) *Time for furnishing statements—(i) In general.* Each statement required under paragraph (f) of this section to be furnished to any person for a calendar year with respect to amounts includible as interest shall be furnished to that person after April 30 of that year and on or before January 31 of the following year, but not before the final interest payment (if any) for the calendar year.

(ii) *Nominee reporting.* Each statement required under paragraph (f) of this section to be furnished by a nominee shall be furnished to the actual owner or owners of a REMIC interest no later than 30 days after the nominee receives such information.

(6) *Special rules*—(i) *Copy of Form 1099 permissible.* The requirements of paragraph (f) of this section for the furnishing of a statement to any person, including the legend requirement of paragraphs (f)(2)(i)(C) and (ii)(F) of this section, may be met by furnishing to that person—

(A) A copy of the Form 1099 filed pursuant to paragraph (b) of this section in respect of that person, plus a separate statement that contains the information described in paragraphs (f)(2)(ii)(C), (D), and (G) (f)(3), and (f)(4), if applicable, of this section, or

(B) A substitute form that contains all the information required under paragraph (f) of this section and that complies with any current revenue procedure concerning the reproduction of paper substitutes of Forms 1099 and the furnishing of substitute statements to forms recipients.

(ii) *Statement furnished by mail.* A statement mailed to the last known address of any person shall be considered to be furnished to that person within the meaning of this section.

(g) *Information required to be set forth on face of debt instrument.* In the case of any REMIC regular interest, or any other debt instrument to which section 1272(a)(6) applies, that is issued after April 8, 1988, and that has original issue discount, the issuer shall set forth on the face of the regular interest or other debt instrument—

(1) The amount of the original issue discount,

(2) The issue date,

(3) The rate at which interest is payable (if any) as of the issue date, and

(4) The yield to maturity, including a statement as to the assumption made under section 1272(a)(6)(B)(iii), the method used to determine yield where there is a short accrual period, and the amount of the original issue discount allocable to the short accrual period.

In cases where it is not possible to set forth the information required by this paragraph (g) on the face of the regular interest or other debt instrument by the issue date, the issuer shall deliver to the holder a sticker containing this information within 10 days after the issue date. For rules relating to the penalty imposed for failure to show the information required by this paragraph (g) on the regular interest or other debt instrument, see section 6706(a) and the regulations thereunder.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by adding to the table in the appropriate place—

"§1.67–3T . . . . . 1545–0118",
"§1.860D–1T . . . . . 1545–0118",
"§1.860F–4T . . . . . 1545–0118", and
"§1.6049–7T . . . . . 1545–0118".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) or section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

February 23, 1988.

[FR Doc. 88–5127 Filed 3–4–88; 3:03 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3291-1]

Standards of Performance for New Stationary Sources; Appendix B, Performance Specification 6; Addition of Specifications and Test Procedures for Continuous Emission Rate Monitoring Systems in Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 9, 1987, EPA proposed an amendment to Appendix B of 40 CFR Part 60 to add Performance Specification 6 (PS 6) to address continuous emission rate monitoring systems (CERMS's) that may be required by subparts to Part 60 (52 FR 7178). This action promulgates the amendment. The intended effect of this addition is to provide a protocol needed for the evaluation of the quality of the data produced by a CERMS. PS 6 contains specifications for acceptable data quality, and describes how test procedures from Appendix A of Part 60 are to be used to measure that quality. PS 6 will apply to Subpart LLL and any other stationary source category where CERMS's are required, except when specifically excluded by the governing regulation.

DATES: *Effective Date:* March 9, 1988.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this notice. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A–86–21, containing information considered by EPA in development of the promulgated rulemaking, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. William Grimley or Mr. Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

A performance specification for continuous emission rate monitoring systems is being added to Appendix B of 40 CFR Part 60. Subpart LLL of Part 60 specifies the use of such systems, and this performance specification is needed for their evaluation.

This rulemaking does not impose emission monitoring requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add a protocol for evaluating the achievement of emission monitoring requirements that would apply irrespective of this rulemaking.

II. Public Participation

The proposed amendment to Appendix B was published in the **Federal Register** on March 9, 1987 (52 FR 7178). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed procedures, a public hearing was scheduled for April 23, 1987, beginning at 10:00 a.m. The hearing was not held because no one requested to speak. The public comment period was from March 9, 1987, to May 26, 1987. Two comment letters were received concerning issues related to the proposed amendment. The comments have been considered carefully and, where determined to be appropriate by the Agency, changes have been made to the proposed rulemaking.

III. Significant Comments and Changes to the Proposed Standards

Two comment letters were received on the proposed addition—one that contained five comments from a State agency, and one that contained two comments from an industry trade association.

The State agency's first comment was that an operational test period specification should be added to verify the short-term reliability of the sensor.

The test period for the calibration drift (CD) is 7 consecutive days. The CD specification for all measurement parameters provides the verification of short-term reliability for any portion of the CERMS, including the flow rate sensor.

The State agency's second comment was that a calibration error specification should be added to verify sensor accuracy and repeatability throughout the entire measurement range.

The CD definition already encompasses calibration error, since CD is defined in terms of an established reference value, as opposed to a previous instrument reading. The extent of calibration error, in terms of the CD, is determined at both zero and high level values. In addition, the midpoint error is determined by the results of the relative accuracy (RA) test.

The State agency's third comment was that a response time specification which would verify that the flow sensor response is at least as quick as pollutant concentration analyzers should be added to prevent inaccurate emission rates being reported during periods of fluctuating flow.

It is the EPA's opinion that flow rate sensors have a response time equally as fast as pollutant concentration analyzers. It is also the EPA's opinion that a response time specification is not necessary because the applicable regulations specify an averaging time of generally 60 minutes or more. The potential for problems in meeting the RA specification due to the type of situation described by the commenter is considerably lessened because of the averaging of nine separate paired measurements to yield one RA value. No reporting requirement for instantaneous emission rate values is envisioned.

The State agency's fourth comment was that an orientation sensitivity specification should be added to verify that the flow sensor is not overly sensitive to alignment.

The EPA agrees that some flow sensors may be more sensitive to alignment than others; however, if the flow sensor is overly sensitive to alignment, then the CERMS will not pass the RA test.

The State agency's fifth and final comment was that since other PS's require RA to be determined in units of the applicable standard, there is no reason to repeat this specification in PS 6 for cases where the flow sensor is used to convert pollutant concentrations to mass emission rates. However, an RA specification that would apply only to the flow sensor should be added for cases where the flow sensor would be used for other purposes (e.g., estimation of emission rates using factor-generated concentrations, or back-calculation of heat inputs to combustion units).

An RA specification that would apply only to the flow sensor cannot be added because no regulatory requirement exists for such a specification. However, a regulatory requirement does exist for determining emission rates as total mass in a measured quantity of stack gas per unit of time. PS 6 includes a flow rate sensor and, therefore, the RA specification is not a repetition of other PS's.

The trade association's first comment was that the proposed 3 percent CD specification does not appear to be consistent with those in other PS's. The commenter noted that the 3 percent is lower than the 5 percent span value limit (6 out of 7 days) specified in PS 5 for total reduced sulfur (TRS) monitors. The commenter also noted that, although PS 2 has a 2.5 percent drift limit for SO_2 and NO_x monitors, it does not include the O_2 and CO_2 monitors which are allowed a CD of no more than 0.5 percent from the reference value. The commenter then suggested language to include in PS 6 to state that the CD shall be determined separately for each analyzer in terms of its specific measurement, and that for analyzers for which PS's have been established (e.g., PS 2 for SO_2 and NO_x monitors, PS 3 for CO_2 and O_2 monitors, and PS 5 for TRS monitors), the CD limit shall be the same as in the applicable PS.

The EPA is in agreement with this comment, and PS 6 has been revised accordingly.

The trade association's second and final comment dealt with the RA specification. The commenter questioned whether the 20 percent RA requirement was developed with an allowance for flow measurement errors, and noted that a 20 percent RA requirement also applies to PS 2, where flow measurements are not required. The commenter then stated that if flow measurement errors have not been considered, an increase in the 20 percent figure may be appropriate.

The 20 percent RA specification of PS 6 includes an allowance for errors in the flow measurement. PS 2 has the same RA specification which includes an allowance for error in the measurement of O_2 or CO_2. Errors in the measurement of flow rate are essentially the same magnitude as errors in the measurement of CO_2 or O_2 concentration, so no change has been made in the RA specification.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (Clean Air Act, Section 307(d)(7)(A)).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The rulemaking does not impose emission monitoring requirements beyond those specified in the current regulations; instead, it provides a protocol for evaluating the achievement of emission monitoring requirements that would apply irrespective of the rulemaking. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis (RFA) in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, an RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have any economic impact on small entities, because the rule does not add either to the existing requirement for the installation of continuous monitoring systems or increase their associated maintenance costs. These costs (initial investment $45,000; annualized operating $40,000) for Subpart LLL were considered at the time that the regulation was developed, and the costs have not increased.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are in the docket.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Onshore natural gas processing, Reporting and recordkeeping requirements, Incorporation by reference.

Date: March 3, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding Performance Specification 6 to Appendix B as follows:

Appendix B—Performance Specifications

* * * * *

Performance Specification 6—Specifications and Test Procedures For Continuous Emission Rate Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 Applicability. The applicability for this specification is the same as Section 1.1 of Performance Specification 2 (PS 2), except this specification is to be used for evaluating the acceptability of continuous emission rate monitoring systems (CERMS's). The installation and measurement location specifications, performance specification test procedure, data reduction procedures, and reporting requirements of PS 2, Section 3, 5, 8, and 9, apply to this specification.

1.2 Principle. Reference method (RM), calibration drift (CD), and relative accuracy (RA) tests are conducted to determine that the CERMS conforms to the specification.

2. Definitions

The definitions are the same as in Section 2 of PS 2, except that this specification refers to the continuous emission rate monitoring system rather than the continuous emission monitoring system. The following definitions are added:

2.1 Continuous Emission Rate Monitoring System (CERMS). The total equipment required for the determination and recording of the pollutant mass emission rate (in terms of mass per unit of time).

2.2 Flow Rate Sensor. That portion of the CERMS that senses the volumetric flow rate and generates an output proportional to flow rate. The flow rate sensor shall have provisions to check the CD for each flow rate parameter that it measures individually (e.g., velocity pressure).

3. Performance and Equipment Specifications

3.1 Data Recorder Scale. Same as Section 4.1 of PS 2.

3.2 CD. Since the CERMS includes analyzers for several measurements, the CD shall be determined separately for each analyzer in terms of its specific measurement. The calibration for each analyzer used for the measurement of flow rate except a temperature analyzer shall not drift or deviate from either of its reference values by more than 3 percent of 1.25 times the average potential absolute value for that measurement. For a temperature analyzer, the specification is 1.5 percent of 1.25 times the average potential absolute temperature. The CD specification for each analyzer for which other PS's have been established (e.g., PS 2 for SO_2 and NO_x), shall be the same as in the applicable PS.

3.3 CERMS RA. The RA of the CERMS shall be no greater than 20 percent of the mean value of the RM's test data in terms of the units of the emission standard, or 10 percent of the applicable standard, whichever is greater.

4. CD Test Procedure

The CD measurements are to verify the ability of the CERMS to conform to the established CERMS calibrations used for determining the emission rate. Therefore, if periodic automatic or manual adjustments are made to the CERMS zero and calibration settings, conduct the CD tests immediately before these adjustments, or conduct them in such a way what CD can be determined.

Conduct the CD tests for pollutant concentration at the two values specified in Section 4.1 of PS 2. For each of the other parameters that are selectively measured by the CERMS (e.g., velocity pressure), use two analogous values: one that represents zero to 20 percent of the high-level value (a value that is between 1.25 and 2 times the average potential value) for that parameter, and one that represents 50 to 100 percent of the high-level value. Introduce, or activate internally, the reference signals to the CERMS (these need not be certified). Record the CERMS response to each, and subtract this value from the respective reference value (see example data sheet in Figure 6–1).

5. RA Test Procedure

5.1 Sampling Strategy for RM's Tests, Correlation of RM and CERMS Data, Number of RM's Tests, and Calculations. These are the same as PS 2, Sections 7.1, 7.2, 7.3, and 7.5, respectively. Summarize the results on a data sheet. An example is shown in Figure 6–2. The RA test may be conducted during the CD test period.

5.2 Reference Methods (RM's). Unless otherwise specified in the applicable subpart of the regulations, the RM for the pollutant gas is the Appendix A method that is cited for compliance test purposes, or its approved alternatives. Methods 2, 2A, 2B, 2C, or 2D, as applicable are the RM's for the determination of volumetric flow rate.

6. Bibliography

1. Brooks, E.F., E.C. Beder, C.A. Flegal, D.J. Luciani, and R. Williams. Continuous Measurement of Total Gas Flow Rate from Stationary Sources. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. Publication No. EPA–650/2–75–020. February 1975. 248 p.

[FR Doc. 88–5150 Filed 3–8–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 266

[SWH–FRL–3338–3]

Hazardous Waste Management System; Burning of Used Oil Fuel in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency.

ACTION: Notice of determination to deny petitions.

SUMMARY: On November 29, 1985, EPA issued final rules to control the burning of used oil and hazardous waste as fuel under Subtitle C of the Resource Conservation and Recovery Act (RCRA). One provision of those rules established a specification for used oil fuel. Fuel meeting the specification may be burned in any boiler or furnace, while fuel not meeting the specification may only be burned in industrial boilers or furnaces. EPA made this specification effective December 9, 1985, except for the lead limit (of 100 ppm) which became effective May 29, 1986. EPA received petitions from three parties requesting (among other things) that the lead limit be suspended. On January 26, 1987, EPA issued a notice to tentatively deny these petitions, and to solicit comments on the tentative determination. In response to the tentative determination, EPA received four public comments. In this notice, EPA is announcing its final determination to deny these petitions.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or (202) 382–3000. For technical information, contact David Tomten, Office of Solid Waste, (202) 382–7917. Single copies of this notice can be obtained by calling the RCRA Hotline (above).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background
II. The Petitions and Comments
III. EPA Response to the Petitions and Comments
  A. Proposed Listing of Used Oil
  B. The Lead Specification
  C. Burner Notification
IV. Summary
V. Supporting Documents

Decision to Deny Petitions to Eliminate or Modify Used Fuel Oil Specifications

I. Background

On November 29, 1985 (50 FR 49164–49211) EPA established, among other provisions, a burning specification for used oil fuel (see 40 CFR 255.40(e)). See Table 1, below, for the fuel specification. Fuel meeting the specification may be burned in any boiler or furnace, while fuel exceeding any specification limit may only be burned in an *industrial* boiler or furnace (see 40 CFR 266.41). EPA has established that fuel not meeting the specification may pose a significant hazard when burned in non-industrial boilers and, therefore, that its use must be restricted (50 FR 49180–49187). For now, the principal restriction is the prohibition on burning in *non-*industrial boilers and furnaces. There are other regulations such as record-keeping requirements. Industrial burners may burn off-specification used oil fuel provided they comply with the notification, certification, and record-keeping provisions of 40 CFR 266.44 (50 FR 49195–49198). EPA may impose further restrictions to control emissions from burning off-specification used oil fuel in any type of combustion unit in a future rulemaking.

TABLE 1.—THE EPA USED OIL FUEL SPECIFICATION[a]

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash Point	100 °F minimum.
Total Halogens	4,000 ppm maximum.[b]

[a] The specification does not apply to used oil fuel mixed with a hazardous waste other than hazardous waste from small quantity generators conditionally exempt under 40 CFR 261.5.

[b] Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under 40 CFR 266.40(c). Such used oil is subject to 40 CFR Part 266, Subpart D, rather than Part 266, Subpart E, when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

II. The Petitions and Comments

EPA received three petitions to amend the final used oil fuel rules, all of which dealt principally with eliminating or deferring the specification for the contaminant lead:

(1) Petition from the National Oil Recyclers Association (NORA), dated May 9, 1986. NORA is an association of firms in the business of processing used oil for use as fuel. NORA requested that EPA postpone the effective date of the 100 ppm lead limit until such time as at least 80% of used oil samples, on a nationwide basis, meet the limit.

(2) Petition from the Midwest Oil Refining Company, dated May 13, 1986. Midwest Oil processes used oil for use as fuel. Midwest Oil requested that first, EPA rescind the burner notification requirement or, as an alternative, delay the lead limit as NORA recommends; and second, that EPA withdraw its proposed listing of used oil as a hazardous waste (see 50 FR 49258, November 29, 1985).

(3) Petition from the the Association of Environmentally Regulated Connecticut Industries (AERCI), dated May 22, 1986. AERCI is an association of firms in the business of processing used oil for use as fuel. AERCI requested delay of the lead limit until September 30, 1986, or later.

In summary, the three petitioners are concerned that EPA's requirements, chiefly the lead specification, and also the requirement that used oil fuel burners notify the Agency of their activities, are having an adverse impact on the used oil fuel market, causing them economic hardship. Consequently, they assert that EPA's requirements are leading to improper disposal of used oil. The petitioners also assert that the Agency's rule rests on flawed assumptions. They cite EPA's projection that by May 1986, nearly 80% of used oil samples would be at or below 100 ppm lead (50 FR 49186). The petitioners, however, provided limited self-sampling data showing that as of March and April 1986, lead levels in used oil being processed for use as fuel were more typically 300–400 ppm and sometimes as high as 500–700 ppm. NORA and Midwest Oil also claim that they market used oil fuel to industrial burners, and that these burners are reluctant to notify EPA that they are burning off-specification used oil fuel. NORA and Midwest Oil claim that the reduced demand for used oil fuel will lead to the collapse of the used oil recycling system and to widespread uncontrolled disposal of used oil. The petitioners argue that temporarily suspending the lead limit would allow the continued sale of most used oil fuel as "specification" fuel, exempt from regulation, and would thus prevent such adverse impacts.

On January 26, 1987, we tentatively denied these petitions primarily for the following reason. The Agency has determined that the 100 ppm limit is necessary to protect human health and the environment. Our studies show that burning fuel oil exceeding the 100 ppm lead specification would result in violations of the national Ambient Air Quality Standard (NAAQS) of 1.5 micrograms per cubic meter ($\mu g/m^3$). We have concluded that, as a minimum, the NAAQS must be met to protect human health. See also 52 FR 2695 (January 26, 1987) for a more detailed discussion of the basis for EPA's tentative denial of the petitions.

EPA has received four comments on the tentative decision to deny the petitions. They are:

(001) Letter to U.S. Senator Strom Thurmond, from Statewide Service and Supply, Inc., dated November 21, 1986. From the content of the letter, it is difficult to tell in what area of the used oil business Statewide Service and Supply is involved (i.e., hauler, burner). The commenter wants the "lead credit" and National Ambient Air Quality Standard established by EPA to be considered when setting the lead specification.

(002) Comment from the Midwest Oil Refining Company, dated February 24, 1987. Midwest Oil processes used oil for use as fuel. In their comment, Midwest Oil reiterates their requests that first EPA rescind the burner notification requirement or, as an alternative, delay the lead limit as NORA recommends; and second, that EPA withdraw its proposed listing of used oil as a hazardous waste (see 50 FR 49258, November 29, 1985).

(003) Comment from Patchem, Inc., dated March 17, 1987. The company manages fuel blending programs at cement plants. The commenter claims that lead in oil burned for cement kilns would not be emitted to the atmosphere and that the 100 ppm specification is excessively stringent for this type of burning. The commenter agreed with EPA's level of 100 ppm lead to classify oil as off-specification for use in industrial boilers.

(004) Comment from the National Oil Recyclers Association (NORA), dated March 27, 1987. NORA is an association of firms in the business of processing used oil for use as fuel. NORA reiterates their request, in their comment, that EPA postpone the effective date of the 100 ppm lead limit until such time as at least 80% of used oil samples, on a nationwide basis, meet the limit.

In summary, the commenters objecting to the 100 ppm lead specification level for used oil repeated the petitioners' arguments that EPA's requirements ultimately lead to improper disposal of used oil by discouraging the burning of used oil as fuel in industrial boilers and furnaces. Commenters claim that the fuel brokers and industrial burners who are their customers refuse to register or notify and no longer buy used oil. In their comments, they stated that the stigma and potential liability associated with burning hazardous fuel coupled with the low market price of virgin fuel oil has deterred burners from using off-specification fuel.

Of the four parties commenting on the specification levels for used oil constituents, one, Patchem Inc., agreed that industrial boilers with capacity to generate 50 million Btus per hour should burn only oil with less than 100 ppm lead. The commenter states that a lime scrubber would be necessary for safe burning of oil containing greater than 100 ppm lead.

III. EPA Response to the Petitions and Comments

A. Proposed Listing of Used Oil

Midwest Oil petitioned and later commented to EPA that the Agency withdraw its proposed listing of used oil (when recycled) as a hazardous waste because fuel customers fear adverse publicity, increased liability, etc., perceived to be associated with handling hazardous waste. The Agency, as explained in a recent **Federal Register** notice, has determined that recycled used oil will *not* be listed as hazardous waste (51 FR 41900, November 19, 1986). This aspect of the petition, then, is no longer relevant and no specific response is provided here. Marketers of used oil fuel may cite the listing determination notice to those burners who were concerned because of the listing proposal. As explained further below, burners may also notify EPA using a form or letter without reference to "hazardous waste."

B. The Lead Specification

Lead is a very toxic pollutant with serious health effects even at very low levels. EPA promulgated the 100 ppm limit because levels higher than 100 ppm are expected to result in violations of the National Ambient Air Quality Standard (NAAQS) of 1.5 micrograms per cubic meter ($\mu g/m^3$) under certain conditions (50 FR 1697–1698, January 11, 1985, and 50 FR 49184–49185, November

29, 1985). EPA concluded that exceedances of the NAAQS could cause adverse health effects, especially in children and other sensitive populations and, as a *minimum*, the Agency must meet the NAAQS. As we discussed at 50 FR 49185 (November 29, 1985), EPA is considering establishing a used oil lead specification lower than 100 ppm.

A commenter stated that EPA's level of 100 ppm lead, when found in used oil, should classify it as an off-specification fuel even for use in industrial boilers. Unless controlled through the use of lime-scrubbing air pollution control devices, the commenter stated that emissions from such units could be detrimental to human health and the environment. No data were provided. Based on available data as summarized in the November 1985 final rule (50 FR 49184), EPA believes the 100 ppm level is protective because it protects against lead emissions from burning used oil exceeding the NAAQS, for a Most Exposed Individual in reasonable worst case conditions (multiple boilers burning 100 percent used oil fuel in an urban area with poor air dispersion). Since the Agency has been provided with no data disputing this analysis, the Agency's original conclusion still stands.

The petitioners and commenters argue that EPA cited projections of lead content in used oil showing that by May 1986 approximately 80% of used oil samples nationwide would meet the 100 ppm lead limit as-generated (i.e., without blending with virgin fuel oil). The petitioners provided, however, self-sampling data showing that by March or April of 1986, lead levels in used oil they processed were not near 100 ppm, but more typically 300–400 ppm. They argue that EPA should therefore delay imposition of the 100 ppm limit until such time as 80% of used oil samples, on a nationwide basis, meet the limit.

Petitioners' and commenters' reasoning here, however, starts with the incorrect premise that EPA only established a 100 ppm lead limit for used oil because we thought 80% of used oil, as generated, would meet such limit by May 29, 1986. As explained above, EPA established the limit to prevent adverse health effects; we never conditioned the limit on any set percentage of samples meeting the limit. In fact, EPA expected that even if lead levels dropped substantially, most unblended used oil would still be off-specification in May 1986 (see 50 FR 49186, Table 5, November 29, 1985). Data submitted by the petitioners (Table 2) confirms that this was a reasonably accurate prediction.

TABLE 2.—DATA SUBMITTED BY PETITIONERS

A. Petitioner	Number Samples Analyzed.	Number Samples Analyzed for Arsenic, Cadmium, or Chromium.	Number Samples Exceeding Specification Levels for either Arsenic, Cadmium, or Chromium
NORA	34	11	3
AERCI	18	2	1
B. Petitioner	Number Samples Analyzed.	Number Samples Analyzed for Total Halogens	Number Samples Exceeding 1000 ppm Halogen Level[a]
NORA	34	5	2
C. Petitioner	Number Samples Analyzed.	Number Samples Analyzed for Individual Chlorinated Solvents.	Number Samples Exceeding 100 ppm for Any Individual Chlorinated Solvent[b]
AERCI	18	18	11
D. Petitioner	Number Samples Analyzed.	Number Samples Analyzed for Lead	Number Samples Exceeding Lead Specification
NORA	34	34	34
AERCI	18	18	18

[a]Used oil containing greater than 1,000 ppm total halogens is rebuttably presumed to be hazardous waste. See 40 CFR 266.40(c), discussed at 50 FR 49176, November 29, 1985.

[b]Used oil containing greater than 100 ppm of a hazardous spent solvent has probably been mixed with that solvent. See 50 FR 49176, November 29, 1985.

Petitioners and commenters also cite the staggered effective date EPA promulgated as justification for suspension of the 100 ppm lead limit. EPA made the specification (and the ban on burning off-specification fuel in nonindustrial boilers) effective December 9, 1985, except that the 100 ppm lead limit did not become effective until May 29, 1986 (50 FR 49185–49186, November 29, 1985). The petitioners argue that EPA was "delaying" the imposition of the lead limit until 80% of used oil samples meet the 100 ppm limit. As discussed above, EPA did not condition imposition of the 100 ppm limit on any set percentage of samples meeting the limit; nor did we establish an effective date on this basis. Making the lead limit effective May 29, 1986, gave the regulated community six months to comply with the rules; this is the usual amount of time comtemplated for compliance with RCRA subtitle C regulations. See RCRA section 3010(b). The somewhat unusual action in this case was making the remainder of the specification effective within only 10 days. This action was taken to control the potentially toxic or carcinogenic effects of the other constituents as soon as practicable during the 1985–86 heating season (50 FR 49202).

Some of the petitioners (*after* submission of their original petitions) and commenters later raised the issue that EPA, in making its projections on lead levels in used oil, did not take into account the Agency's "lead credits" program, under which gasoline marketers can use "banked" lead to market leaded gas in exceedance of the national standard of 0.1 grams per gallon (see 40 CFR 80.20(e)). EPA agrees that when banked lead is taken into account, lead levels in used oil (nationwide) will fall more slowly than was predicted on November 29, 1985. As discussed above, however, imposition of the used oil rules was not conditioned on any set percentage of used oil meeting the specification. The effect of the phased reduction of lead in gasoline on lead content of used crankcase oil, therefore, is not a factor. In any case the credits expired in December 1987. The discussion at 50 FR 49185–49186 (November 29, 1985) concerned whether the lead limit should be imposed almost immediately (i.e., December 9, 1985) or 6 months later, both dates being within the normal scope of effective dates under RCRA section 3010(b). Neither in the January 11, 1985 proposal nor at any other time did EPA propose an extended

phase-in of its used oil fuel specifications that would be similar to the Agency's leaded gasoline reduction program. The two situations are very different.

In the case of leaded gasoline, EPA is working toward reduction or elimination of the use of lead as a fuel additive (see § 80.20(a)(1)). Refiners must modify production processes to eventually eliminate the addition of lead or leave the gasoline production business. In contrast, EPA has not banned the marketing of off-specification used oil fuel, but limits marketing only to industrial burners. To implement this restriction, the Agency established minimal paperwork requirements (i.e., §§ 266.43(b) and 266.44). Industrial burners have historically comprised 80% of the used oil fuel market.

In summary, EPA finds no basis for suspending the used oil fuel lead limit. Petitioners' and commenters' arguments are based on misconceptions of the original basis for the specification. Most importantly, the specification is EPA's definition of contaminated fuel, and the rules in Part 266, Subpart E are designed to keep such fuel out of residential and other nonindustrial boilers. In making this determination, EPA has considered how easy or difficult it would be to meet the specifications. We expected most used oil, as-generated, would not meet the specification. By analogy with section 3010(b), we provided that the regulations would become effective six months after promulgation.

C. Burner Notification

EPA does not see a basis for rescinding the notification requirement for burners of off-specification fuel. First, the notification is a necessary part of EPA's efforts to control the burning of contaminated fuels. Second, the notification is by no means a burdensome requirement and, therefore, the Agency has concluded it does not adversely affect used oil recycling.

1. *Uses of the notification.* Congress, in amending RCRA sections 3004 and 3010 in 1984 to include the special waste-as-fuel provisions, was reacting to what they perceived as a "major deficiency in the * * * RCRA regulations * * *" (H.R. Rep. No. 98–198 at 39). RCRA section 3010(a), as amended, was self-implementing so that if EPA did not act, all burners of used oil (with certain exceptions specified in the statute) would have been required to notify by February 1986. EPA did act to require notification but, as authorized by Congress, we exempted from the statutory notification requirement (and all other requirements) burners of *specification* used oil fuel. EPA determined that since burning *specification* used oil fuel does not pose a serious hazard, no regulation is necessary (see 50 FR 49180, November 29, 1985).

EPA determined that a continuing notification requirement was needed for processors, marketers, and burners of off-specification used oil fuel. To the extent the requirement applies after February 1986, the requirement does not derive from section 3010, but rather serves, and is derived from, general information-gathering authority.

EPA does not agree with the petitioner who asserts that notification by burners of *off*-specification used oil fuel is also unnecessary. As stated on November 29, 1985 (50 FR 49195): "Notification is necessary because EPA must be able to identify those persons who engage in waste-as-fuel activities in order to ensure that waste fuels are managed properly and not routed to nonindustrial markets." It is not sufficient, as the petitioner suggests, for EPA to inspect sales records (logs, invoices, etc.) of used oil fuel marketers. We believe the burner notification requirement serves the important function of providing the Agency with an independent means of checking the assertions of marketers that they are in fact selling off-specification used oil fuel only to the industrial market. For example, as noted in our previous tentative denial of the petitions, if the Agency suspected a specific marketer off selling of-specification used oil fuel to non-industrial burners, one way to determine whether this was in fact occurring would be to compare fuel sales invoices at the marketer's facility with the Agency's own list of industrial burners who have notified as required.

The Agency does not agree with the commenter who stated that notification adds nothing to the enforcement process. The notification is used as a means for enforcement officials to identify the regulated community of marketers and legitimate off-specification used oil burners. Without this device, enforcement officials would have to monitor the regulated community in a piece-meal way (i.e., watching trucks, reviewing company history, etc.).

2. *Impacts on recycling.* When EPA issued its final used oil fuel burning regulations on November 29, 1985 (50 FR 49201–49202), we concluded that the regulations as a whole would have a minimal impact on used oil recycling. The notification requirement for burners of off-specification used oil fuel itself was estimated to be a one-time cost of $50 per burner (see 50 FR 1708, January 11, 1985). We cannot agree with the petitioners' and commenters' argument that the notification requirement is per se burdensome and therefore inhibits recycling. Although the petitioners and commenters argue that the notification requirement is causing reduced fuel sales, the Agency believes that burners' misunderstanding about the significance of the notification, and the unusually low price of virgin fuels, are the real causes of burners' reluctance to purchase used oil fuel (particularly now that the Agency has determined not to list recycled oil as a hazardous waste). For example, the petition by Midwest Oil cites, almost exclusively, burners' concerns over the listing of used oil as hazardous waste. EPA has been active in attempting to help burners understand current requirements, and is now working to publicize the November 19, 1986, decision that recycled oil is not listed as a hazardous waste, thereby reducing and eliminating the stigma that may be associated with using such fuel. We have also made it known that burners who are concerned that the RCRA notification form (EPA Form 8700–12) includes the term "hazardous waste" may notify on a form amended to remove that term, or may notify by letter, so long as all required information is provided. Finally, EPA has made available information bulletins that explain and reiterate current burner requirements. (Bulletins may be obtained by calling the RCRA Hotline at (800) 424–9346 or (202) 382–3000.) These steps, we believe, should allay burners' fears and clear up misconceptions.

EPA also notes that in written comments to the Agency and in oral testimony before the House Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business (May 19, 1986), the National Asphalt Pavement Association (NAPA) indicated that its membership remained interested in burning used oil fuel, provided that only limited requirements were imposed. (Asphalt concrete plants comprise a large segment of the industrial market for off-specification used oil fuel, and NAPA member firms produce about 75% of the total hot mix asphalt produced in the U.S.) The notification requirement was not cited by NAPA as being onerous. And, in fact, NAPA states that most of its members were required to notify the EPA under the small quantity generator rules made final March 24, 1986 (51 FR 10146).

The only conceivable impact a notification requirement could have is to stigmatize partially the recycled oil as being not completely safe to burn because it is called "off-specification." Although the off-specification

designation has limited legal significance—it triggers notification and record-keeping requirements, and off-specification used oil fuel may not be burned in non-industrial boilers—the name connotes potential risks from burning, and the possibility of future regulation. EPA believes this potential stigma to be unavoidable. We have found that off-specification used oil fuel can pose significant risks when burned in non-industrial boilers. There may well be future regulation of such fuel, such as restricting circumstances when it may be burned in devices without air pollution control equipment. These possibilities exist no matter what the used oil fuel is called, and whether or not burners file a one-time notification. Any such possible stigma does not pose an adequate basis for rescinding the notification requirement.

Finally, the Agency cannot help but remark on the absence of comment from any burning facility. Surely if the existing regulatory framework was a substantial factor in their decisionmaking, there would have been more interest (as there was in the Agency's 1985 proposal). The Agency infers that this absence of comment supports its view that the minimal existing record-keeping requirements are not substantial factors in burners' decisionmaking. For instance, we believe that the price differential between used oil and virgin oil products influences the demand for used oil. When the price differential is great, used oil demand goes up.

IV. Summary

In summary, based on the information presented, EPA is rejecting petitioners' and commenters' arguments that it modify the 40 CFR Part 266, Subpart E regulations for used oil fuel.

V. Supporting Documents

Documents relevant to this rulemaking are listed below. They have been placed in the RCRA Docket at EPA (Sub-basement), 401 M Street, SW., Washington, DC 20460. The docket number for this rulemaking is F-86-LSP-FFFFF. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling Michelle Lee at (202) 475-9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

Documents

1. Petition from the National Oil Recyclers Association, dated May 9, 1986.
2. Petition from Midwest Oil Refining Company, dated May 13, 1986.
3. Petition from the Association of Environmentally Regulated Connecticut Industries, dated May 22, 1986.
4. EPA *Information Bulletin* for used oil recyclers and burners, dated June 13, 1986.
5. Written comments of National Asphalt Pavement Association to EPA, dated April 9, 1986.
6. Testimony of National Asphalt Pavement Association, dated May 19, 1986.
7. Written comments of Statewide Service and Supply, Inc. to Senator Strom Thurmond, United States Senate, dated November 21, 1986. Transmitted to EPA on January 15, 1987.
8. Written comments of Midwest Oil Refining Company, dated February 24, 1987.
9. Written comments of Patchem, Inc. dated March 17, 1987.
10. Written comments of National Oil Recyclers Association, dated March 27, 1987.
11. **Federal Register**, Vol. 52, No. 16; Hazardous Waste Management System; Burning of Used Oil Fuel in Boilers and Industrial Furnaces: Notice of tentative determination to deny petitions, January 26, 1987.

List of Subjects in 40 CFR Part 266

Hazardous waste, Recycling.

Dated: March 2, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-5151 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6666

[OR-943-07-4220-10-GP-07-291; OR-36222]

Withdrawal of Public Land for Fields Administrative Site; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 5 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Fields Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 900 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management administrative site:

Willamette Meridian

T. 38 S., R. 34 E.,
Sec. 23, E½E½SW¼NE¼NE¼ and W½W½SE¼NE¼NE¼.
The area described contains 5 acres in Harney County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

February 26, 1988.

[FR Doc. 88-5170 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 86-16]

Conference Service Contract Authority

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules governing agreements with regard to conference service contract authority. The Final Rule requires conferences to state in their agreements their generally applicable rules affecting or implementing conference service contract authority. The Final Rule further requires that conferences file an amendment to their agreements

whenever these rules are changed. The Final Rule also requires that conference service contract authority provisions be located in a designated article of the conference agreement.

DATE: Effective June 7, 1988.

FOR FURTHER INFORMATION CONTACT:

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

Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission instituted this proceeding by Notice of Proposed Rulemaking ("Notice" or "Proposed Rule") published in the **Federal Register**. The Proposed Rule would amend the Commission's regulations regarding agreements with respect to conference service contract authority. As proposed, the rule would require that a conference specify in its agreement the method for regulating or prohibiting the use of service contracts and file an amendment with the Commission before implementing any significant change in the method of regulating service contracts. The Proposed Rule further provided examples of what would be considered a significant change in the method of regulating service contracts. Finally, the Proposed Rule would require that conference service contract authority be located in a reserved numbered article of the agreement.

Interested persons were invited to comment on the Proposed Rule and twelve comments were filed. Comments were submitted by: (1) The U.S. Department of Justice ("DOJ"); (2) the U.S. Department of Transportation ("DOT"); (3) the Chemical Manufacturers Association ("CMA"); (4) IBP, Inc. ("IBP"); (5) Sea-Land Service, Inc. ("Sea-Land"); (6) a group of conferences serving the U.S.-Latin America trade ("Latin American Conferences"); [1] (7) a group of conferences serving the U.S.-North Europe Trade ("North Europe Conferences" or "NEC"); [2] (8) a group of conferences serving the U.S. trades with the Far East, Australia-New Zealand, and Mediterranean ("ANERA *et al.*"); [3] (9) a group of conferences serving the U.S.-Japan trade ("Trans-Pacific Conferences"); [4] (10) the Pacific/Australia-New Zealand Conference ("PANCON"); (11) the Trans-Pacific Westbound Rate Agreement ("TWRA"); and (12) the Council of European & Japanese National Shipowners' Associations ("CENSA").

The comments represented a broad spectrum of views on the Proposed Rule ranging from those that fully supported the proposal, to those who supported the rule with reservations, to those who urged that this rulemaking proceeding be discontinued. The Commission has carefully considered these comments and has determined to issue a Final Rule. The Final Rule retains the basic requirements of the Proposed Rule but makes a number of modifications in order to incorporate certain suggested improvements and to accommodate, to the extent possible, concerns expressed in the comments. A discussion of the comments and the specific changes in the Proposed Rule follows.[5]

II. Discussion

A. Pre-Implementation Review of Conference Agreements

The Notice initiating this proceeding discussed the Commission's responsibility and authority under the Shipping Act of 1984, 46 U.S.C. app. 1701-1720 (the "Act" or the "1984 Act"), to review agreements prior to their becoming effective. A number of comments contend that the Notice overstates the Commission's pre-implementation review authority. They generally argue that the Commission's role is limited and that the discussion in the Notice exaggerates the Commission's review authority as well as the function of the 1984 Act's public notice requirement.

Aside from general assertions that the Commission's review function has been overstated, these comments are not persuasive that then Proposed Rule exceeds the Commission's statutory authority. Briefly stated, the 1984 Act requires that every agreement within the scope of the Act, including conference agreements, be filed with the Commission prior to implementation. An agreement must observe a brief waiting period before it becomes effective, during which time the Commission reviews the agreement to determine whether it meets the filing requirements of section 5, is consistent with the general standard set forth in section 6(g), and does not violate the specific prohibitions of section 10. During this pre-implementation review period, the Commission may reject an agreement that fails to meet section 5 requirements, seek to enjoin the operation of an agreement, or request additional information and thereby suspend the running of the waiting period. In addition, the 1984 Act requires that notice of the filing of an agreement be published in the **Federal Register**, thereby affording the shipping public an opportunity to comment on an agreement before it becomes effective.

The Proposed Rule would require each conference agreement to set forth the basic rules established by the members regarding the use of service contracts by the conference or by individual members, and to file changes in those rules with the Commission prior to implementation. A major purpose of the Proposed Rule is to assure that each conference agreement reflects the complete understanding among the parties regarding a conference's control over the use of service contracts so that the Commission is able to conduct a meaningful review of the agreement and the shipping public is apprised of the rules which a conference has established regarding the use of service contracts. As the Notice indicated, meaningful review by the Commission and public notice of the agreement are thwarted where conference authority over service contracts is set forth only in the most general terms or where a conference can change the rules governing the use of service contracts without first filing an amendment with the Commission.

The Proposed Rule is based upon the Commission's regulatory need to know, at least in broad outline, how the members of a conference have agreed to regulate their competitive relationships, as well as the rules for dealing with shippers, and the need to know when those basic provisions have changed.

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[1] This group consists of: the Atlantic and Gulf/West Coast of South America Conference; the United States Colombia Conference; the United States Atlantic and Gulf/Ecuador Conference; the United States Atlantic and Gulf/Hispaniola Steamship Freight Association; the United States Atlantic and Gulf/Southeastern Caribbean Steamship Freight Association; and the United States Atlantic and Gulf/Venezuela Conference.

[2] This group consists of: the U.S. Atlantic-North Europe Conference; the North Europe-U.S. Atlantic Conference; the Gulf-European Freight Association; and the North Europe-U.S. Gulf Freight Association.

[3] This group consists of: the Asia North America Eastbound Rate Agreement ("ANERA"); the Greece/U.S. Atlantic & Gulf Conference; the Mediterranean North Pacific Coast Freight Conference; the Mediterranean/U.S.A. Freight Conference; and the U.S. Atlantic & Gulf/Australia-New Zealand Conference.

[4] This group consists of: the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference.

[5] In the following discussion, reference is made to the basis and purpose of the Proposed Rule. Those objectives which are discussed here and which were also set forth in the Notice apply equally to the Final Rule. Although a number of changes have been made in the language of the Final Rule, its basis and purpose remain the same as that set forth for the Proposed Rule.

Without this minimum essential information, meaningful pre-implementation review would be frustrated.

The Proposed Rule also ensures that the shipping public is adequately informed of the conference's general policies regarding the use of service contracts. The Proposed Rule thus fulfills the purpose that is inherent in the 1984 Act's requirement that notice of the filing of an agreement be published in the **Federal Register**. Without a sufficiently detailed statement of agreement authority, the shipping public would be disadvantaged in commenting on an agreement or providing relevant information to the Commission during the period prior to an agreement's becoming effective.

In addition, it should be noted that agreements are public documents that are intended to reflect the current conference policies with respect to the exercise of service contract authority. Thus, the shipping public should be able to determine a conference's general policies by consulting the agreement language.

Although some comments contended that the Proposed Rule is contrary to the 1984 Act's stated policy of establishing a regulatory process "with a minimum of government intervention," the Proposed Rule requires only that minimum level of specificity needed to ensure meaningful review and adequate public notice.

The Proposed Rule does not re-establish a prior approval type of review as existed under the Shipping Act, 1916 ("1916 Act"). Nor does it expand or overstate the role of non-parties under the 1984 Act. It merely ensures that the basic rules which a conference establishes for the use of service contracts be reflected in the terms of the agreement.[6]

B. Guidelines for Specificity in Conference Service Contract Authority

The Notice discussed, in the context of conference service contract authority, certain guidelines that may be applied in determining the degree of specificity that may be required in a conference agreement and in determining whether a specific activity is covered by existing agreement authority. In this discussion, a number of cases decided under the 1916 Act were mentioned. Some commenters object that the guidelines enunciated in these 1916 Act cases are not applicable in the regulatory scheme established by the 1984 Act. The Commission is not persuaded that reference to these guidelines is unsound under the 1984 Act.

The 1916 Act cases were cited in the Notice is connection with two concerns. The first concern is the degree of specificity that may be required in an agreement. In *Joint Agreement Between Member Lines of the Far East Conference and the Member Lines of the Pacific Westbound Conference*, 8 F.M.C. 553 (1965), *Aff'd in part, rev'd in part, Pacific Westbound Conference v. Federal Maritime Commission*, 440 F.2d 1303 (5th Cir.), *cert. denied*, 404 U.S. 881 (1971) ("*Joint Agreement*"), the Commission formulated the following test regarding the degree of detail required in an agreement:

> * * * the applicable test here is whether or not the agreement as filed with the Commission and as approved sets out in adequate detail the procedures and arrangements under which the concerted activity permitted by the agreement is to take place.

Joint Agreement, supra, 8 F.M.C. at 558. In *Agreement 9448—N. Atlantic Outbound/European Trade*, 10 F.M.C. 299, 307 (1967), the Commission stated that agreements which were so broadly worded that they failed to "* * * set forth clearly, and in sufficient detail to apprise the public just what activities will be undertaken * * *" would be subject to disapproval under section 15 of the 1916 Act.

The fact that this principle was enunciated in cases decided under the 1916 Act does not detract from its relevance to the question of the degree of specificity that may be required in an agreement filed pursuant to the 1984 Act. Adequate detail regarding concerted activity is as relevant to antitrust immunity under the 1984 Act as to antitrust immunity under the 1916 Act. Nor does the reliance upon these cases in any way resuscitate the *Svenska* Standard,[7] as some commenters fear. Clearly, the Commission no longer "approves" agreements under a "public interest" standard. It does, however, conduct a substantive review of an agreement to determine its conformity with the requirements of sections 5, 6 and 10 of the 1984 Act. The requirement that an agreement be filed and reviewed is more than a formality, as some comments seem to imply. That review function only has meaning if an agreement is clear and definite and reasonably specific.

Furthermore, agreements filed under the 1984 Act are not filed on a confidential basis. They are public documents and should provide sufficient detail to apprise the public of the scope and kind of activities that will be conducted under the agreement. With regard to service contract authority, this means more than a general statement that does not inform the shipping public of such basic matters as whether or not individual service contracts are permitted. Service contracts are one of the major elements of the legislative bargain that resulted in the 1984 Act. It is in keeping with the Act's scheme to assure that the shipping public has adequate knowledge of conference policies on the use of service contracts.

A second concern is when an agreed to change in operations may be made pursuant to existing authority and when an agreement is necessary. The Notice cited two cases which enunciated general principles for determining whether a further agreement is interstitial to existing authority: *Agreements 7770—Establishment of a Rate Structure*, 10 F.M.C. 61, 66 (1966), *aff'd sub nom, Persian Gulf Outward Freight Conference v. Federal Maritime Commission*, 375 F.2d 335 (D.C. Cir. 1967) ("*Agreement 7770*" or "*Persian Gulf*"); and *Tariff FMC 6, Rule 22 of the Continental North Atlantic Westbound Freight Conference*, 21 F.M.C. 594, 597 (1978), *Vacated and remanded, Interpool Ltd. v. Federal Maritime Commission*, 663 F. 2d 142 (D.C. Cir. 1980).

In *Agreement 7770*, the Commission stated that further agreements are not interstitial when they: (1) Introduce an entirely new scheme of rate combination and discrimination not embodied in the basic agreement; (2) represent a new course of conduct; (3) provide new means of regulating and controlling competition; (4) are not limited to the pure regulation of intraconference competition; or (5) constitute an activity

[6] A clear statement of conference service contract authority, which the Proposed Rule would require, is also necessary in order to fulfill the Commission's monitoring and enforcement responsibilities over agreements that are in effect. In order to assure that conference operations are conducted in accordance with the terms of the agreement, the Commission must have some idea of what the terms of the agreement are.

[7] The *Svenska* Doctrine is the proposition affirmed in *Federal Maritime Commission v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238 (1968), whereby agreements filed pursuant to section 15 of the 1916 Act which interfere with the policies of the antitrust laws will be disapproved as "contrary to the public interest" unless justified by evidence establishing that the agreement, if approved, will meet a serious transportation need, secure an important public benefit or further a valid regulatory purpose of the Shipping Act, 1916. The burden in on the proponents of such agreements to come forward with the necessary evidence. The 1984 Act legislatively overruled *Svenska* with respect to agreements among carriers in the foreign commerce of the United States. The *Svenska* doctrine is now limited to agreements in the domestic commerce of the United States which are subject to section 15 of the 1916 Act.

the nature and manner of effectuation of which cannot be ascertained by a mere reading of the basic agreement. *Agreement 7770, supra*, 10 F.M.C. at 65.

The changes wrought by the 1984 Act do not appear to make these principles obsolete or remove their statutory underpinnings. Rather they would appear to be relevant to the Commission's review of an agreement to determine conformity to sections 5, 6 and 10 of the Act. If these 1916 cases did not exist, we would be obliged to establish the principles embodied in them anew.

The Commission understands the concern which some conference commenters have expressed with regard to the question of antitrust immunity. The Commission recognizes that the 1984 Act was intended to remove uncertainty about antitrust immunity. The Commission's rule is not intended to intrude upon that policy. Nor would it appear to do so since section 7(a)(2) grants antitrust immunity for * * *

> any activity or agreement within the scope of this Act * * * undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place * * *.

46 U.S.C. app. 1706(a)(2). This would appear to be a sufficiently broad grant of antitrust immunity which is not jeopardized by the rule at issue here. Those who act on service contracts in a way arguably not covered by a conference provision would still be governed by the "reasonable basis to conclude" language of the Act. Finally, the Final Rule should provide adequate guidance as to when an agreement amendment should be filed.

C. Conference Authority To Control the Use of Service Contracts

The Proposed Rule would require that service contrast authority be stated in the conference agreement with a reasonable degree of specificity and that changes in that Commission prior to implementation. Some comments object theat the Proposed Rule is contrary to the 1984 Act because it unduly interferes with the authority of a conference to control the use of service contracts. According to one commenter, Congress did not intend any rule that limits a conference's ability to regulate service contracts or requires a conference to explain why or how it intends to do so. Another commenter argues that conferences have absolute authority over service contracts and are to be given wide latitude in the regulation of these contracts. Finally, some commenters object that the Proposed Rule interferes with a conference's commercial flexibility and disadvantages a conference competing with independent carriers. These comments suggest that a conference should have the same degree of flexibility and discretion with regard to service contracts as an individual independent carrier.

The basic authority of an individual ocan common carrier or conference of carriers to enter into service contracts is provided for by section 8(c), which states:

> An ocean common carrier of conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act.

Section 4(a)(7) authorizes a conference to "* * * regulate or prohibit their use of service contracts."

The Proposed Rule would not "interfere with" conference authority to control the use of service contracts. Conferences would be free to establish conditions for their use or to prohibit their use entirely. The Proposed Rule would not limit this authority. It merely states that once a conference has exercised its authority to establish conference rules regarding service contracts, that it file an amendment to its agreement with the Commission. The Proposed Rule does not require conferences to explain why they have chosen a particular course of action or to justify that choice.[8] Nor does the Proposed Rule interfere with the terms of a service contract negotiated with a shipper.[9] Rather, it would require that the general rules for use of service contracts, to the extent that they have been collectively determined, be reflected in the agreement.

The Proposed Rule was not intended to deal with the terms that may be negotiated with an individual shipper. Moreover, those matters that would be subject to filing with the Commission can be processed and become effective in as few as 14 days after notice in the **Federal Register**. Conferences will thus have considerable flexibility even in those matters that would require an amendment filing.

Nevertheless, some comments suggest that a conference should have the same degree of flexibility and discretion with a regard to service contracts as an individual independent carrier. Conference action, however, is different from action by a single independent carrier. When it acts on service contracts, a conference acts collectively under the protection of antitrust immunity. The *quid pro quo* for this immunity is that a conference's rules for governing its members' commercial relationships, at least in broad outline, must be included in its organic agreement. A conference does not have absolute authority to alter the terms of that relationship without filing an appropriate amendment with the Commission. Accordingly, the Commission is not persuaded that the basic requirements of the Proposed Rule unduly interfere with a conference's authority to control the use of service contracts.

D. Section-by-section Discussion of the Proposed Rule

The comments advance a number of concerns, objections and suggestions regarding particular aspects of the Proposed Rule. Most of these comments address three terms used in the Proposed Rule: "method," "significant change," and "terms and conditions." Some comments pointed out alleged ambiguities in the Proposed Rule. Others offered drafting suggestions to improve a Final Rule.

1. *Section 572.502(a)(5)(i)—Specification of the Method for Regulating Service Contracts.* Subparagraph (i) of the Proposed Rule would require that a conference agreement that contains service contract authority specify the method for regulating the use of service contracts. The Proposed Rule states:

> (i) Each conference agreement that contains service contract authority shall specify the method for regulating or prohibiting the use of service contracts by the conference or by individual members.

CMA suggests that the word "contains" be deleted and replaced by the words "regulates or prohibits" in order to clarify that a conference member may enter into a service contract on its own, unless explicitly prohibited or limited by the conference.

This suggested clarification has merit. A member of a conference does retain the authority under section 8(c) to enter into service contracts unless the conference takes some collective action to control that authority. This principle is implicit in the language of the Proposed Rule which states that a conference agreement that "contains" service contract authority must state the

[8] Although the Proposed Rule does not require this, this is not to say that the Commission could not, under certain circumstances, require a conference to expalin its policy for controlling the use of service contracts and to justify that policy.

[9] On this point, there is some uncertainty regarding the meaning of the reference to "terms and conditions" in the Proposed Rule. This reference was not intended to mean that the terms which would be bargained for in a service contract with a shipper must be included in the agreement. This is addressed below in the specific discussion of that aspect of the Proposed Rule.

method by which it controls the use of service contracts. The change suggested by CMA removes any uncertainty and is adopted in the Final Rule.

The other suggested change to subparagraph (i) concerns the term "method." Sea-Land states that the term "method" "* * * could be read so broadly as to embrace literally everything the conference does with respect to service contracts, whether generically, as to a particular class of cargo, or as to a particular shipper's cargo." (Sea-Land Comment at p. 2). In place of the reference to "method," Sea-Land offers a revised rule which would require a conference to state whether it permits or prohibits: (1) Conference service contracts; (2) individual member service contracts; and (3) independent action on service contracts.

NEC points out that the term "method" is never defined in the Proposed Rule. NEC states that, undefined, the term is so general as to embrace everything from routine operational matters to "an entirely new scheme of combination and discrimination not embodied in an effective Agreement." (NEC Comment at p. 4).

IBP, on the other hand, fears that the Proposed Rule, by focusing on "method," creates an ambiguity as to when an agreement modification must be filed. This is because IBP believes that the Proposed Rule may be read as requiring a conference to inform the Commission of the procedure by which it makes decisions regarding the use of service contracts, *i.e.*, the "method," but not the "results" of such deliberations, *i.e.*, conference guidelines governing service contracts. IBP also suggests a revised rule that in some respects is similar to that suggested by Sea-Land and NEC.

The term "method" was not intended to embrace everything a conference does with regard to service contracts. Nor was it intended to include routine operational matters or the procedures by which a conference reached a decision on service contract matters.[10] The term "method" was intended to apply to the general scheme established by the conference for regulating the use of service contracts. Where the members of the conference agree upon certain rules which will govern the use of service contracts, those rules must be filed with the Commission. Inasmuch as the word "rules" is more precise than the vaguer term "method" which may be interpreted to apply to strictly operational details, it shall be substituted for the term "method" in the Final Rule.

As proposed, subparagraph (i) sets forth a requirement that conference rules governing service contracts be stated in the agreement. A number of comments suggest that this general requirement be replaced by a list of specific agreement provisions which must be stated in agreement if adopted by a conference. NEC, for example, offers the following alternative to the Proposed Rule:

> Conference agreements shall state whether the parties thereto have agreed to (i) permit all or any of them, collectively or individually, to enter into service contracts; (ii) prohibit all or any of them, collectively or individually, from entering into service contracts; and (iii) permit or prohibit independent action on service contracts by all or any of them and if and to the extent such independent action is so permitted, any notice or other procedural requirements upon which its exercise may be contained.

The virtue in drafting a rule as proposed by NEC is that its application is definite and requires little, if any, interpretation. It sets forth a specific list of possible conference rules, affecting the use of service contracts, that would be subject to filing. Such an approach, however, has two drawbacks. First, it would not cover a provision that might restrict or control service contract use in a significant way but not be specifically mentioned in the rule. Second, such a proposal would not address provisions which would allow a conference to change its rules for regulating service contracts by a vote of the parties and without filing an amendment with the Commission. Under the NEC proposal, for example, conference authority which determined whether to permit or prohibit individual service contracts by a conference vote would be acceptable. All the NEC proposal would mandate is that the procedural requirements be stated in the agreement. Thus, a conference could take virtually any action it wished without the filing of an amendment with the Commission. The 1984 Act does not authorize, nor can the Commission sanction, such unfettered discretion.

However, the rule, as proposed, is not intended to interfere with the flexibility of a conference to negotiate with shippers. A conference would be free, for example, to agree upon its negotiating position with a shipper. It would not be required to make its negotiating position a part of its agreement. However, where the conference decided to agree upon rules of general applicability to all shippers, then such a rule would be required to be filed as part of the conference agreement.

Therefore, subparagraph (i) shall be preserved basically as proposed with some language changes to make it more precise. The revised text of subparagraph (i) of the Final Rule shall read as follows:

> (i) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

As revised, subparagraph (i) states the requirement that collectively established rules governing the use of service contracts must be included in a conference agreement.

2. *Section 572.502(a)(5)(ii)—Filing of Significant Changes in the Method of Regulating Service Contracts.* Subparagraph (ii) of the Proposed Rule would require the filing of any significant change in the method of regulating service contracts. The text states:

> (ii) Any significant change in the method of regulating service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

The comments on this subparagraph focus on the meaning of the term "significant change." Sea-Land states that the term "significant change" defies precise definition. NEC also states that the meaning of "significant change" is ambiguous and uncertain. Moreover, NEC points out that the law requires the filing of every modification to an agreement whether or not it is significant whereas the Proposed Rule seems to require a filing only of significant changes.

The point raised by NEC, which has advanced some critical but constructive comments in this proceeding, is well taken. Conferences are required to file all changes in their agreements whether or not they are "significant." The qualifier "significant" therefore shall be deleted from the Final Rule. It should improve the clarity and predictability of the rule to simply refer to "any change" in place of any "significant change." In addition, the use of the term "method" shall be replaced by a reference to "conference provisions regulating or prohibiting the use of service contracts" for the reasons discussed above. Subparagraph (ii) as revised reads as follows:

> (ii) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be

[10] Voting procedures would, however, be required to be stated in the conference agreement.

implemented prior to the filing and effectiveness of an agreement modification reflecting that change

Revised in this manner, subparagraph (ii) should remove the ambiguity surrounding the term "significant", and at the same time retain the key feature of the rule, namely the filing requirement.

3. *Section 572.502(a)(5)(iii)—Illustrative Definition of Significant Change.* Subparagraph (iii) of the Proposed Rule provides a definition of "significant change." The text states:

(iii) For the purpose of this section, a significant change includes one which: permits or prohibits conference service contracts; permits or prohibits individual service contracts, establishes terms or conditions under which conference or individual service contracts may be offered; or permits or prohibits independent action on service contracts.

The purpose of this subparagraph was to furnish to illustrative definition of the meaning of the term "significant change" used in subparagraph (ii) and thereby provide some guidance as to when an agreement modification must be filed. However, inasmuch as subparagraph (ii) is revised in the Final Rule to delete the reference to "significant" change and instead require that "any" change in conference service contract rules be filed, the reference to "significant change" shall also be deleted from subparagraph (iii).

One objection to subparagraph (iii), as proposed, was that the use of the term "includes" would create serious uncertainty because there is no way of knowing what other changes not listed might be regarded as significant. According to TWRA, the practical effect of this and other "catch-all" provisions of the Proposed Rule would be that virtually any change in conference regulation of service contracts would be required to be submitted to the Commission before implementation. "Otherwise the conference will risk being found, after the fact, in violation of its agreement." (TWRA Comment at 11). The catch-all provisions, in TWRA's view, "* * * revive the regulatory uncertainty and retroactive liability which the 1984 Act sought to abolish." (TWRA Comment at 11). TWRA objects to a rule which implies that "* * * every conference policy or practice with regard to service contracts must be spelled out in the agreement." (TWRA Comment at 11). TWRA goes on to state that: "If a proposed rule did no more than require a conference agreement to state the general authority of the conference with respect to service contacts, it would not be objectionable." (TWRA Comment at 11).

While TWRA does not indicate what it believes should be included in a statement of "general authority", it would appear that some of TWRA's concerns might be met by the language changes suggested above. Deletion of references to "significant change" and "method" improves the precision of the rule. The one additional language modification that would remove any ambiguity from the rule would be the deletion of the word "includes" from subparagraph (iii). This change would result in subparagraph (iii) consisting of a list of those service contract provisions which must be filed in an agreement. The deletion of the word "includes", however, would sacrifice the comprehensiveness of the rule. The rule would then merely list the kinds of service contract provisions that must be filed. If this approach were to be taken, the list could, of course, always be expanded in the future if the Commission found other types of provisions that should be added. There are, however, disadvantages to this approach. First, it would require additional time and resource-consuming rulemakings to add new provisions to the list. More importantly, the Commission might never become aware of significant restrictive service contract provisions that might be imposed. Especially once a rule is made final, the presumption would be that only those listed provisions need be filed. Other provisions might never come to the Commission's attention.

The other aspect of this subparagraph, which attracted considerable comment, is the reference to "terms or conditions." DOT suggests that the Commission either describe the pertinent "terms or conditions" that are viewed as agreement modifications or otherwise address the ambiguity created by the phase. Sea-Land objects that this phrase is too vague to permit members to know their legal obligations and could be read so expansively as to intrude on case-by-case contractual negotiations. NEC believes that it is an unnecessary and vague catch-all standard. The Trans-Pacific Conferences object that it could require inclusion of commercial contract terms in agreements. ANERA states that this requirement interferes with commercial flexibility. The Latin American Conferences argue that terms and conditions are negotiated by a conference and shipper on an *ad hoc* basis and cannot be reduced to a rule of general applicability.

The reference to "terms or conditions" in the Proposed Rule was not intended to include the terms or conditions that would be the subject of service contract negotiations with a shipper. Thus, the Proposed Rule was not intended to interfere with the commercial process of negotiating service contracts or to impede the flexibility of a conference or its members in such negotiations. As with the other items listed in subparagraph (iii), what is intended is that conference *rules* with regard to the use of service contracts by its members be included in the agreement.

Section 8(c) of the 1984 Act confers authority to enter into service contracts upon all ocean common carriers whether or not they are a member of a conference. A carrier retains that authority when it becomes a member of a conference, subject only to those restrictions and limitations which the members collectively agree upon pursuant to section 4(a)(7) of the Act. When the members reach agreement on whether to permit or prohibit conference service contracts, or whether to permit or prohibit individual members from entering into service contracts, or whether to permit or prohibit independent action on service contracts, they establish fundamental rules for dealing with the shipping public. Those rules should be reflected in the agreement.

The conference may also impose specific requirements on the members as a whole or on individual members. For example, the conference may determine to permit individual members to enter into service contracts subject to the condition that such contracts be for a minimum term of 12 months. In such a case, the members would as a group have imposed a significant restriction on an individual member's ability to exercise that member's service contract authority.

It is admittedly difficult to define "terms and conditions" in such a way that conference-agreed-to restrictions would be required to be stated in an agreement but conference flexibility to negotiate service contract terms would not be hampered. For example, a conference could adopt a rule that no conference service contract shall be entered into for a term of less than 12 months. The rule might apply to all commodities and all shippers. On the other hand, the conference could vote to adopt as the conference's negotiating position with a particular shipper that a service contract should be for at least 12 months duration. In the first instance, the rule should be stated in the conference agreement; in the second, it need not.

The difference between the two rules is that the first is a rule that is more or less permanent and has general applicability to all shippers or perhaps

to a class of shippers. The second is simply a negotiating position for dealing with a particular shipper. Presumably, it would be subject to change in the negotiating process. What this proceeding is intended to address are those rules of general applicability which are of a more permanent nature and which would not be subject to change during contract negotiations. Conference negotiating positions, on the other hand, should not be affected by the Final Rule and conference flexibility should not be unduly hampered.

A second area of concern is where terms or conditions are imposed upon individual conference members. For example, a conference might adopt a rule that no individual service contract may be for less than a 12-month term. Or it might deny all service contract authority to individual members except upon the vote of the members and subject to such conditions as they may impose. A member should know in advance whether individual service contracts are permitted and what restrictions if any are attached. The Final Rule requires the statement in an agreement of any limitations placed upon individual members. All members will thus know in advance what rules govern individual service contracts, and all will be treated equally. Finally, subparagraph (iii) shall also be modified to add that opt-out rules should be stated in the agreement. This is discussed below in connection with the PANCON comment.

Finally, some comments suggest that subparagraph (iii) could be deleted entirely without substantive loss. Conferences would then simply be required to state in their agreements any rules collectively agreed upon regarding the use of service contracts and file modifications with the Commission whenever those rules were changed. However, subparagraph (iii) does appear to serve a useful function by providing guidance as to certain conference rules that must be stated in an agreement. Therefore, it shall be retained in the Final Rule with the above modifications. Based on all the foregoing, paragraph (iii) of the Proposed Rule shall be amended to read as follows:

(iii) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; impose restrictions or conditions under which individual service contracts may be offered.

4. *Mandtory Placement of Service Contract Authority In A Designated Article 14.* The Proposed Rule adds a new paragraph (a)(5) to § 572.502 "Organization of conference and interconference agreements." The new paragraph (a)(5) would require conferences to reserve Article 14 of their agreements as the repository for the conference's statement of its service contract authority.[11]

Only one comment addressed the Article 14 requirement of the Proposed Rule. NEC opposes mandatory placement of service contract authority in Article 14 on the grounds that such placement is costly, cumbersome, and creates legal uncertainties. NEC argues that service contract provisions should be set forth in Article 5 (the basic authorities article) of conference agreements, if necessary in a separately numbered paragraph. NEC also argues that the rule should provide "that (i) except as may be otherwise provided in such article 5 service contract provisions, all of the other provisions of the Agreement shall be applicable thereto, *e.g.*, voting, delegation of authority, meetings, shippers' requests, etc.) and (ii) the parties may rely on the contents of the entire agreement as authority for their service contract activities." (NEC Comment at p. 43).

The Commission's authority to prescribe "the form and manner in which an agreement shall be filed" is clearly set forth in section 5(a) of the Act. The Commission has exercised that authority in its agreement regulations by requiring that certain numbered articles of conference agreements be reserved for specific subject matter. *See* 46 CFR 572.501–502. These existing format regulations, which provide for a clear and logical arrangement of agreement authority, have been of great assistance to the Commission in meeting the statutory deadlines for processing agreements established under the streamlined review procedures of the 1984 Act.

The placement of service contract authority in a reserved Article 14 appears to be of sufficient benefit to the Commission in its review, audit, and monitoring functions as to justify the slight burden that may be placed on conferences by requiring them to locate their service contract authority in Article 14.[12] Such placement, for example, would ease the Commission's administrative burden were it to audit service contract authority in all conferences.[13]

Finally, the question of whether members can rely on their entire agreement as authority for their activities has arisen before. It led to the modification of the agreements rules when they were issued as Final Rules. Section 572.501(b)(5), 46 CFR 572.501(b)(5), states that:

Article 5 is not necessarily definitive of the authority that the parties may collectively exercise pursuant to the agreement and parties may rely on the contents of the entire agreements as authority for their activities.

Thus, the second concern of NEC appears to have been addressed. In addition, NEC is correct in assuming that the agreement provisions such as voting, delegations of authority, meetings, etc. are applicable to service contract matters.

5. *Effective Date of Final Rule.* The Proposed Rule did not specify a time period in which any Final Rule would become effective. NEC states that because of reformatting requirements, drafting complexities, and the conference approval process, no less than 90 days should be afforded to parties to file any agreement modifications that might be required by the Final Rule.

The Commission accepts NEC's position and will allow a period of 90 days before the Final Rule becomes effective. This liberal timetable for compliance should substantially alleviate my administrative burdens or costs that might be incurred. This period of time should afford ample time for review of agreements by the parties, for drafting any necessary changes, and for obtaining member approval of agreement modifications. In addition, in many cases, conferences may be able to reduce any costs associated with filing by submitting service contract modifications in connection with other agreement filings or even in connection with the periodic required republication of agreements.

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[11] At present, Subpart E of Part 572 reserves the first 13 articles of a conference agreement for specific subject matter.

[12] The Final Rule, however, does not preclude statements of, or references to, service contract authority in Article 5 or other articles of a conference agreement. Conferences would not be required to delete such references as may appear elsewhere in their agreements provided, of course, that the particular language otherwise conforms to statutory and regulatory requirements.

[13] Such an audit was conducted of conference agreement independent action authority to determine compliance with Docket No. 85–7, *Independent Action—Notice and Meeting Provisions in Conference Agreements*, 23 S.R.R. 1022 (1986).

E. Additional Issues

A number of comments raised other additional issues related to the Proposed Rule.

1. Information Form Requirement and Service Contract Authority

NEC contends that service contract provisions are not subject to section 6(g) as a matter of law and that the filing of such provisions and modifications thereto should never be subject to the requirement to file an Information Form. In the Notice the Commission, at least implicitly, rejected the notice that service contract authority is not subject to review under the general standard. The Proposed Rule did not, however, require the Information Form in connection with service contract authority filings and the Commission has not done so in the past. Generally, there does not seem to be any need for the Information Form in connection with service contract filings. Should a particular filing raise possible section 6(g) concerns, then relevant information could be obtained through a formal or informal request. Therefore, the Final Rule does not require that an Information Form be filed with the initial service contract filing or with subsequent modifications of service contract authority.

2. Notice and Waiting Period Requirements.

NEC also urges that service contract filings be exempted from the notice and waiting period requirements of the 1984 Act. In NEC's view, the purpose of the Proposed Rule should be simply to insure that appropriate provisions are filed. NEC says that third parties have little or no interest in such filings and have no standing to sue to block them. NEC says that the Commission could still act against improper filings after they become effective.

This proposed exemption from notice and waiting period requirements, whatever might be its merits, cannot be accommodated within the scope of this rulemaking.[14] The Proposed Rule did seek to accomplish the purpose cited by NEC, namely to ensure that appropriate provisions are filed. The Final Rule, however, cannot and does not alter the statutory notice and waiting period requirements with respect to service contract filings. Such an exemption is clearly beyond the scope of this rulemaking and would require a separate exemption proceeding pursuant to section 16 of the 1984 Act.

3. PANCON Comment

PANCON's comment focuses upon the particular service contract provisions in its agreement and offers a defense of those provisions. PANCON, however, does not consider its comment a "special-exemption application." Rather it believes that its agreement provisions raise issues which are of industry-wide concern.

The PANCON agreement contains a provision which allows one or more members to elect not to participate in a service contract entered into in the conference's name. It provides that such non-participation be expressly noted in the contract. PANCON is concerned that such a case-by-case "opt-out" provision would be prohibited by the Proposed Rule. PANCON apparently believes that the Proposed Rule might be read as precluding all such contemporaneous decisions not to participate in a conference-wide service contract, unless the agreement itself is first amended.

PANCON's concern is misplaced. The Proposed Rule does not prohibit "opt-out" provisions of the type contained in the PANCON agreement. Such provisions clearly state the right of an individual member line to elect not to participate in the contract. Such a right is conferred by existing effective language of the agreement and is not dependent upon the contemporaneous action of the conference. The case would be different if the provision were to state that a member's decision not to participate is subject to express permission granted by the conference. As stated, however, the PANCON provision establishes the member's right to "opt-out."

The PANCON agreement also contains a provision which prohibits a member from entering independently into a service contract, or from taking independent action on a service contract, unless the members expressly permit it by a contemporaneous vote. PANCON characterizes this provision as being merely the "flip-side" of the opt-out provision discussed above and believes that it should not be prohibited.

This provision, however, is quite different from the "opt-out" provision. Unlike the "opt-out" provision which establishes a member's right to elect not to participate, this provision conditions a member's right to offer service contracts on a vote of the membership. Individual service contracts would thus be decided on a case-by-case basis and a member would always require approval from the conference prior to entering into a contract with a shipper. This is precisely the kind of provision that is reached by the Final Rule.

The third PANCON provision provides as follows:

> The members may vote to "open" rates on a particular commodity or commodities, with or without authority thereby granted to individual members to enter separately into service contracts respecting such commodities, and/or setting the maximum, term, or successive terms, of any such individual-party service contract, during the period in which the rate is open.

This provision also controls a member's right to enter into service contracts on open rated items by a vote of the membership and would also appear to be prohibited under the Final Rule.

III. Conclusion

Upon review of the comments received, the Commission has determined that issuance of a Final Rule, modified somewhat from that as proposed, will enable the Commission to fulfill its agreement review responsibilities and is well within the Commission's authority under the 1984 Act. In addition, the Final Rule will assure that conference agreements are complete and that the shipping public is adequately informed of conference policies on service contracts. Moreover, the legal precedent established under the 1916 Act, which addresses issues of agreement authority that were not affected by the enactment of the 1984 Act, offers useful guidelines on these questions. Finally, the Final Rule does not appear to interfere in any way with the authority of a conference to control the use of service contracts and does not unduly restrict conference service contract activity.

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

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that this Rule will not have a significant economic impact on a substantial number of small entities,

[14] To the extent the rationale of the Proposed Rule is based upon the public notice and pre-implementation review provisions of the 1984 Act, an exemption from notice and waiting period requirements might not be consistent with that rationale.

including small businesses, small organizational units, and small governmental jurisdictions.

The collection of information requirements contained in this Final Rule have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 95-511) and have been assigned OMB Control Number 3072-0044.

List of Subjects in 46 CFR Part 572

Administrative practice and procedure, Antitrust, Contracts, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 5, 6 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1705, 1716, Part 572 of Title 46, Code of Federal Regulations, is amended as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701-1707, 1709, 1710, 1712, 1714-1717.

2. Paragraph (a) of § 572.502 is amended to add a new paragraph (a)(5) to read:

§ 572.502 Organization of conference and interconference agreements.

(a) * * *

(5) *Article 14—Service Contracts.* (i) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

(ii) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

(iii) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; impose restrictions or conditions under which individual service contracts may be offered.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5174 Filed 3-8-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 71276-8031]

Pacific Halibut Fisheries

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

ACTION: Notice of approval of Pacific halibut catch sharing plan.

SUMMARY: NOAA announces approval by the Secretary of Commerce of a Catch Sharing Plan (plan) developed and adopted by the Pacific Fishery Management Council (PFMC) to allocate the catch of Pacific halibut in International Pacific Halibut Commission (IPHC) statistical catch Area 2A. This allocation plan is for 1988 only, as it pertains to catch by treaty Indian fishermen, and 1988 and 1989 only, as it pertains to non-Indian commercial and recreational fishermen. The plan will be forwarded to the IPHC for implementation by regulations.

The plan establishes a distribution of harvest of the poundage of halibut determined by the IPHC to be available for harvest in Area 2A between treaty Indian and non-Indian commercial and recreational fishermen. The intended effect of this action is to ensure the conservation and management of Pacific halibut stocks by limiting the total harvest to the level determined by the IPHC to be biologically acceptable while equitably distributing the allowable harvest among affected user groups.

DATE: The plan was approved on March 1, 1988.

ADDRESSES: Copies of the plan combined with the environmental assessment and the regulatory impact review are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center Suite 420, 2000 SW. First Ave., Portland, OR, 97201, or Rolland A. Schmitten Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA, 98115.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six at 503-221-6352 or William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (the Act), Pub. L. 97-176, 16 U.S.C. 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters which are in addition to but not in conflict with regulations of the IPHC. The geographic area involved is all U.S. marine waters lying south of the United States-Canada border including Puget Sound, known as statistical Area 2A.

The Under Secretary of Commerce, in compliance with the Act, directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocations be necessary. In compliance with this directive, the PFMC initiated development of a plan for Area 2A. The process for developing the allocation plan involved State, Federal, and treaty Indian fishery managers and technicians, user group representatives, and the general public.

The PFMC adopted a proposed catch sharing plan for public review at its November 18-19, 1987, meeting in Portland, Oregon. The proposed plan was subsequently submitted to the Secretary of Commerce (Secretary) for review and approval. The Secretary published the proposed plan in the **Federal Register** (53 FR 156, January 5, 1988), with a request for public comments. On January 14, 1988, the PFMC, following review of public comments and a public hearing, adopted a final catch sharing plan which is identical to the proposal plan except that the treaty Indian commercial fishing season will begin on March 1, 1988, instead of April 1, 1988.

Establishment of the total allowable catch (TAC) is the responsibility of the IPHC. This plan allocates TAC in area 2A among treaty Indian and non-Indian commercial and recreational fisheries as follows:

1. Treaty Indian commercial fishing will commence March 1, 1988, and terminate October 31, 1988, using hook-and-line gear only, with a 32-inch minimum size limit. Ceremonial and subsistence fishing may commence on February 1, 1988, or as soon afterward as regulations can be promulgated, and will terminate December 31, 1988, with no minimum size limit. A daily ceremonial and subsistence catch limit of two fish per fisherman will apply only from February 1 through March 31, 1988, and November 1 through December 31, 1988. Under the PFMC plan, a reserve will be established which is equal to the difference between the midpoint and the

upper limit of the TAC range. This reserve may be taken by the treaty Indian fisheries, if necessary, to permit them to continue fishing throughout their reason.

2. Non-Indian fisheries will be allowed to harvest poundage equal to the midpoint of the IPHC TAC range minus the estimated treaty Indian catch. This amount will be divided 55 percent for the commercial catch and 45 percent for the recreational fishery. If the TAC midpoint minus the estimated treaty Indian catch equals more than 600,000 lbs., the amount in excess will be divided 60 percent for the commercial harvest and 40 percent for the recreational. The commercial quota will apply to all of Area 2A with no subarea quotas; however, the Oregon share of the recreational catch quota shall not be less than 60,000 lbs.

The PFMC forwarded the plan to the Secretary for review and approval and to the IPHC for implementation. The Secretary received 55 comments during the comment period, of which 50 were by form letters. Public comments received during the comment period are summarized and responded to below:

Comment 1: Many commercial longliners were not aware of the public meetings and negotiations and consequently weren't able to meaningfully participate or influence the outcome.

Response: The PFMC's process for developing the catch sharing plan spanned 6 months with numerous opportunities for public participation and comment. The process followed was initially proposed at the July, 1987, meeting of the PFMC. Subsequently, the treaty-Indian/non-Indian portion of the plan was developed at eight separate meetings of representatives of the treaty Indian tribes and State and Federal resource management agencies. The Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fisheries (WDF) led discussions between non-Indian commercial and recreational users which included at least four meetings as well as three public workshops held in Newport, Oregon, and Olympia and Port Angeles, Washington, during October. Announcement of the public workshops was widespread by means of newspaper and radio announcements. Formal opportunities for public comment at PFMC meetings were announced and provided at three meetings, September and November 1987 and January 1988.

Comment 2: The recreational fishery received too high a share of the total non-Indian quota based on historical catches.

Response: The PFMC's catch sharing plan represents a realistic compromise between the interests of commercial and recreational fishermen. Commercial fishermen, having been the sole harvester of Pacific halibut for over 100 years, are understandably reluctant to relinquish a large share of the commercial harvest to the recreational community. However, recreational fishermen and the businesses and communities that support recreational fishing in Washington and Oregon have turned to halibut fishing as a result of severe reductions in fishing opportunities for salmon brought on by depressed salmon stocks and various Federal Court decisions.

As a result, the recreational halibut catch in Area 2A has grown from less than 100,000 pounds in 1984 to over 460,000 pounds in 1987. The catch sharing plan, which allocates 55 percent of the total allowable catch to commercial and 45 percent to recreational fishermen, cuts off the uncontrolled growth of the recreational fishery and protects the traditional preeminence of the commercial fishery. In 1988, the recreational fishery will be reduced almost 40 percent from the 1987 catch level. Despite the desires for an even greater share of the catch by commercial fishermen, the catch sharing plan appears to strike a reasonable balance between the two harvesting groups.

Comment 3: The WDF estimate of the 1987 recreational catch of Pacific halibut was inaccurate and inflated and should not have been used as a basis for developing the 1988 catch sharing plan.

Response: At the beginning of the process, the WDF estimate of the recreational harvest of Pacific halibut was erroneous due to the inadvertent inclusion of other species of groundfish. That error was corrected before the non-Indian commercial and recreational representatives developed the 1988 and 1989 catch shares. Some discomfort was expressed by some of the participants in the process with the possible confidence levels and variability associated with the WDF estimate of the 1987 recreational harvest in Puget Sound. However, the data were the best available. WDF has received additional funding and manpower from the IPHC to improve monitoring of the recreational fishery in 1988.

Comment 4: Representatives of commercial fishermen were coerced into accepting the catch sharing formula by the ODFW and WDF negotiators.

Response: The subject of alleged coercion was discussed in detail at the January 14, 1988, PFMC meeting, at which time representatives of commercial fishing associations involved in development of the plan categorically denied such charges.

Comment 5: Because some commercial fishing groups felt they were not adequately informed and thus were unable to participate in the development of the catch sharing plan, the catch sharing formula between commercial and recreational fishermen should not be a 2-year plan but be only for the 1988 season. After the 1988 season, the plan should be renegotiated.

Response: This catch sharing plan being approved by the Secretary contains catch sharing provisions between non-Indian commercial and recreational fishermen for both the 1988 and 1989 seasons. NOAA has no objection, however, if all parties to the plan desire to modify certain provisions for the 1989 season.

Classification

This Pacific halibut catch sharing plan is a general statement of Agency policy which does not require notice and comment rulemaking under the Administrative Procedures Act at 5 U.S.C. 553(b)(A). As such, the Regulatory Flexibility Act does not apply.

Based on a regulatory impact review prepared to fulfill the requirements of E.O. 12291, the Assistant Secretary, NOAA, concludes that actions taken under the plan are not "major" and a regulatory impact analysis is not required. An environmental assessment was prepared by the Council in accordance with the National Environmental Policy Act regulations. The Assistant Administrator for Fisheries, NOAA, concluded that any action taken under the plan will not have any significant adverse impact on the human environment. The environmental assessment and regulatory impact review are available at the address above.

As required by section 307 of the Coastal Zone Management Act, it has been determined that this action is consistent to the maximum extent practicable with applicable state coastal zone management programs as required.

This notice of approval of a catch sharing plan does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule contains no collection of information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773K.

Dated: March 4, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88–5159 Filed 3–4–88; 5:06 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

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

Agricultural Marketing Service

7 CFR Part 51

Mixed Nuts in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would revise the voluntary United States Standards for Grades of Mixed Nuts in the Shell. A large packer has requested that the standards be revised to relax the required minimum percentage in a mixture for each individual nut species. The Agricultural Marketing Service (AMS) has the responsibility, in cooperation with industry, to keep U.S. grade standards up-to-date with current marketing practices.

DATE: Comments must be received on or before April 8, 1988.

ADDRESS: All persons interested in commenting on this proposal should submit written comments, in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2085, South Building, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456, Phone: 202-447-2185.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521-1 and has been designated as "nonmajor."

Pursuant to the requirements set forth in the Regulatory Flexibility Act, The Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revisions to the standards for mixed nuts in the shell will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large business. In addition, this action will result in a relaxation of current minimum requirements under the grade standards to the benefit of the industry.

The U.S. Standards for Grades of Mixed Nuts in the Shell were established in August 1965 and were last revised in August 1981. These standards provide that only the tree nut species Almonds, Brazils, Filberts, Pecans and Walnuts may be used in the mixture. The current standards for U.S. Extra Fancy and U.S. Fancy grades provide that for each species there be a minimum of 10 percent and a maximum of 40 percent by weight of the mixture. Mixed nuts are primarily marketed from early October through December, with majority of the demand occurring prior to Thanksgiving. Consequently, to insure adequate during this peak marketing period mixed nut packaging should begin in September.

A large packer and marketer of in-shell mixed nuts, has requested that the current grade standards be revised to reduce the minimum requirement for each species from 10 to 5 percent in the U.S. Extra Fancy and U.S. Fancy grade designations. The packer states that because of crop shortages in past years, the majority of packers in the industry would not have been able to meet the 10 percent minimum for each of the species of nuts in the final pack. In 1982 and 1983, there were not enough almonds during the major portion of the mixed nut marketing season to meet the minimum percentage requirement for the U.S. Fancy and U.S. Extra Fancy grades. During these production seasons there was less than adequate almond production as a result of growing conditions, as well as a sharp reduction in almonds that would meet grade requirements as a result of staining discoloration due to rain damage. As a result the Agricultural Marketing Service issued temporary rules during those seasons to lower the 10 percent minimum for almonds to 5 percent for the U.S. Extra Fancy and U.S. Fancy grades. In addition, it appears the current requirements do not meet the needs of the industry. In fact most of the larger packers have stopped requesting inspection under the U.S. grade standards.

Under the current U.S. grade standards, packages of in-shell mixed nuts must contain 5 separate species of nuts: almonds, Brazil nuts, filberts, pecans, and walnuts. When applying U.S. Extra Fancy and U.S. Fancy grade criteria, the 5 species of nuts must be mixed to a degree so that no single species consists of less than 10 percent or more than 40 percent of the mixture. Packages containing less than 10 percent or more than 40 percent of any single species would fail to meet either of these two grades, regardless of the quality or size of the nuts. Under the U.S. Commercial or U.S. Select grade, the minimum mixture requirement is 5 percent.

This action proposes to relax the minimum percent of mixture requirement for each species of nut in a mixture for U.S. Extra Fancy and U.S. Fancy from 10 to 5 percent. The proposed changes would, we believe, more closely reflect current marketing practices and better serve the needs of the industry. Although there would be a reduction in the minimum requirement for each species under this proposed rule, there would not be any changes in the current quality or size requirements of the U.S. Standards for Grades of Mixed Nuts.

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products (Inspection, certification, and standards).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended (7 U.S.C. 1622, 1624).

§ 51.3521 [Amended]

2. Section 51.3521, the chart designating the U.S. Extra Fancy grade

requirements, would be amended by removing the 10 percent minimum percentage allowable in a mixture and inserting a 5 percent minimum allowable percentage for each of the nut species Almonds, Brazils, Filberts, Pecans, and Walnuts.

§ 51.3522 [Amended]

3. Section 51.3522, the chart designating the U.S. Fancy grade requirements would be amended by removing the 10 percent minimum percentage allowable in a mixture and inserting a 5 percent minimum allowable percentage for each of the nut species Almonds, Brazils, Filberts, Pecans, and Walnuts.

Done at Washington, DC on March 4, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-5186 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 52

United States Standards for Grades of Pickles

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On December 8, 1987 (52 FR 46486), the Agricultural Marketing Service proposed to revise the United States Standards for Grades of Pickles. A correction to the proposed rule was published on February 5, 1988 (53 FR 3403 and 53 FR 3490) to correct two table references and make minor editorial changes. In order to provide additional time for all interested persons to respond, the public comment period is reopened and extended to April 7, 1988.

DATES: Comments must be received on or before April 7, 1988.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, Telephone (202) 447-6247.

Dated: March 4, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-5184 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1924

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations dealing with planning and performing construction and other development. This action is intended to allow applicants to obtain the services necessary to plan projects, including analysis of project design, preparation of drawings, specifications and bidding requirements, and general administration of the construction contracts, from a wider range of individuals or organizations. A major effect of this action would be to increase FmHA's ability to provide decent, sanitary, and safe housing to eligible applicants in rural areas.

DATES: Written comments must be received on or before May 9, 1988.

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 and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Specialist, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5534, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 382-1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "non-major." 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.

Programs Affected

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410–Low Income Housing Loans (section 502 Rural Housing Loans). For the reasons set forth in the Final rule and related Notice(s) to 7 CFR Part 3015, Subpart V, this activity affects the following programs that are included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials: 10.405–Farm Labor Housing Loans and Grants; 10.406–Farm Ownership Loans; 10.413–Recreation Facility Loans; 10.415–Rural Rental Housing Loans; and 10.416–Soil and Water Loans.

Regulatory Flexibility Act

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 deals with the general administration of construction contracts and minimum certification requirements.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of Proposed Rule

Background

At the present time, FmHA requires that applicants have their drawings and specifications certified only by licensed architects, professional engineers, authorized building officials, or certified code authorities as meeting applicable laws, ordinances, codes, and regulations related to the safety and sanitation of buildings. This requirement has caused approved loan applicants hardship in finding qualified certifiers at reasonable cost and has resulted in delays in assisting low-income and very low-income applicants in obtaining adequate

housing. The major purpose for revising the FmHA regulations at this time is to authorize individuals or organizations trained and experienced in the compliance, interpretation or enforcement of the applicable development standards to certify that drawings and specifications meet adopted codes and standards. By allowing the use of qualified persons such as builders, contractors, and community officials in addition to those previously mentioned, such delays would be eliminated.

1. Section 1924.5(f)(1)(iii) is partially revised as follows:

(a) Paragraph (A) is revised to list individuals or organizations who are authorized to certify plans and specification.

(b) Paragraph (B) is revised to state the certifier's license, certificate or authorization must be current at the time of certification and a building permit or professional stamp is not an acceptable substitute for the certification statement.

(c) Paragraph (C) is revised to list others authorized to certify drawings and specifications.

(d) Paragraph (D) is revised to contain the provisions of what was paragraph (B) in the current regulation, which required that the same individual or organization (if available) that certified the original drawing and specifications certify any modifications to the original drawings and specifications. If that person is not available, the drawings and specifications must be recertified by another authorized plan certifier.

(e) Paragraph (E) is revised to contain the provisions of what was paragraph (C) in the current regulation, which stated under what circumstance the certification of a modification of drawings and specifications may be waived.

(f) Paragraph (F) is added to contain and revise the provisions of what was paragraph (D) in the current regulation, which provide the suggested format for certification contain the minimum representation from the certifier that is acceptable to FmHA.

(g) Paragraph (G) is added to contain the statement a contractor must sign to receive final payment.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation Housing, Loan program-Agriculture, low and moderate income housing.

Accordingly, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—GENERAL

1. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1980; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10 Pub. L. 93–357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegation of authority by Dir., OEO 29 FR 14764, 33 FR 9850.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.5 is amended by revising paragraphs (f)(1)(iii) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(A) Certifications may be accepted from individuals or organizations who are trained and experienced in the compliance, interpretation or enforcement of the applicable development standards for drawings and specifications. Plan certifiers may be any of the following:

(*1*) Licensed architects,

(*2*) Licensed engineers,

(*3*) Registered Professional Building Designers certified by the American Institute of Building Design.

(*4*) Plan reviewers certified by a national model code organization listed in Exhibit E to this subpart.

(*5*) Local building officials authorized to review and approve building plans and specifications.

(*6*) National technical standards and codes organizations listed in Exhibit E to this subpart.

(*7*) Others with equivalent qualifications.

(B) The license, certificate, or authorization of the individual must be current at the time for the certification statement. A building permit (expect as noted in paragraph (f)(1)(iii) (C)(*1*) of this section) or professional's stamp is not an acceptable substitute for the certification statement. However, a code compliance review conducted by one of the National recognized code organizations indicating no deficiencies or the noted deficiencies have been corrected is an acceptable substitute for the certification statement.

(C) For one to four family dwelling units, FmHA may also accept drawings and specifications that have been certified or approved by:

(*1*) A local community, if that community has adopted, by reference, one of the model building codes and has trained official(s) who review and inspect for compliance as a requisite for issuing a building permit. The building permit, issued by the community, may serve as evidence of acceptance. The State Director will determine eligible communities upon request and publish, as a State supplement to this section, a list of those communities that qualify.

(*2*) A builder or contractor

(*i*) If the drawings and specifications meet the development standards adopted by the State Director and are accompanied by the signed certification contained in paragraph (f)(1)(iii)(F) of this section and;

(*ii*) The FmHA State Architect, Engineer, construction analyst, or construction inspector post reviews the first set of plans and specifications submitted by a builder and spot checks subsequent submittals to determine if the plans, specifications or construction complies with the code. All violations will be rendered in writing to the builder or contractor. If the builder or contractor fails to take corrective action within 30 days, the County Supervisor will recommend to the State Director that the advance of funds be halted and the contractor be suspended or debarred.

(D) The modifications of certified drawings or specifications must be certified by the same individual of organization that certified the original drawings and specifications. If such individual or organization is not available, the entire set of modified drawings and specifications must be recertified.

(E) The certification of modifications for single family housing (SFH) construction may be waived if the builder provides a written statement that the modifications are not regulated by the applicable development standard. The County Supervisor may consult with the State Office Architect/Engineer as to acceptance of the statement and granting a waiver.

(F) The following format is suggested for certification and contains the minimum representation acceptable to FmHA:

"I _____ being a (licensed architect, engineer, builder, contractor, or authorized building official, etc.) hereby certify that I have reviewed:

_____ the drawings and specifications dated _____ prepared by

_____

(name of firm or individual)
and related to the development of the

_____

(project/applicant name (if known) and location)

_____ modifications listed below, that have been clearly indicated on the drawings and specifications dated _____

prepared by _____, certified by _____ and related to the development of the

_____

(project/applicant name (if known) and location).

Based upon this review, to the best of my/our knowledge and belief, these documents conform to the (names and editions of applicable development standards) designated as the development standard for the project.

I further understand that if it is determined by FmHA that the drawings and/or specifications do not meet the applicable development standard that, within 30 days of being notified, the necessary corrections shall be made. It is also understood that false certification and failure to comply may result in suspension or debarment from participating in future government programs.

_____

Date

_____

Signature (Title)

(G) FmHA will obtain from the contractor, the following signed statement prior to final payment:

I, _____, have constructed this dwelling in accordance with the certified drawings and specifications and all modifications, if any, were approved by FmHA.

* * * * *

Dated: February 5, 1988.

LaVerne Ausman,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 88-5187 Filed 3-8-88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. 1

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission has issued the December 1987 Regulatory Agenda. The Agenda, which is a quarterly compilation of all rules on which the NRC has proposed, or is considering action as well as those on which it has recently completed action, and all petitions for rulemaking which have been received and are pending disposition by the Commission, is issued to provide the public with information regarding NRC's rulemaking activities.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG-0936) Vol. 6, No. 4 is available for inspection and copying at a cost of six cents per page at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

Single copies of the report may be purchased from the U.S. Government Printing Office (GPO). Customers may call (202) 275-2060 or (202) 275-2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086, toll free number (800) 368-5642.

Dated: at Bethesda, Maryland, this 4th day of March 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-5129 Filed 3-8-88; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Parts 50 and 73

Nuclear Power Plant Access Authorization Program; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement.

SUMMARY: This proposed policy statement defines the policy of the Nuclear Regulatory Commission (NRC) regarding unescorted access to protected areas and vital areas at nuclear power plants. On August 1, 1984, the Nuclear Regulatory Commission published in the **Federal Register** for public comment a proposed rule to establish an access authorizing program. The nuclear industry responded to this request for comment by proposing industry guidelines for nuclear power plant access authorization programs. The Commission has reviewed these guidelines and is considering either the issuance of a policy statement which endorses the industry-developed guidelines or the promulgation of a rule codifying access authorization provisions. If the policy option is selected, commitments to adhere to these guidelines would be formalized through amendments to the physical security plans to licensed nuclear power plants and be subject to inspection and enforcement by the NRC. The Commission specifically invites public comment regarding the policy statement vs. rulemaking option.

DATE: Comment period expires May 9, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 7:30 and 4:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra D. Frattali, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3773; or, for information of a legal nature, Robert L. Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1643.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1984, the NRC published in the **Federal Register** (49 FR 30726) proposed amendments to 10 CFR Parts 50 and 73 of its regulations which would establish an employee screening program for individuals requiring unescorted access to nuclear power plant protected and vital areas. Industry groups, including the Nuclear Utility Management and Resource Committee (NUMARC), the Edison Electric Institute, and later, the Atomic Industrial Forum and KMC, Inc., recommended the rule be withdrawn and proposed that it be replaced with an industry-proposed initiative to voluntarily commit to industry guidelines for an access authorization program. The Commission believes there may be merit in considering this approach and directed that a policy statement be developed endorsing the NUMARC Guidelines. This proposed policy statement and the NUMARC Guidelines are being published for public comment.

Proposed Statement of Policy

The Commission has concluded that it is appropriate for each licensee who operates a nuclear power plant to establish an access authorization program to ensure that individuals who require unescorted access to protected areas or vital areas of their facilities are trustworthy, reliable, emotionally stable

and do not pose a threat to commit radiological sabotage. Accordingly, the NRC published a proposed rule on August 1, 1984, which would require an access authorization program at nuclear power plants (49 FR 30726).

An alternative proposal by the Nuclear Utility Management and Resources Committee (NUMARC) was submitted as a public comment on this proposed rule. The alternative proposed a voluntary industry commitment to implement an access authorization program at nuclear power plants based upon industry guidelines. The Commission endorses the program developed by NUMARC which is described in the document entitled, "Industry Guidelines for Nuclear Power Plant Access Authorization Program, Rev. 8" dated October 3, 1986 (hereafter referred to as the Guidelines). Major provisions of this program include background investigation, psychological evaluation, and behavioral observation. The Guidelines are also being published in the **Federal Register** and follow this statement of policy.

The Commission recognizes that the availability of a review procedure for use in the event the employment of a permanent utility employee is or will be terminated as a direct result of a denial or revocation of unescorted access authorization is an important element of this program. The Guidelines contain provision for such a review procedure.

Consistent with the requirements of 10 CFR 50.70(b)(3), the Commission expects that individuals certified by the NRC as having met the requirements of a program essentially equivalent to the Guidelines will be granted unescorted access to protected areas and vital areas without further investigation or screening. Further, under emergency conditions, the provisions of 10 CFR 50.54 (x) and (y) may be applied as needed by the licensee.

The Commission understands that all licensees who operate nuclear power plants are members of NUMARC and will incorporate the provisions of the Guidelines and of this policy statement into their NRC approved physical security plans. This expectation does not preclude the licensee from committing to or conducting more stringent screening of individuals, if so desired. The power reactor utilities will submit by 120 days from the effective date of this notice amendments to their physical security plans, including an implementation schedule. These amendments will include commitments to implement and maintain access authorization programs consistent with this policy and the Guidelines within 180 days of security plan amendment approval. The commitment will state, "All elements of the NUMARC guidelines, *Industry Guidelines for Nuclear Power Plant Access Authorization Programs (Revision 8)*, or any NRC-approved future revisions will be implemented in accordance with the NRC policy statement, Nuclear Power Plant Access Authorization Program, (licensee insert date of publication and citation in the **Federal Register**). "Amended plans submitted in accordance with this commitment will be accepted by the NRC without further review. The NRC will monitor compliance with this program through its normal inspection and enforcement activities.

This policy is based upon a Commission understanding that to implement the Guidelines and policy in this statement, nuclear power plant licensees are prepared to commit voluntarily to a program that is subject to NRC inspection and to enforcement action for noncompliance. Because this policy statement will replace a proposal for rulemaking that had previously received backfit approval and because the NRC staff considers the Guidelines to be equivalent in substance to the requirements, benefits, and costs of the proposed rulemaking, no additional backfit analysis for this policy statement has been prepared.

(Single copies of the backfit analysis may be obtained from Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3773.) It is further understood that the provisions of the Industry Guidelines will not supersede any requirements imposed by NRC regulations.

Dated at Washington, DC, this 4th day of March, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A.—Industry Guidelines for Nuclear Power Plant Access Authorization Programs

October 3, 1986.

[Rev. 8]

Table of Contents

1 Purpose
2 Scope
3 Responsibility
4 Applicability
5 General Requirements for Unescorted Access
6 Screening Program
6.1 Initiation of a Screening Program
6.2 Background Investigation Elements
6.2.1 Employment History
6.2.2 Education History
6.2.3 Criminal History
6.2.4 Military Service
6.2.5 Character and Reputation
6.2.6 Verification of Identity
6.2.7 Credit Check
6.3 Psychological Evaluation
6.4 Temporary Unescorted Access Authorization
7 Evaluation Criteria for Access Authorization
7.1 Criteria
7.2 Review Process
8 Transfer and Reinstatement of Unescorted Access Authorization
8.1 Transfer
8.2 Reinstatement
8.3 Update Requirements
9 Continual Behavioral Observation Program (CBOP)
10 Screening During Cold Shutdown
10.1 Devitalization of Vital Areas
11 Grandfathering
12 Contractor and Vendor Requirements
13 Evaluations and Audits
13.1 Utility Programs
13.2 Contractor and Vendor Programs
14 Records
Attachment A—Minimum Audit Criteria

1 Purpose

To support the safe operations of licensed nuclear power plants, utilities will implement an access authorization program in accordance with the following guidelines. These guidelines have been designed with the objective of achieving high assurance that personnel granted unescorted access authorization to the protected and vital areas of utility nuclear power plants are trustworthy and reliable and do not pose a threat to commit radiological sabotage. Individual utilities may have additional requirements.

2 Scope

These guidelines define the acceptable levels for conducting and evaluating the elements of the screening program. Major elements include background investigation, psychological evaluation, and behavioral observation. Additionally the guidelines (1) provide evaluation criteria for the determination of access authorization, (2) establish provisions for accepting unescorted access authorization from other utilities, (3) include a grandfathering of personnel who were previously screened and (4) discuss records maintenance, and evaluation and audits of the access authorization program is being met.

3 Responsibility

The final granting and controlling of unescorted access authorization is the responsibility of the utility. Each nuclear utility will inform contractors and vendors of the existence of these guidelines and of the necessity to follow these guidelines. The utilities are

responsible to audit non-utilities who conduct their own screening and/or implement continual behavioral observation programs (CBOP) to assure these guidelines are followed. Each utility is responsible for having an independent evaluation conducted of its program in accordance with Section 13.1 of these guidelines.

4 Applicability

These guidelines apply to all nuclear utilities, and nuclear utilities shall require those contractors and vendors who provide services at the utility's nuclear power plants to also follow them.

One level of permanent unescorted access authorization will be granted to personnel who have been processed in accordance with these guidelines. Such unescorted access authorization will allow access to both protected and vital areas as needed.

5 General Requirements for Unescorted Access

A utility may grant unescorted access authorization to an individual following the satisfactory completion of a screening program (6.0) which consists of a background investigation (6.2) and a psychological evaluation (6.3). All of the foregoing may be waived if the individual satisfies any of the following: (1) Satisfies requirements for grandfathering (11.0); (2) has a transferable access authorization from another utility (8.1); (3) has a previously granted reinstateable access authorization from the utility (8.2); or (4) will be restricted to protected or devitalized areas during cold shutdown or refueling (10.1). Also, a utility may grant a temporary nontransferable unescorted access authorization valid for no more than 180 days based on a psychological evaluation and a limited background check (6.4).

6 Screening Program

6.1 Initiation of a Screening Program

No element of the screening program may be initiated without the knowledge and written consent of the person who is subject to such screening. The applicant for unescorted access authorization shall be informed of the types of records that may be produced and retained, where such records are normally maintained, the duration such records are usually retained, the applicant's rights concerning access to the information, and to whom and under what circumstances the information will be released.

Initial screening requirements are applicable to those individuals who have never been screened or granted unescorted access authorization except as defined in Section 11.0. The initial screening program has two components: a background investigation (Section 6.2) and a psychological evaluation (Section 6.3).

An applicant may withdraw consent to a psychological evaluation or background investigation at any time. When withdrawal of consent is made, all processing of work in connection with either the psychological evaluation or background investigation must cease as soon as practical. Withdrawal of consent must be deemed as withdrawal of the application for unescorted access authorization.

Information collected under these guidelines may be released only on a need-to-know basis.

6.2 Background Investigation Elements

The background investigation covers the time period specified in each element below or since the eighteenth birthday, whichever is shorter. The applicant's employment history, education history, credit history, criminal history, military service, and the applicant's character and reputation must be addressed in the following manner.

6.2.1 Employment History

Except as noted below, employment history must be obtained for the past five years through contacts with previous employers, by obtaining the following information:

a. Verification of claimed periods of employment of 30 days or more;

b. Disciplinary history;

c. Reasons for termination and eligibility for rehire;

d. Any other information that would adversely reflect upon the reliability and trustworthiness of the individual as it relates to the individual being permitted unescorted access; and

e. Activities during interruptions of employment in excess of 30 days must be verified.

Note.—Because of the multitude of employments many employees experience during a five-year period, especially craft and trade workers, verification of all such employments may not be possible. Consequently, utilities may consider these applicants for unescorted access based upon an inclusive three-year retrospective employment check if the entire five-year period cannot be covered. Under no circumstances may unescorted access be granted based on an employment check of less than three years, and attempts should be made to include the entire five-year period.

6.2.2 Education History

Verify any claimed enrollment at an educational institution during the previous five years. In addition, verify the highest claimed post high school attendance or degree regardless of time.

6.2.3 Criminal History

As required by Federal law (Pub. L. 99–399, "Omnibus Diplomatic Security and Anti-Terrorism Act of 1986"), the utility shall perform a criminal history record check through the Federal Bureau of Investigation in accordance with NRC regulations.

6.2.4 Military Service

If within the last five years, military period of service (claimed or developed) must be verified by receipt of a Form DD214 or other National Personnel Records Center (NPRC) records. This information must be obtained from the NPRC through acquisition and submittal of an applicant's authorization for release of military history information. The utility may grant unescorted access for 180 days or less to individuals prior to receipt of DD214 or other military records if all other applicable elements of the guidelines are met and a record is maintained which documents that the request for military history was submitted within 10 working days of granting unescorted access. If it becomes known that an individual's discharge is other than honorable based solely on receipt of a DD214, further investigation must be made.

6.2.5 Character and Reputation

The applicant's reputation for emotional stability, reliability and trustworthiness must be examined through contact with two references supplied by the applicant and at least two additional references (not related to the applicant) developed during the investigation. (It is not necessary that reference's [individually or collectively] association with or knowledge of the applicant for unescorted access cover the entire five-year retrospective period.) Emphasis must be placed on:

a. Identified psychological problems;

b. Criminal history;

c. Illegal use or possession of a controlled substance;

d. Abuse of alcohol;

e. Susceptibility to coercion; and

f. Any other conduct relating to an applicant's trustworthiness of reliability to discharge job duties within the environment of a nuclear power plant.

6.2.6 Verification of Identity

Identity must be verified through means such as photograph, social

security number, date of birth, or comparison of applicant's physical characteristics with employment, education, military and other records and/or employer and character references who have a personal acquaintance with the applicant.

6.2.7 Credit check

A check of the applicant's credit history must be performed through checks with credit bureaus and/or credit references.

6.3 Psychological Evaluation

Reliability and stability must be determined by the result of a reliable written personality test or by any other professionally accepted clinical evaluation procedure. The results of such test or procedures, must be evaluated by a qualified and, if applicable, licensed psychologist or psychiatrist. If the results of the written test or other procedure identify any psychological abnormalities which may indicate emotional instability, unreliability, or untrustworthiness, or the results need further clarification, a clinical interview must be conducted by a qualified and, if applicable, licensed psychologist or psychiatrist.

6.4 Temporary Unescorted Access Authorization

A utility may grant unescorted access authorization not exceeding a period of 180 continuous days based on a temporary authorization. This temporary authorization cannot be transferred from one licensee to another in accordance with Section 8.1 with the exception of the FBI criminal history check which may be transferred. The 180-day temporary authorization may be granted based upon satisfaction of the following conditions:

a. Passing a psychological evaluation within the past year;

b. Conduct of a credit check;

c. Recommendation of one developed character reference who has had frequent and direct association with the applicant; and

d. Evidence that a request for a criminal history check of the individual by the FBI has been submitted to the NRC.

7 Evaluation Criteria for Unescorted Access Authorization

7.1 Criteria

In its decision to grant an individual authorization for unescorted access, the utility shall consider information obtained during the background investigation any psychological evaluation. This information must be reviewed using the guidelines specified in this section. Each utility shall define the appropriate level of management to adjudicate matters covered by these criteria. In making a determination of trustworthiness or reliability, the following must be considered:

a. Willful omission or falsification of material information submitted in support of employment or request for unescorted access authorization to protected or vital areas;

b. Illegal use or possession of a controlled substance or abuse of alcohol without adequate evidence or rehabilitation;

c. A criminal history without adequate evidence of rehabilitation which establishes untrustworthiness or unreliability;

d. History of mental illness or emotional instability that may cause a significant defect in the individual's judgment or reliability;

e. Any evidence of coercion, influence or pressure that may be applied by outside sources to compel an individual to commit any act of sabotage or other act which would adversely reflect upon the individual's trustworthiness or reliability;

f. Evidence that the individual has committed or attempted to commit, or aided or abetted another who committed or attempted to commit, any act of sabotage or other act that would pose a threat or reflect adversely upon that individual's trustworthiness or reliability;

g. A psychological evaluation which indicates that the individual is a risk in terms of trustworthiness or reliability; and

h. Any other information that would adversely reflect upon the reliability and trustworthiness of the individual as it relates to the individuals being permitted unescorted access.

7.2 Review Procss

Each permanent employee [1] of a utility whose employment is or will be terminated as a direct result of a denial or revocation of access authorization will: (1) Be informed of the basis of denial or revocation of unescorted access; (2) have the opportunity to provide any additional information; and (3) have the decision, together with any additional information, reviewed by another designated manager of the utility who is equivalent or senior to and independent of the individual who made the initial decision to deny or revoke unescorted access. The determination from this review is final. An alternative review process which is independent and impartial is acceptable. If an alternative review process is used, the utility will include a description of its review process in its plan which meets this guideline.

8 Transfer and Reinstatement of Unescorted Access Authorization

Transfer or reinstatement of unescorted access authorization requires verification of the individual's identity by the utility.

8.1 Transfer

An individual's unescorted access authorization granted by one utility in accordance with these guidelines may be transferred to another utility via correspondence, computer data transfer, or telecopy if the gaining utility: (1) Verifies or receives confirmation that the individual currently holds a valid unescorted access authorization or had a valid unescorted access authorization which was terminated under favorable conditions within the previous 365 days, and (2) cross-checks information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

8.2 Reinstatement

The utility may reinstate the unescorted access authorization granted an individual if the individual returns to the same utility and unescorted access authorization has not been interrupted for a continuous period of more than 365 days and if the previous unescorted access authorization was terminated under favorable conditions.

8.3 Update Requirements

A utility shall not authorize unescorted access where the individual's unescorted access authorization has been interrupted for more than 365 calendar days unless the psychological evaluation and the background investigation is updated to cover the individual's activities from the date of the previous background investigation, not to exceed retrospective periods in 6.2, or to the period when unescorted access was last held, whichever is less. A temporary unescorted access authorization (6.4) may be issued while the background investigation update is occurring.

9 Continual Behavioral Observation Program (CBOP)

Each individual granted unescorted access shall be subject to a CBOP. This

[1] The term "permanent employee" refers to a person who is employed by a utility for an undefined term. It does not include employees who were temporarily hired for a specific project or other temporary work or who were hired under an employement contract with a defined term.

CBOP applies to all personnel who are granted unescorted access. The following must be included in the overall program:

a. A program with the objective for assuring the detection of alcohol and drug abuse and other behavior that may evidence a threat to commit radiological sabotage;

b. A continual behavioral observation program that provides for management/supervisory personnel responsibility for observing personnel for behavioral traits and patterns that may reflect adversely on their trustworthiness or reliability and reporting those observations to appropriate utility management; and

c. A training program which reasonably assures that management/supervisory personnel have the awareness and sensitivity to detect and report changes in behavior, to include suspected alcohol and drug abuse, which adversely reflect upon the individual's trustworthiness or reliability, and to refer these persons to the utility's management for appropriate evaluation and action.

Individuals with unescorted access authorization must be notified of his/her responsibility to report any arrest that may impact upon his/her trustworthiness.

10 Screening During Cold Shutdown

10.1 Devitalization of Vital Areas

During refueling or maintenance outage in which all or a part of a nuclear power plant is in a cold shutdown, refueling, or devitalized status, the utility may grant unescorted access authorization to the protected and devitalized areas for personnel who have not been screened in accordance with Section 6.0 providing that:

a. The unescorted and unscreened person is restricted to the protected or devitalized areas;

b. Other requirements of the approved security plan remain in force, and the requirements of 10 CFR 73.55 are followed for unscreened personnel granted unescorted access;

c. Prior to start-up, a thorough visual inspection of the devitalized area is made by knowledgeable plant personnel to identify signs of tampering or attempted sabotage; and

d. Appropriate safety start-up procedures are followed to assure that all operating and safety systems are functioning normally.

11 Grandfathering

The utility may grant unescorted access authorization to individuals if they hold a valid unescorted access authorization on the date security plan amendments in response to these guidelines are approved or have been granted unescorted access authorization within the 365 days prior to the date of amended security plan approval.

12 Contractor and Vendor Requirements

The utility may accept the results of the entire screening program or any part thereof conducted by a contractor or vendor, provided that the contractor or vendor meets the requirements of these guidelines and that it makes its records available for auditing by the licensee or its designated representative in accordance with sections 13 and 14. The utility retains the ultimate responsibility for assuring that individuals granted unescorted access to the facility have been subjected to the screening elements of this program.

13 Evaluations and Audits

13.1 Utility Programs

An independent evaluation of the access authorization program and its conformance to these guidelines must be made within 12 months of the effective date of implementation of the amended security plan which commits to these guidelines. Thereafter, an independent evaluation must be conducted at least once every 24 months. The utility shall retain all reports of evaluation for a period of three years.

13.2 Contractor and Vendor Programs

The utility or its designated representative shall conduct annual audits of contractor and vendor access authorization programs to ensure compliance with these guidelines. Other utilities may accept the originating utility's audit and need not reaudit the same contractor or vendor for the same period of time providing the scope of the audit meets the minimum auditing criteria contained in Attachment A. A copy of the audit report, to include findings, recommendations and corrective action must be provided to the sharing utility.

14 Records

Utilities and contractors and vendors of utilities who conducted screening programs in accordance with these guidelines shall maintain actual data that;

a. A background investigation and psychological evaluation were conducted for each person who is screened under Section 6.0 of these guidelines;

b. Other persons were granted unescorted access authorization in accordance with Section 11; and

c. Satisfaction with the conditions of Section 6.4 which resulted in the granting of temporary unescorted access authorization.

The utility, contractor, or vendor shall retain records for each person who is granted unescorted access for a three-year period following termination of access authorization.

Each utility or utility's contractor or vendor who collects personal information for the purpose of processing access authorizations shall establish and maintain a system of files and procedures for the protection of the personal information. This information must not be disclosed to persons other than the subject or his/her representative, utility counsel and officers, auditors whose purpose for review would be to inspect program conformance, other utilities if an individual's access authorization is transferred, and those individuals who have a need to have access to the information in performing assigned duties in the process of granting or denying access authorization.

Attachment A—Minimum Audit Criteria

The following information must be reviewed during the conduct of an audit of a contractor/vendor screening program to meet the objective that the intent of these guidelines have been met.

A. Background Investigation

The auditor shall review screening activities by examining records and conducting interviews with appropriate personnel to determine that screening activities were accomplished in a correct and accurate manner.

In conducting an audit of the background information to reasonably assure contractor conformance with these guidelines, the auditor shall randomly verify the following:

1. Employment History

Date the verification was made, complete dates of employment, position, disciplinary history, reason for termination, eligibility for rehire, and any other information which would adversely reflect upon the reliability and trustworthiness of the individual. The retrospective period for employment history must be reasonably attempted for five years; however, due to the nature of employment histories of some transient craft workers, a minimum period of three years is required.

2. Education

Copies of transcripts, diplomas, etc., documentation which verifies all claimed attendance within the previous

five years. In addition, the highest post-high school attendance or degree must be verified regardless of time. Records must include, as a minimum, dates of check, dates of attendance, highest level of attendance, and reason for leaving, i.e., graduation, transfer, expulsion, etc.

3. Criminal History

Date of check and results of FBI criminal history records check. If temporary unescorted access authorization was granted, evidence of submittal of request for FBI criminal history records prior to granting unescorted access.

4. Military History

Date of receipt and copy of Form DD214 or other military records from the National Personnel Records Center if military service was within previous five years. If unescorted access was granted prior to receipt of NPRC records, evidence of submission of request for military history within ten working days of granting unescorted access shall be contained in the access authorization file.

5. Character References

Dates of contact, names of references, association with applicant, period of association and any information related to identified psychological problems, criminal history, illegal use or possession of a controlled substance, abuse of alcohol, susceptibility to coercion and any other conduct relating to applicant's trustworthiness and reliability. Each file must contain two listed references and two developed references (not related to applicant) as a minimum.

6. Verification of Identity

How verification of identity was accomplished through such means as photograph, social security number, date of birth, and comparison of applicant's physical characteristics with records and/or references.

7. Credit History

Date of the credit check(s), name and location of credit bureau or other source, and results of initial check(s).

B. Psychological Evaluation

To reasonably assure contractor conformance concerning psychological evaluation, the auditor must be concerned with the date of the testing and that a psychologist/psychiatrist reviewed the evaluation. Contractor records must include a copy of the report signed by a licensed, if applicable psychologist/psychiatrist.

C. Continual Behavioral Observation Program (CBOP)

To reasonably assure contractor conformance concerning a CBOP, the auditor must review contractor's program to determine compliance with these guidelines, specifically to address that supervisors are sensitized to alcohol and drug abuse and other behavioral traits/patterns which may cause a threat to commit radiological sabotage, and to report/refer persons displaying such behavior to the utility's management for appropriate evaluation and action.

D. Temporary Unescorted Access Authorization

To reasonably assure contractor conformance concerning temporary unescorted access authorization, the auditor must be concerned with completion dates for credit check, reference check, psychological evaluation (within previous year from date unescorted access was granted) and date of submission to the NRC of FBI criminal history check. The auditor shall follow criteria set forth in Section A for credit history and character references and Section B for psychological evaluation. Evidence of submission of FBI criminal history request or receipt of results transferred from another utility or received directly from the NRC must be contained in access authorization file.

E. Update Requirements

To reasonably assure contractor conformance concerning updating access authorizations when access authorizations have been interrupted for more than 365 days, the auditor must be concerned with the dates of psychological evaluation and background investigation, and the retrospective period of the background investigation must cover activities from the date of the previous background investigation not to exceed the retrospective period of Section 6.2 or the period when unescorted access was last held, whichever is less. The criteria listed in Sections A and B must be met in updating unescorted access authorization.

F. Grandfathering

To reasonably assure contractor conformance concerning grandfathering, the auditor must be concerned with the date of the previous unescorted access authorization to determine that the individual held unescorted access authorization on the date security plan amendments in response to these guidelines were approved or was granted access authorization within the 365 days prior to the date of amended security plan approval. The auditor must be concerned that no individuals were grandfathered earlier than the 365 days prior to the date of amended security plan approval or subsequent to the date of amended security plan approval.

[FR Doc. 88-5166 Filed 3-8-88; 8:45 am]

BILLING CODE 7590-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3146/P443; FRL-3337-2]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the insecticide permethrin and the sum total of its metabolites DCVA and 3-PBA in or on the raw agricultural commodities avocados and papayas. The proposed regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [P 4E3146/P443], must be received on or before April 8, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716C, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3146 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of California, Florida, and Puerto Rico.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethycyclopropane carboxylate] and the sum of its metabolites, 3-(2,2-dichloroethenyl)-2,2-dimethycyclopropane carboxylic acid (DCVA) and (3-phenoxybenzyl)-methanol (3-PBA), in or on the agricultural commodities avocados and papayas at 1.0 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances were discussed in a final rule document (PP 8F2099-R422), published in the **Federal Register** of October 13, 1982 (47 FR 45008). Tolerances for residues of the insecticide on various raw agricultural commodities have been previously established, ranging from 0.05 to 60.0 ppm.

The acceptable daily intake (ADI), based on the 2-year rat chronic feeding/oncogenicity study (no-observed-effect level (NOEL) of 5.0 mg/kg/day or 100 ppm) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.015461 mg/kg/day; the current action will increased the TMRC by 0.000020 mg/kg/day (0.1 percent) to 0.015481 mg/kg/day.

The nature of the residues is adequately understood, and an adequate analytical method, gas-liquid chromatography, is available in the Pesticide Analytical Method (PAM), Volume II, for enforcement pruposes. No secondary residues in meat, milk, poultry, or eggs are expected from use of permethrin on avocados and papayas; a label restriction precludes the grazing of livestock in treated fields or feeding of treated cover crops to livestock. There are currently no actions pending against the continued registration of this chemical.

Based on the above information and data considered by the Agency, the tolerance established by amending 40 CFR 180.378 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3146/P443]. All written comments filed in response to this petition will be available in the Information Service Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.378(b) is amended by adding and alphabetically inserting entries for the commodities avocados and papayas, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * *	*
Avocados	1.0
* * * *	*
Papayas	1.0
* * * *	*

[FR Doc. 88-4611 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300181; FRL-3338-2]

Definitions and Interpretations; Proposed Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to add an entry for green onions in the commodity definitions and to revise the established commodity definition for onions. This proposed amendment, which would define onions and green onions, was requested by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [OPP-300181], must be received on or before April 8, 1988.

ADDRESSES: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted this request to EPA on behalf of Dr. Robert H. Kupelian, National Director, and the IR-4 Technical Committee.

IR-4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by adding "green onions" to the general category of commodities listed in column A and defining that commodity as "green onions, leeks, spring onions or scallions, Japanese bunching onions, and green shallots or green eschalots" by inserting these corresponding commodities in the specific commodities listing in column B.

The IR-4 supports this request by pointing out that the growth habits, cultural and production practices, pest complex and harvest techniques for these green onion commodities are all similar.

The IR-4 requested to more specifically define the commodity term "green onions" already listed in column B of 40 CFR 180.1(h) as a specific raw agricultural commodity for the general commodity "onions."

As a logical result of the green onion definition, the specific raw agricultural commodities listing corresponding to the general commodity onions would be amended by redefining the onion definition.

The Agency concurs with IR-4 on the proposed revision of 40 CFR 180.1(h) to add the general category "green onions" in Column A and a corresponding listing of the specific raw agricultural commodities in Column B. This revision will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the general category "green onions" to include the specific raw agricultural commodities as listed. Based on the information considered by the Agency, it is concluded that the regulation established by amending 40 CFR Part 180 will protect the public health. Therefore, it is proposed that 40 CFR 180.1(h) be amended as set forth below.

Interested persons are invited to submit written comments on the proposed amendment. Comments must bear a notation indicating the document control number, [OPP 300181]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 1, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1(h) is amended by revising the definition for onions and by adding a definition for green onions, to read as follows

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Onions	Dry bulb onions, green onions, and garlic.
* * * * *	
Onions, green	Green onions, leeks, spring onions or scallions, Japanese bunching onions, green shallots, or green eschalots.
* * * * *	

* * * * *

[FR Doc. 88-4963 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300183; FRL 3338-9]

Ultramarine Blue; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that ultramarine blue (CAS Reg. No. 57455-37-5) be exempted from the requirement of a tolerance when used as an inert ingredient (pigment/colorant) in pesticide formulations applied to animals. This proposed regulation was requested by Y-Tex Corp.

DATE: Written comments, identified by the document control number [OPP-300183], must be received on or before March 24, 1988.

ADDRESSES: By mail, submit comments to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Lynn M. Bradley, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-7700.

SUPPLEMENTARY INFORMATION: At the request of Y-Tex Corp., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for ultramarine blue when used as a component (pigment/colorant) of plastic animal tags in pesticide formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Ultramarine blue (CAS Reg. No. 57455-37-5).

Name and address of requestor. Y-Tex Corporation, P.O. Box 1450, 1825 Big Horn Avenue, Cody, WY 82414

Bases for approval of ultramarine blue 1. Ultramarine blue is not expected to result in residues in meat and milk or to be bioavailable by reason of its solid form and insoluble nature.

2. Ultramarine blue is cleared under 21 CFR 73.50 for use in coloring salt used in feeding animals subject to the restriction that the quantity of ultramarine blue does not exceed 0.5 percent by weight of the salt.

3. Ultramarine blue is cleared under 21 CFR 73.2725 for use as a colorant in externally applied cosmetics, including cosmetics intended for use in the area of the eye.

4. Ultramarine blue is cleared under 21 CFR 177.1680 as a pigment in polyurethane resins used as the food-contact surface of articles intended for use in contact with bulk quantities of dry food of the type identified in 21 CFR 176.170(c).

5. Ultramarine blue is cleared under 21 CFR 177.2600 as a color (not to exceed 10 percent by weight of the rubber product) in rubber articles intended for repeated use in producing, packing, processing, preparing, treating, packaging, transporting, or holding food.

6. Ultramarine blue is cleared under 21 CFR 177.2800 as a substance used in the production of or as a component of textiles fibers used as articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

7. Ultramarine blue is cleared under 21 CFR 178.3970 as a colorant when used in the manufacture of flexible, semirigid, and rigid plastic materials, and textiles and textile fibers [as provided in 21 CFR 178.2800] intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearance, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendments to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains this inert igredient may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP-300183]. All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 3, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Ultramarine blue (CAS Reg. No. 57455-37-5).	Not more than 1.5% of pesticide formulation.	Pigment/colorant in animal tag.
* * *	* * *	* * *

[FR Doc. 88-5136 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3565, 7E3567, 7E3568/P446; FRL-3338-7]

Pesticide Tolerances for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodities asparagus, spinach, and endive. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 7E3565, 7E3567, 7E3568/P446], must be received on or before April 8, 1988.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the herbicide (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]-propanoic acid (resolved isomer of fluazifop-P-butyl), all expressed as fluazifop, in or on certain raw agricultural commodities as follows:

1. PP 7E3565 on behalf of the Agricultural Experiment Stations of New Jersey and Washington in or on asparagus at 3.0 parts per million (ppm). The petitioner proposed that use on this commodity be limited to Maryland, New Jersey, Oregon, and Washington based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

2. PP 7E3567 on behalf of the Agricultural Experiment Stations of Arkansas, California, Connecticut, Maryland, North Carolina, Oklahoma, and Texas in or on spinach at 6.0 ppm.

3. PP 7E3568 on behalf of the Agricultural Experiment Station of Florida in or on endive at 6.0 parts per million (ppm). The petitioner proposed that use on this commodity be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year chronic feeding/oncogenicity study in rats which was negative for oncogenic potential under the conditions of the study at all feeding levels of 0.1, 0.3, 1.0, and 3.0 milligrams (mg) per kilogram (kg) of body weight (bw) per day (equivalent to 2, 6, 20, and 60 ppm) and a systemic no-observed-effect level (NOEL) of 1 mg/kg/day.

2. A 90-day rat feeding study with a NOEL of 0.5 mg/kg/day (equivalent to 10 ppm).

3. A 90-day dog feeding study with a NOEL of 25 mg/kg/day (equivalent to 1,000 ppm).

4. A rat oral lethal dose LD_{50} of 3,300 mg/kg.

5. A rat teratology study with a teratogenic and maternal toxicity NOEL of 10 mg/kg/day (equivalent to 200 ppm) and a NOEL for fetotoxicity of 1 mg/kg/day.

6. A rabbit teratology study with no teratogenic effect at 90 mg/kg/day (highest dose tested) and a NOEL for fetotoxicity of 10 mg/kg/day (equivalent to 330 ppm).

7. A two-generation rat reproduction study with a NOEL of 1 mg/kg/day.

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

9. An 18-month mouse chronic feeding/oncogenicity study with no observed oncogenic potential under conditions of the study at all feeding levels of 0.1, 0.3, 1.0, and 3.0 mg/kg/day and a NOEL for systemic toxicity of 1.0 mg/kg/day (equivalent to 7 ppm).

10. An Ames test (negative), a rat cytogenetic study (negative), and an in-vitro transformation assay (negative).

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

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.01 mg/kg/day of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.001766 mg/kg/day; the current action will increase the TMRC by 0.000308 mg/kg/day (17.4 percent). Published tolerances utilize 17.7 percent of the ADI; the

current action will utilize an additional 3.1 percent.

The nature of the residues is adequately understood and adequate analytical methods, high-pressure liquid chromatography using an ultraviolet detector, are available in Pesticide Analytical Manual, Vol. II (PAM-II), for enforcement purposes.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.411 would protect the public health. No secondary residues in meat, milk, poultry, or eggs are expected since asparagus, endive, and spinach are not considered livestock feed commodities.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interest persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3565, 7E3567, 7E3568/P446]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 1, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.411 is amended in paragraph (c) by adding and alphabetically inserting the raw agricultural commodity spinach and in paragraph (d) by adding and alphabetically inserting the raw agricultural commodities asparagus and endive, to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Spinach	6.0
* * * * *	

(d) * * *

Commodity	Parts per million
* * * * *	
Asparagus	3.0
* * * * *	
Endive	6.0
* * * * *	

[FR Doc. 88-5152 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 4, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service
  Kiwifruit Grown in California under Marketing Order No. 920
  Recordkeeping; Monthly; Annually; Every four years
  Farms; Businesses or other for-profit; 921 responses; 697 hours; not applicable under 3504(h)
  Robert Matthews (202) 447-2431
- Farmers Home Administration
  Section 502 Rural Housing Demonstration Program
  On occasion
  State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 25 responses; 2,000 hours; not applicable under 3504(h)
  Jack Holston (202) 382-9736
- Foreign Agricultural Service
  Emergency Relief from Perishable Product Imports from Israel
  On occasion
  Farms; Businesses or other for-profit; 3 responses; 54 hours; not applicable under 3504(h)
  Abraham Avidor (202) 382-9060

Reinstatement

- Food and Nutrition Service
  Annual Report of State Revenue Matching
  FNS-13
  Annually
  State or local governments; 57 responses; 4,560 hours; not applicable under 3504(h)
  Alan Rich (703) 756-3100

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 88-5190 Filed 3-8-88; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

Advisory Committee on Cotton Marketing Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Cotton Marketing will meet on Wednesday, April 13, from 8:30 a.m. to 4:30 p.m. in room 104-A of the USDA Administration Building, Jefferson Drive, Washington, D.C. The purpose of the meeting, the first held by the committee, will be to establish a common understanding of committee objectives and to initiate a review of prominent marketing system issues.

Tentative agenda items include the establishment of spot quotations, the Universal Cotton Standards Agreement, and the utilization of high-volume-instrument quality factors in the Commodity Credit Corporation price-support loan structure. This meeting is open to the public, and written comments may be submitted in advance to Jesse F. Moore, Director, Cotton Division. Time, however, will be inadequate to permit lengthy public comment on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-3193.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Cotton Marketing is being established by the U.S. Department of Agriculture to review the cotton marketing system and to recommend ways of improving its efficiency. Notice of this meeting is provided in accordance with section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463).

Dated: March 4, 1988.

William T. Manley,
Deputy Administrator, Marketing Programs.
[FR Doc. 88-5185 Filed 3-8-88; 8:45 am]
BILLING CODE 3410-02-M

Forest Service

Significant Amendment to the George Washington National Forest Land and Resource Management Plan; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement to the Final EIS on the George Washington National Forest Land and Resource Management Plan filed in September, 1986. The supplement will address the following main issues: (1) Whether and how much the Forest should increase or decrease the supply of timber to

industry; (2) to what extent the Forest's timber sale program and associated road construction provides benefits to the recreation and wildlife programs; (3) whether the efficiency of the Forest's timber sale program can be increased; (4) whether the mix of uneven-aged (group selection) or even-aged (shelterwood or clearcut) management is adequate to produce timber on the Forest; (5) how much land suited for timber production should be identified; and (6) how the Forest's timber sale program affects other resources such as local economies, nonmotorized recreation experiences, and sensitive wildlife.

The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received by April 15, 1988 to assure timely consideration.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to George W. Kelley, Forest Supervisor, George Washington National Forest, P.O. Box 233, Harrison Plaza, Harrisonburg, VA 22801.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Steve Parsons, Planning Staff officer, George Washington National Forest, P.O. Box 233, Harrison Plaza, Harrisonburg, VA 22801, phone number 703-433-2491.

SUPPLEMENTARY INFORMATION: The George Washington Land and Resource Management Plan was approved September 9, 1986. Additional analysis of the Forest Plan was required by Regional Forester John Alcock's decision of August 1987 directing the Forest Supervisor to perform a supplemental analysis based on issues raised by interested and affected publics.

The Forest Plan will remain in effect and continue to be implemented during the supplemental analysis. However, in recognizing the concerns of the interested and affected publics, the Chief, USDA Forest Service set the following interim guidelines for the Forest: (1) Annual timber sales offered may not exceed thirty eight million board feet per year; (2) All parties to the appeals will be notified of proposed surface disturbing projects associated with timber harvest and road building; and (3) major conflict areas will be determined and timber harvest activities postponed or relocated where feasible. Conflict areas were identified and discussed with interested parties at a January 14, 1988 meeting. Some timber harvesting activities on the Forest have been postponed or relocated as a result of that meeting and other public comments.

The Forest has been communicating with interested and affected members of the public to determine the scope of the supplemental analysis since October 1987. A meeting with interested publics was held on January 14, 1988 to review the process to be used, and better identify the issues, including those issues surrounding major areas of conflict. Subsequent public participation activities have included presentations to various public groups, individual meetings and phone calls, and requests for written comments on timber sale programs. In continuation of this process, the Forest will periodically send interim analysis documents for public review and comment, culminating with a draft and final supplemental environmental impact statement.

In preparing the environmental impact statement, the Forest Service may develop additional alternatives that: (1) Increase and/or decrease timber harvest and road construction levels, analyze various mixes of timber harvest methods, and analyze various mixes of nontimber and timber activities for producing recreation and wildlife benefits; and (2) provide timber harvesting at levels where direct timber revenues exceed direct costs as well as alternatives where timber harvesting is economically efficient considering the contribution harvesting makes to providing other resource benefits; and (3) emphasize different mixes of recreation, wildlife, and timber resources which may or may not meet demand for those resources.

Some original alternatives described in the FEIS Chapter II will be redesigned to reflect any changes resulting from issues addressed in the SEIS. Submit requests for material describing the alternatives to the address noted below for the George Washington National Forest.

The draft supplemental environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by August, 1989. At that time EPA will publish a notice of availability of the DESEIS in the **Federal Register**. The comment period on the DSEIS will be 90 days from the date the EPA notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the George Washington National Forest participate at that time. To be most helpful, comments on the DSEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviwers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553, (1978)*, and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc., v. Harris, 490 F. Supp. 1334, (E.D. Wis. 1980)*. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FSEIS.

After the comment period ends on the DSEIS, the comments will be analyzed and considered by the Forest Service in preparing the final supplemental environmental impact statement. The final SEIS is scheduled to be completed by April, 1990. In the final SEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the SEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

The responsible official is John E. Alcock, Regional Forester, Southern Region 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

Dated: March 1, 1988.

John E. Alcock,
Regional Forester.

[FR Doc. 88-5168 Filed 3-8-88; 8:45 am]
BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: March 24, 1988.

Time: 8:30 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: Colonel William C. Golbitz, General Advisory Committee on Arms Control and Disarmament, Room 5927, Washington, DC 20451 (202) 647-5178.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review the impacts of treaty compliance and verification issues, and will hold executive sessions.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated April 1, 1987, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 88-4207 Filed 3-8-88; 8:45 am]

BILLING CODE 6820-32-M

COMMISSION ON CIVIL RIGHTS

Ohio Advisory Committee; Agenda of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:30 p.m., on March 11, 1988, at the Terrace Hilton Hotel, 15 West Sixth Street, Cincinnati, Ohio. The purpose of the meeting is to provide orientation for the rechartered SAC and discuss plans for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Prock, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-5062 Filed 3-8-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket No. 7685-01]

Actions Affecting Export Privileges; Andre A. Buccolier

Summary

Pursuant to the Decision and Order set out below, Andre Buccolier (Respondent), with an address in care of Marvin Margolis, Esq., 770 Lexington Avenue, New York, New York 10021, is denied all export privileges for a period of ten (10) years from the date of this Order; provided, however, that commencing five (5) years from the date hereof, the denial of export privileges shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten (10) year period provided that the Respondent has committed no further violations of the Act, the Regulations, or the final Order in this proceeding.

Decision and Order

Procedural and Factual Background

This proceeding against Respondent Andre A. Buccolier (Respondent) began with the issuance February 5, 1987 of a charging letter by the Office of Export Enforcement (Agency), Export Administration,[1] U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. App. 2410-2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (Act), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1987)) (Regulations). The letter charged generally that Respondent had violated § 387.5 of the Regulations in 1982, with a specific allegation that Respondent had represented that Italy was the ultimate destination of three exports of U.S.-origin equipment from the United States, when Respondent knew that the shipments were to be reexported from Italy to the Soviet Union.

Respondent filed a March 2, 1987 answer requesting a hearing. The hearing was held October 6-8 and December 1-5, 1987 together with the hearing of charges by the Agency, under the Act and the Regulations, against a company of which Respondent was president. At the hearing, Respondent was accompanied by counsel for addressing most procedural issues, but was unaccompanied by counsel for addressing the substantive issue involving the allegations of the charging letter. The due date for the last post-hearing filings was January 12, 1988.

Preceding this 1987-88 administrative proceeding were two judicial trials against Respondent and the company of which he was president. These trials involved essentially the same charges that were raised in this administrative proceeding against Respondent and in the administrative proceeding against the company of which he was president. The first judicial trial, in November 1985, ended in a mistrial when Respondent's counsel became ill and was unable to continue. (Respondent's counsel in that first trial was different from his counsel in the second trial, and both were different from his counsel in these administrative proceedings.) The second trial, in May 1986, was concluded when the company of which Respondent was president pled guilty to one charge, and the government dismissed all the remaining charges against both Respondent and the company of which he was president.

The Agency's specific charge is that Respondent, for two 1982 shipments of a laser system and for one 1982 shipment of a computer system from the United States to Italy, told the persons who filled out the shipper's export

[1] When the Office of Export Enforcement issued the charging letter February 5, 1987, it was part of an organization within the U.S. Department of Commerce titled the International Trade Administration. As of October 1, 1987, however, it became part of an organization within the Department titled the Export Administration.

declarations (Ex.[2] 42; Ex. 44; Ex. 63) that the destination of each shipment was Italy. In fact, both the laser system and the computer system were reexported by the Italian consignee to the Soviet Union. The shipper's export declaration listing Italy as the destination had been presented to the U.S. government, and the Agency thus alleged that Respondent had caused a misrepresentation on these documents of the destination.

The primary dispute between Respondent and the Agency during the hearing, and apparently the only focus of the Administrative Law Judge (ALJ), was whether Respondent knew in advance that the shipments to Italy were to be reexported to the Soviet Union. Much of the factual background was either stipulated or uncontested. The parties stipulated that the shipments to Italy were actually reexported to the Soviet Union (Oct. Tr.[3] 280–83). Respondent did not contest the Agency's showing that both the laser system and the computer system required a validated license for export to either Italy or the Soviet Union, that licenses were not obtained, and that a presumption existed to issue licenses for exports to approved Italian and users, but to deny licenses for exports to the Soviet Union (Ex. 19; Ex. 20). After a lengthy discussion of the evidence on whether or not the Respondent knew in advance that the shipments to Italy were to be reexported to the Soviet Union, the Administrative Law Judge, in his recommended Decision and Order of February 1, 1988, found that the Agency had not met its burden of proof to sustain the specific charge of misrepresenation of final destination by a preponderance of the evidence and dismissed all charges contained in the February 5, 1988 charging letter. Pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420) (1982 and Supp III 1985)), that Decision and Order has been referred to me for final action.

[2] References to hearing exhibits will be as follows: Ex. (plus a number for Agency Exhibits and plus a letter for Respondent Exhibits). This abbreviation corresponds to that used in the Agency's January 4, 1988 Post-Hearing Brief.

[3] For the two judicial trials and for the October and December 1987 administrative hearings, references to the respective transcripts will be abbreviated as follows: November 1985 trial—1985 Tr.; May 1986 trial—1986 Tr.; October 1987 hearing—Oct. Tr.; and December 1987 hearing—Dec. Tr. These abbreviations correspond to those used in the Agency's January 4, 1988 Post-Hearing Brief.

Issues

1. Was the ALJ correct in his finding that the evidence did not support the specific charge that Respondent knew of and falsely represented the ultimate destination of the three shipments?

2. If the ALJ was correct in his findings with respect to the charge of specific knowledge of the ultimate destination, was he correct in dismissing the charges altogether in the face of evidence establishing another violation of § 387.5 of the Regulations?

Discussion

With respect to the first issue, although there is substantial evidence to support the Agency's charge that the Respondent knew that the ultimate destination of the three shipments was the Soviet Union, it cannot be said that the ALJ was clearly in error in holding otherwise. The ALJ had the benefit of conducting the hearing, including the benefit of observing the demeanor of the Respondent. In essence, the destination issue revolved around the testimony of Carlo Laviani in the form of his 1983 grand jury testimony (Ex. K) and a June 1985 deposition in Italy (Ex. 9) for the Agency and the direct testimony of the Respondent supported by the deposition of Carlo Banfi (Ex. N), the president of the Italian consignee in all three shipments. While one might reasonably come to a different conclusion upon reading the record of the proceedings, unless there has been clear and convincing error, the ALJ's decision on the facts must be accepted. To do otherwise would require a *de novo* consideration of the issue, something certainly not contemplated by the Act or the regulations. With respect to the second issue, certain exhibits in this case and exhibits in and findings made by the ALJ in the companion case of Buel Electronic Connectors, Inc. (Docket No. 7896–01) (hereafter "Buel"), which case was affirmed by me on this date, document a separate violation of § 387.5 of the Regulations which must be recognized with appropriate penalty imposed. Section 387.5 provides in part that

> No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact * * * [i]n connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in § 370.2 * * *

Section 370–2 includes the Shipper's Export Declaration among those defined as export control documents.

In Buel the ALJ found that the corporate respondent was the exporter of the two laser shipments which are the subject of this case and that the exportation to Italy was made "without the validated export licenses that Respondent (Buel) knew or had reason to know were required by the Regulations." (Buel, p. 16). In making that finding, the ALJ had previously found that "it was the Respondent that made arrangements for the freight forwarder, and in that relationship Respondent approved a shipper's export declaration naming it as the exporter and the Italian company as the ultimate consignee." (Buel, p. 14). What is clear from the SEDs in question (Ex. 42, 44) is that Buel either misrepresented to or concealed from the SED preparer the facts concerning the requirement of an export license which the ALJ found that Buel knew or had reason to know. That being so, the only question to be addressed is whether Respondent Buccolier can be held personally accountable for the corporate misrepresentation or concealment already found by the ALJ to have occurred. I find that he can and must be held accountable.

Buccolier was the president and principal, perhaps only, stockholder of Buel Electronic Connectors, Inc. at all times relevant to these proceedings. (See, eg. Ex. 7). Mr. Buccolier had been made aware of the absolute necessity of complying with the Regulations as early as 1968. (Ex. 11). Finally, it was Buccolier, the Respondent in this action, who personally provided the information to the freight forwarder for the preparation of the SEDs in question. (Buel, p. 5 and exhibits cited). Since the evidence shows Respondent's personal knowledge of the regulatory requirements, and personal direction of preparation and final approval of the SEDs which either misrepresented or concealed the license requirement of the laser system for export to Italy, the Respondent is personally culpable within the language of § 387.5. The fact that he was acting on behalf of the corporation cannot shield the Respondent when he personally caused, with knowledge found by the ALJ, the violation in the name of the corporation. Thus, based on the findings in Buel and the evidence in the instant case, I find the Respondent has committed two violations of § 387.5 of the Regulations (the two laser shipments) which cannot be ignored notwithstanding the failure of the Agency to prevail on the greater offense: the misrepresentation of destination with express knowledge that the ultimate destination is a proscribed destination. This lesser offense (falling within the general charge by the Agency) was proved conclusively in the

course of the two proceedings, which were conducted simultaneously. They should have been recognized by the ALJ on his own motion, with the record amended to reflect that fact.

With respect to the computer system export, the system was shipped pursuant to an SED indicating a Distribution License number. Although the number was not valid for the transaction and consignee involved, the evidence is unclear on Respondent's involvement, if any, with the listing of that number. Thus no finding is made against Respondent with respect to that shipment.

As to the penalty to be imposed on Respondent Buccolier, I find it reasonable to adopt that recommended by the ALJ and affirmed by me in the Buel case. Having been on warning since 1968 of the applicability of the Regulations to exports to Italy, at the very least Respondent showed a cavalier attitude regarding the legal particulars of exporting. He did so at his peril. In fact, there is much in the record that might suggest a harsher penalty.

Finally, Respondent, personally and through counsel, raised two additional issues. The claim is made that the ALJ errored in not granting a continuance with respect to the December 1, 1987 hearing date, and that the final denial order in Buel was overboard. With respect to the hearing date, the ALJ was merely following the schedule which had been directed by me in an interlocutory order of October 21, 1987. No error was committed. With respect to the denial order, denied parties are free to seek advisory opinions from the office of the Under Secretary for Export Administration with respect to activities which they feel justifiably fall outside the order but appear to be otherwise covered by it. I find no reason to revise the language of the denial order at this time.

Order

I. For a period of 10 years from the date of the final Agency action, as modified during the second half of such period by the suspension set forth in Paragraph VI below, Respondent Andre A. Buccolier, % Marvin Margolis, Esq., 770 Lexington Avenue, New York, New York 10020, is hereby denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) 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

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position or responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which 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 Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure 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 Respondent or any related person, or whereby Respondent or related person 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 Respondent or related person 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.

VI. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth in Paragraphs I–V above shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the 10-year period set forth in Paragraph I above, and shall be terminated at the end of such 10-year period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceedings.

VII. This Order constitutes an affirmation in part, a vacation in part, and a modification in part of the recommended Decision and Order of the ALJ dated February 1, 1988.

VIII. This constitutes final Agency action in this matter.

Date: March 2, 1988.

Paul Freedenberg,

Acting Under Secretary for Export Administration.

[FR Doc 88–5155 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 7686-01]

Actions Affecting Export Privileges; Buel Electronic Connectors, Inc.

Summary

Pursuant to the Decision and Order of the Administrative Law Judge, which Decision and Order is affirmed by me, Buel Electronic Connectors, Inc. (Respondent), with an address at 770 Lexington Avenue, New York, New York 10021, is denied all export privileges for a period of ten (10) years from the date of this Order; provided, however, that commencing five (5) years from the date hereof, the denial of export privileges shall be suspended, in accordance with § 388.16 of the Regulations, for the remainder of the ten (10) year period provided that the Respondent has committed no further violations of the Act, the Regulations, or the final Order in this proceeding.

Order

On February 1, 1988 the Administrative Law Judge entered his recommended Decision and Order in the above reference matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420 (1982 and Supp III 1985)) for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Date: March 2, 1988.

Paul Freedenberg,

Acting Under Secretary for Export Administration.

Decision and Order

Procedural Background

In the matter of Buel Electronic Connectors, Inc., Respondent, Docket No. 7686–01.

Appearance for Respondent: Joseph H. Sharlitt, Esq., P.C., Suite 300, 1300 19th St. NW., Washington, DC 20036–1609.

Appearance for Agency: Margo E. Jackson, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave. NW., Washington, DC 20230.

This proceeding against Respondent Buel Electronic Connectors, Inc. began with the issuance February 11, 1987 of a charging letter by the Office of Export Enforcement (Agency), Export Administration,[1] U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. app. sections 2410–2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (Act), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1987)) (Regulations). The letter charged that Respondent had violated §§ 387.3, 387.4, and 387.6 of the Regulations in 1982–83 exports and attempted exports from the United States to Italy of U.S.-origin laser systems and semiconductor manufacturing equipment.

Respondent filed a March 2, 1987 answer requesting a hearing. The hearing was held October 6–8 and December 1–5, 1987 together with the hearing of charges by the Agency, under the Act and the Regulations, against Respondent's president individually. At the hearing, Respondent was accompanied by counsel for addressing most procedural issues, but was unaccompanied by counsel for addressing the substantive issues involving the allegations of the charging letter. The due date for the last post-hearing filings was January 12, 1988.

Preceding this 1987–88 administrative proceeding were two judicial trials against Respondent and its president involving essentially the same charges that were raised in this administrative proceeding against Respondent and in the proceeding against its president. The first judicial trial, in November 1985, ended in a mistrial when Respondent's counsel became ill and was unable to continue. (Respondent's counsel in that first trial was different from its counsel in the second trial, and both were different from its counsel in this administrative proceeding.) The second trial, in May 1986, was concluded when Respondent pled guilty to the charge regarding the semiconductor manufacturing equipment, and the government dismissed all the remaining charges against both Respondent and its president.

Positions of the Parties

The Agency charged that Respondent, on or about February 13 and March 23, 1982, exported the components of a U.S.-origin laser system from the United States to Italy, in two separate shipments, without the validated export licenses that Respondent knew or had reason to know were required by the Regulations. Such exports, the Agency charged, violated §§ 387.4 and 387.6 of the Regulations.

The Agency charged also that Respondent, on or about January 21 and 24, 1983, attempted to export U.S.-origin semiconductor manufacturing equipment from the United States to Italy, in two separate shipments, without the validated export licenses that it knew or had reason to know were required by the Regulations. Such attempted exports, the Agency charged, violated §§ 387.3 and 387.4 of the Regulations. As a sanction for both the alleged 1982 and 1983 violations, the Agency proposed a 20-year denial of all U.S. export privileges.

Respondent denied the charge regarding the laser system (Dec. Tr [2] 45–92), and basically admitted the charge regarding the semiconductor manufacturing equipment, but cited mitigating circumstances (*id.* 412–744). As to both these 1982 and 1983 transactions, Respondent explained that it conducted them pursuant to a commercial relationship it then had with an Italian company. According to Respondent, it would investigate the American market for products that the Italian company was interested in obtaining and, if the Italian company so decided, would arrange for the Italian company to acquire them. For this function, Respondent said that it received a monthly payment from the Italian company, first of $500 and then of $800, plus a commission of about 5% or 10% of the price of items selected for purchase by the Italian company. (*Id.* 332–40.)

Laser Exports

Agency. To support its charges against Respondent regarding this equipment, the Agency argued chiefly that Respondent, and not the U.S. manufacturer, was the exporter. The Agency introduced Respondent's order form for the laser system that Respondent sent to the manufacturer, which listed only Respondent and not the Italian company (Ex. 25). The Agency also presented testimony from the manufacturer's official who handled the transaction stating that she dealt only with Respondent, not with the Italian company (1985 Tr. 70; see also *id.* 82–83; 1986 Tr. 106). She testified further that Respondent directed specifically that the two shipments include only Respondent's invoices and packing slips, and none of the manufacturer's (1985 Tr. 66, 73–74; 1986 Tr. 102–04, 109–11; Ex. 36).

The Agency introduced testimony that Respondent's president arranged for an American freight forwarder to handle transportation of the laser system from the United States to Italy (1985 Tr. 68, 86–90). An official of the freight forwarder testified that, for the first of the two shipments, his preparation of the air waybill (Ex. 50) and of the shipper's export declaration (Ex. 42) was based on information provided by Respondent's president (1985 Tr. 93–95). This shipper's export declaration listed Respondent as the exporter and the

[1] When the Office of Export Enforcement issued the charging letter February 11, 1987, it was part of an organization within the U.S. Department of Commerce titled the International Trade Administration. As of October 1, 1987, however, it became part of an organization within the Department titled the Export Administration.

[2] For the two judicial trials and for the October and December 1987 administrative hearings, references to the respective transcripts will be abbreviated as follows: November 1985 trial—1985 Tr.; May 1986 trial—1986 Tr.; October 1987 hearing—Oct. Tr.; and December 1987 hearing—Dec. Tr. References to exhibits will be as follows: Ex. (plus a number for Agency Exhibits and plus a letter for Respondent Exhibits). These abbreviations for the transcripts and exhibits correspond to those used in the Agency's January 4, 1988 Post-Hearing Brief.

Italian company as the ultimate consignee (Ex. 42). The official of the freight forwarder stated that Respondent's president reviewed and approved this document (1985 Tr. 94–95). For the second and final shipment, this official testified that he, the official, completed the air waybill (Ex. 43) and the shipper's export declaration (Ex. 44) with essentially the same information as for the first (1985 Tr. 96–98; 1986 Tr. 193–94), the shipper's export declaration again listing Respondent as the exporter and the Italian company as the ultimate consignee (Ex. 44).

As to licensing requirements for this laser system, the Agency showed that this export to Italy required a validated license for national security reasons, and that a presumption existed to issue such a license for an export to an approved Italian end user (Ex. 19). As for Respondent's awareness of U.S. licensing requirements, the Agency introduced copies of license applications that Respondent had submitted for previous exports (Ex. 12) and of a warning letter Respondent's president had received regarding previous violations (Ex. 11). The license applications and the warning letter concerned exports from Respondent's company to this Italian company during the 1968–71 period.

Respondent. In reply, Respondent argued that the export was actually handled by the manufacturer, or at least by an official of the manufacturer (Dec. Tr. 45–47, 53), citing, among other points, two invoices of the manufacturer to the Italian company (*id.* 47). In addition, Respondent contended that this official of the manufacturer had told Respondent's president that the laser system could be exported under a general license (*id.* 47, 410–11).

Agency. The Agency challenged both of these arguments. As to who really conducted the export, the Agency cited the evidence, described above, that it was Respondent (Agency's January 4, 1988 Post-Hearing Brief 6–8). Specifically as to the manufacturer's invoices, the Agency explained them as a special feature only of the letter of credit arrangements. As accounted for by this explanation, the Italian company had opened a letter of credit to pay for the laser system, and the beneficiary was Respondent (Ex. 30). The U.S. manufacturer, however, to ensure that it would be paid directly by the bank, required Respondent to have this letter revised to make the manufacturer the beneficiary (1985 Tr. 65–70; 1986 Tr. 99–106, 136–45; Ex. 31).

To comply with the terms of the revised letter of credit, the manufacturer had to provide the bank with its invoices reflecting direct billing to the Italian company for the laser system (1985 Tr. 69; Ex. 35; Ex. 39); and it was these invoices that Respondent cited as evidence that the manufacturer was the exporter. But, the Agency observed, these invoices were for purposes of the bank only, and Respondent specifically directed, as noted above, that only Respondent's invoices be sent with the shipments to the Italian company (Agency's January 4, 1988 Post-Hearing Brief 8).

As for Respondent's claim that it had been told by an official of the manufacturer that the laser system could be exported under a general license, the Agency replied with testimony by this official on two points. First, this official denied having discussed licensing with Respondent's president (1985 Tr. 71). Second, this official testified that, although the manufacturer's invoices for the bank incorrectly listed the export as going under a general license (*id.* 70–71), copies of these invoices were not sent to Respondent until after the shipments had been made (*id.* 76–76A). Thus, argued the Agency, this incorrect listing by the manufacturer could not have influenced Respondent's arrangements for the export (Agency's January 4, 1988 Post-Hearing Brief 8).

Semiconductor Equipment Exports

Collateral Estoppel. The Agency moved that Respondent be collaterally estopped from disputing that it attempted to export U.S.-origin semiconductor manufacturing equipment in January 1983 in violation of the Regulations, because it pled guilty to this charge at the end of the second judicial trial. Respondent showed no reason why this motion should not be granted, and it was granted (Oct. Tr. 185–96; Dec. Tr. 447). Consequently, the basic issue that remained—which Respondent did argue—was whether the circumstances of the violation should mitigate any sanction to be imposed.

Agency. The Agency introduced evidence that, on October 20, 1982, Respondent ordered some semiconductor manufacturing equipment from the company that made this equipment (Ex. 71). According to the Agency, this company subsequently notified the Agency about this order pursuant to a general request made by the Agency of companies that make equipment requiring a validated license for export. The purpose of this request is to alert the Agency to orders that have characteristics associated with orders that sometimes are for illegal exports.

An example are orders for equipment that omit a request for installation, when such a request normally accompanies such equipment orders. Testimony presented by the Agency was that a request for installation by the seller ordinarily accompanies orders for this semiconductor manufacturing equipment (Dec. Tr. 639–40), but that Respondent's order omitted it (*id.* 797–98, 801–02). Another example are orders for which the location of the ultimate consignee is changed. Respondent's order, according to the Agency, changed its ultimate consignee first among domestic addresses and then to the address of the Italian company (*id.* 806–07).

Consequently the Agency, after being notified about Respondent's order for the semiconductor manufacturing equipment, followed its progress. When Respondent attempted to export two shipments of this equipment (Ex. 103; Ex. 104) while the license application for its export was still pending, the Agency detained and seized the shipments (Dec. Tr. 843). The Agency presented testimony that export of this equipment to Italy required a validated license for national security reasons, and that a presumption existed to issue such a license for an export to an approved Italian end user (*id.* 630–31, 640).

Respondent. Respondent argued basically that its mistake as to the licensing requirement was simply an honest error, and also that it was unfairly induced by the Agency and the equipment's manufacturer to make, or possibly even entrapped into making, the attempted exports. As to the honesty of its error, Respondent's president sought to show the commercial legitimacy of those characteristics of Respondent's order that triggered the company's notification of the Agency.

With respect to Respondent's omission of a request for installation by the seller, Respondent's president testified that the Italian company had asked for just the equipment, not for installation, and it was Respondent's function simply to transmit the Italian company's order (*id.* 950–52). Respondent's president added that he understood that the Italian company was going to use a Swiss facility of the seller for the installation, not the seller's American company with which he was dealing (*id.* 951). As for listing the ultimate consignee initially as domestic, Respondent's president testified that this listing was a negotiating tactic to learn the seller's domestic price, on the theory that for many sellers it is less than the foreign price, and Respondent was seeking the lowest possible price (*id.* 900, 907–08).

Respondent sought also to show the reasonableness of its thinking on the

export licensing requirements, albeit that it came to an erroneous conclusion regarding the two attempted shipments. Respondent's president emphasized that Respondent had applied for a license (Ex. I–1), showing that it was trying to comply with the licensing requirements and not seeking to export the equipment covertly (e.g., Dec. Tr. 542–45, 577–92, 710–13). When Respondent attempted the two January 1983 shipments of parts of the equipment that were seized, it honestly believed, according to its president, that no validated license was required for these parts.

Respondent's situation then, as described by its president, was that it was under pressure from the Italian company to ship all the semiconductor manufacturing equipment, for which the Italian company had already paid through a letter of credit (e.g., *id.* 591). But Respondent still had not received the export license for which it had applied. Respondent's solution was to ship parts of the equipment other than the computer (e.g., *id.* 591–92), on the theory that it was only the computer that required the license (e.g., *id.* 584–88). Respondent so concluded, its president testified, because an environmental chamber, thought by Respondent to be a part of the equipment (e.g., *id.* 455–61, 538–39, 644–49, 672–74), had already been exported without a validated license (*id.* 808–09). Therefore, as testified by an official of the freight forwarder, Respondent arranged for the other parts save the computer to be exported, specifically withholding the computer from the shipments (1985 Tr. 300–01).

Respondent argued also that its attempted exports of parts of the semiconductor manufacturing equipment were the result of an unfair inducement or entrapment by the Agency and by the company that made this equipment (e.g., Dec. Tr. 535). For this argument, Respondent cited several points. They include: notification of the Agency by the company of the placing of Respondent's order and periodic notifications about its processing (1985 Tr. 213–19; Dec. Tr. 801–09), a letter from the Agency to the company thanking it for its assistance after the seizure of Respondent's attempted shipments (Dec. Tr. 556–59; Ex. U–1), and alleged notice by the Agency to the company that Respondent's license application would be denied (*id.* 553–73).

Agency. The Agency's rebuttal focused on Respondent's claim of unfair inducement or entrapment by the Agency. Essentially the Agency argued that its close following of Respondent's order was simply a normal exercise of the Agency's enforcement function. As the Agency explained, it encourages companies to apprise it of orders having certain characteristics, and it then observes the progress of these orders (Dec. Tr. 796–809; Agency's January 4, 1987 Post-Hearing Brief 18).

The Agency specifically denied communicating to the company with which Respondent had placed its order any advance information regarding the outcome of Respondent's export license application (1985 Tr. 230–31; Dec. Tr. 892–94). In addition to denying such communication, the Agency contended that it could not have known the outcome "with any degree of certainty," because the application was then still pending in another unit of the Commerce Department (Agency's January 4, 1988 Post-Hearing Brief 20; Dec. Tr. 892–94).

Discussion

Laser Exports

For the export of the laser system, the Agency's evidence sufficiently establishes both that Respondent was the exporter and that Respondent reasonably knew or should have known of the pertinent licensing requirements. The major question was whether Respondent or the manufacturer was the exporter. The Agency's evidence showed that Respondent placed the order with the manufacturer, that Respondent directed that the shipments include packing slips and invoices only from it and not from the manufacturer, and that the manufacturer itself dealt only with Respondent, not with the Italian company. Similarly, it was Respondent that made arrangements for the freight forwarder, and in that relationship Respondent approved a shipper's export declaration naming it as the exporter and the Italian company as the ultimate consignee.

Respondent's argument in opposition fails to overcome this body of evidence. The two manufacturer's invoices cited by Respondent were adequately explained by the Agency as relating only to the letter of credit arrangement for payment, not as indicating the manufacturer to be the exporter. The large weight of the evidence clearly establishes Respondent as the exporter of the laser system.

As the exporter, Respondent was responsible for obtaining any needed licenses. That Respondent knew or reasonably should have known of the licensing requirements is established by its prior export license applications and its president's receipt of a warning letter. Although the applications and the letter concerned matters back in 1968–71, they all involved exports by Respondent from the United States to this same Italian company. Respondent claimed also that it was misled by the manufacturer as to the pertinent licensing requirements. But no persuasive evidence suggests that any such misleading advice was transmitted orally, and copies of the manufacturer's invoices with their incorrect general license entry were sent to Respondent only after each shipment.

Semiconductor Equipment Exports

As to Respondent's explanation of how it came to its erroneous conclusion regarding the licensing requirements for its January 1983 attempted exports, the explanation has plausibility and is consistent with the evidence. Respondent's specific withholding of the computer from the shipments, for example, showed an effort at compliance.

As for Respondent's claim of unfair inducement or entrapment by the Agency, the evidence fails to support this claim. As described in detailed logical testimony by the responsible Agency official (Dec. Tr. 795–897), the Agency appears to have been simply doing its enforcement job when it encouraged companies to notify it of orders such as Respondent placed, and when it then followed Respondent's order after it was so notified. With respect to any objections that Respondent lodged as to the conduct of the company with which it placed its order, that company was not a party to this proceeding. Accordingly, no judgment can be made on that conduct, other than to say that the evidence regarding it does not exonerate Respondent from the violation of the Regulations that occurred in January 1983.

Findings

The record of this proceeding warrants the following findings. Respondent exported the components of a U.S.-origin laser system from the United States to Italy, on or about February 13 and March 23, 1982, without the validated export licenses that Respondent knew or had reason to know were required by the Regulations. Respondent attempted to export parts of U.S.-origin semiconductor manufacturing equipment from the United States to Italy, on or about January 21 and 24, 1983, without the validated export licenses that Respondent knew or had reason to know were required by the Regulations. The commodities involved in both these

1982 and 1983 transactions were controlled for national security reasons.

Conclusions

The record requires the following conclusions. Respondent violated Sections 387.4 and 387.6 of the Regulations in February and March 1982 by exporting components of a U.S.-origin laser system from the United States to Italy without the required export licenses. Respondent violated §§ 387.3 and 387.4 of the Regulations in January 1983 by attempting to export parts of semiconductor manufacturing equipment from the United States to Italy without the required export license.

Such violations, involving commodities controlled for national security reasons, are a serious matter. That a presumption of approval existed for license applications for these exports to appropriate Italian end users does not negate the significance of the violations. It is important that the licensing process be given the opportunity to review the details of such proposed exports, in order to check on matters like the nature of the end user.

For these unlicensed exports from the United States to Italy, nevertheless, the Agency's request of a 20-year denial period seems unduly severe. But a significant denial period is warranted. The warning letter sent Respondent's president for violations, though now a decade and a half old, focused on exports from the United States to this same Italian company and admonished that the fact of these violations would be considered in the event of future compliance actions. In light of this letter, Respondent might reasonably have been expected to expend extra efforts to assure its compliance with the Regulations. Instead, Respondent has now been found to have violated the Regulations on not just one, but on several, occasions in 1982–83.

In view of these circumstances, a 10-year denial period would be just. Further, it would be fair to Respondent and would achieve effective enforcement of the Act and the Regulations if the last five years of the denial period are suspended, provided that Respondent has complied with the Act and the Regulations during the first five years.

Order

I. For a period of 10 years from the date of the final Agency action, as modified during the second half of such period by the suspension set forth in Paragraph VI below, Respondent Buel Electronic Connectors, Inc., 770 Lexington Avenue, New York, NY 10021, and all successors, 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 from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) 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

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportuity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which 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 Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specified 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 on any association with Respondent or any related person, or whereby Respondent or related person 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 Respondent or related person 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.

VI. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth in Paragraphs I–V above shall be suspended, in accordance with 388.16 of the Regulations, for the remainder of the 10-year period set forth in Paragraph I above, and shall be terminated at the end of such 10-year period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: February 1, 1988.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 88–5156 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

NBS/OSI Workshop for Implementators of OSI

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces four (4) workshop sessions to discuss the continued development of international computer network protocols.

DATES: The following constitutes the schedule for the workshops for the year 1989. The dates are firm:

March 13–17, 1989
June 12–16, 1989
September 11–15, 1989
December 11–15, 1989

The meetings will be hosted by NBS and will be held at the National Bureau of Standards, Gaithersburg, Maryland.

ADDRESS: To register for the workshops, companies may contact: OSI Workshop Series, Attn: Lawrence Keys, National Bureau of Standards, Building 225, Room B–217, Gaithersburg, MD 20899, Telephone: (301) 975–3604.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. An NBS representative will confirm workshop registration reservations by telephone.

FOR FURTHER INFORMATION CONTACT: Robert Rosenthal (301) 975–3603.

SUPPLEMENTARY INFORMATION: The workshops will cover protocols in seven layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitations of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshops.

Ernest Ambler,

Director.

Date: February 29, 1988.

[FR Doc. 88–5157 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Operational Guidelines for the Fishery Management Plan Process

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

ACTION: Notice of availability of fishery management guidelines.

SUMMARY: The recently updated version of Phases II and IV of *Operational Guidelines—the Fishery Management Plan Process* is available. The purpose of the guidelines is to expedite the development, review, approval, and implementation of fishery management plans (FMPs).

ADDRESSES: Copies of the two revised chapters may be obtained from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235 or from any of NMFS' Regional Offices as follows:

Director, Northeast Region, NMFS, NOAA, 14 Elm Street, Federal Bldg., Gloucester, MA 01930
Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702
Director, Southwest Region, NMFS, NOAA, 300 S. Ferry Street, Terminal Island, CA 90731-7415
Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115-0070
Director, Alaska Region, NMFS, NOAA, P.O. Box 21668, Juneau, AK 99802

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, 202–673–5263.

SUPPLEMENTARY INFORMATION: NMFS announces that the final revised *Operational Guidelines—Fishery Management Plan Process:* Phase II—Development of Draft Documents, and Phase IV—Final FMP/Amendment Review and Approval, Proposed Regulations and Final Rulemaking, is available.

The Magnuson Fishery Conservation and Management Act, as amended (Pub. L. 99–659), establishes eight Regional Fishery Management Councils, whose primary function is to develop, monitor, evaluate, and amend FMPs for each fishery that requires conservation and management within its geographical area of authority. FMPs and amendments to FMPs must be submitted to the Secretary of Commerce for review, approval, and implementation. The *Operational Guidelines* are advisory, and are directed to the Councils and the NMFS offices servicing the Councils. They are designed to improve the quality of FMPs, to produce a clearer understanding of the laws affecting the FMP process, and to speed the Secretarial review, approval, and implementation process. They offer a basic reference checklist for the process, although the publication does not prescribe, in and of itself, legal or regulatory requirements except as provided for in the Magnuson Act and other applicable law.

Operational Guidelines was first issued in 1979, revised in 1983, and supplemented in 1985. On June 23, 1987, Phases II and IV were revised, pursuant to Pub. L. 99–659, and published for the interim use and comment of those using them. This revision now available reflects changes made as a result of experience gained during the six months of interim use and to accommodate comments received.

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

Dated: March 3, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–5161 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting, March 22–24, 1988, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Building 4, Room 2079, 7600 Sand Point Way NE., Seattle, WA, to discuss 1988 commercial groundfish catch projections, research needs, data reporting standards, a proposed trawl codend restriction, and technical revisions to the fishery management plan. Other issues related to management of the west coast groundfish fisheries may be discussed also.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 221–6352

Date: March 3, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–5162 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting of its Law Enforcement Committee and Advisory Panel, March 24, 1988, at 1 p.m., at the Jacksonville Riverwalk Hotel, Jacksonville, FL, to review and make recommendations for modifications of snapper/grouper and mackerel regulations. The public meeting will adjourn March 25, 1988, at 3 p.m. A detailed agenda will be available to the public on or about March 11, 1988.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306,

Charleston, SC 29407; telephone: (803) 571–4366.

Date: March 3, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–5163 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-22-M

Proprietary Research Program; Implementation

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Announcement of implementation.

SUMMARY: This notice announces the implementation of the National Oceanic and Atmospheric Administration's (NOAA) Proprietary Research Program. The program offers designated NOAA facilities for proprietary research activities on a user fee basis. This notice prescribes the conditions for utilization and identifies the five initial facilities. It further lists the points of contact for each and for the overall program.

FOR FURTHER INFORMATION CONTACT: Julie Campbell, Constituent Affairs Staff, Room H5224, National Oceanic and Atmospheric Administration, 14th & Constitution Avenue, NW, Washington, DC 20230 (202) 377–4113.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the authority of Department of Commerce Administrative Order 217–19.

William Matuszeski,

Director, Office of Private Sector Initiatives.

March 1, 1988.

NOAA announces the implementation of its Proprietary Research Program. This program authorizes the use of designated NOAA facilities by State and local governments, educational institutions and the private sector. Proprietary research activities encompass research, surveys, laboratory analyses, measuring and testing of specific materials, chemicals, or devices conducted by non-federal parties using Federal Government facilities, where the resulting data or other products are treated as confidential by the non-federal parties.

Utilization of these facilities will be performed under Memoranda of Agreement issued by the Facility Directors. These agreements are subject to the following conditions: (1) Use must be compatible with the design and purpose of the facility and the user must be technically competent; (2) use must be beneficial to the Government; (3) use must not interfere with the activities or mission of NOAA; (4) use must not be likely to result in misuse or damage to the facilities or injury.

Users will be charged on a full cost basis for facility use and any additional technical assistance, incidental services, or supplies furnished.

The five NOAA facilities available for proprietary research are:

1. Command and Data Acquisition Station, 1 Eisele Road, Fairbanks, AK 99712.

Manager: Gregory White.

Telephone: (907) 452–1155.

Purpose: Provides support for operational and experimental satellite data gathering by a full array of communications equipment including four antenna systems and two 26 meter satellite dishes.

2. Charleston, SC Laboratory c/o, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Acting Regional Director: Joseph Angelovic.

Telephone: (813) 893–3141.

Purpose: Processes fish with a variety of experimental techniques including preservation, processing and vaccum packaging.

3. Gloucester, MA Laboratory c/o, National Marine Fisheries Service, Federal Building, 14th Elm Street, Gloucester, MA 01930.

Regional Director: Robert Learson.

Telephone: (617) 281–3600 ext 237.

Purpose: Processes fish with radiation (gamma emitting Cobalt–90) to enhance shelf life, facilitate component marking and purify fishery products.

4. NOAA Undersea Research Program, 6010 Executive Boulevard, Room 805, Rockville, MD 20852

Director: David Duane.

Telephone: (301) 443–8391.

Purpose: Provides three submersible vehicles located in Honolulu, HI for research in areas of fisheries, pollution, sea floor properties, process and resources; and ocean technology and services.

5. Office of Marine Operations, 6001 Executive Boulevard, Rockville, MD 20852.

Contact: CPT James Midgley.

Telephone: (301) 443–8321.

Purpose: Provides four Class I Research Vessels—OCEANOGRAPHER, DISCOVERER and MALCOLM BALDRIGE in Seattle, WA and SURVEYOR in Miami, FL to support worldwide scientific research in oceanography, hydrology, biology and atmospheric research.

Parties interested in applying for use of a facility should contact the appropriate Director. For further information concerning the program and for a prospectus of the facilities contact Julie Campbell, Constituent Affairs Staff, at the address indicated above.

[FR Doc. 88–5071–08 Filed 3–8–88; 8:45 am]

BILLING CODE 3510-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 17 March 1988 at 10:00 AM in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006, to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of fine Arts, at the above address or call the above number.

Dated in Washington, DC 29 February 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88–5169 Filed 3–8–88; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Control Project on Gills Creek in Richland County, SC

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: The recommended plan would provide for an earth embankment detention structure across Gills Creek at Boyden Arbor Pond on Fort Jackson property. The spillway would be removed to elevation 912.00 so no excavation of a downstream channel would be needed for the tailwater depths required on the new dam. The low level outlet structure consists of a 6 foot diameter pipe quipped with a valve. The valve would be set to non-damaging flows for daily use and can be opened to drain the reservoir after high flood events have passed. The low level outlet will discharge into a preformed spilling

basin. The Gills Creek site would be cleared in the vicinity of the dam and spillway for construction access. Boyden Arbor road located on Fort Jackson above the proposed project would be flooded as a result of the construction of the dam; therefore, the road, as part of the selected plan, will be raised so that it will not be flooded as a result of the 100-year frequency storm.

In addition to the proposed action, the following alternatives have been identified:

1. No Action—The no action alternative represents no additional actions on the part of the Corps of Engineers.

2. Other dam sites were considered on each of the three main streams in the basin: Gills Creek, Jackson Creek, and Little Jackson Creek.

3. Three locations for the proposed Gills Creek Dam sites were analyzed.

4. Alternatives to supplement the reduction of flood flows by use of dams including levees, channelization, bridge removal or alteration and nonstructural solutions would be analyzed.

The DEIS will be distributed to all concerned Federal, State, and local agencies, plus private organizations and individuals. Anyone else who is interested in receiving this DEIS is invited to contact the Environmental Resources Section of the Charleston District, Corps of Engineers to assure that they are included on the mailing list.

Significant issues to be analyzed in the DEIS include:

1. An evaluation of the environmental impacts of the proposal plan.

2. A section 404(b) evaluation of the discharge into U.S. waters of dredged or fill material.

3. An assessment of the impacts on threatened or endangered species. This portion of the EIS supplement has been included to comply with section 7 of the Endangered Species Act.

Preparation of the DEIS will be conducted in accordance with the requirements set forth in the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations and applicable Corps of Engineers regulations and guidance.

A scoping meeting will not be held for the preparation of this DEIS due to prior coordination efforts which identified the significant issues involving Federal, State, and local agencies; interested citizen's groups, and individual citizens.

We estimate that the DEIS will be available to the public during the third quarter of fiscal year 88 (April 1988–June 1988).

Questions concerning the proposal action can be directed to Mr. Larry Casbeer, Planning Branch, U.S. Army Engineer District Charleston, P.O.Box 919, Charleston, South Carolina. Questions concerning the DEIS can be directed to Mr. Jim Woody, Environmental Resources Section, U.S. Army Engineer District Charleston, P.O. Box 919, Charleston, South Carolina.

Date: March 1, 1988.

Stewart H. Bornhoft,

LTC, Corps of Engineers, District Engineer.

[FR Doc 88-5072 Filed 3-8-88; 8:45am]

BILLING CODE 3710-CH-M

Prospective Exclusive License; Cor-A-Vent, Inc.

In accordance with 37 CFR 404.7(a)(1)(i) announcement is made of a prospective exclusive license of a Blister Pressure Relief Valve, invented by C.J. Korhonen and F.C. Gernhard (U.S. Patent Application Serial Number 014,574; Filing Date: February 13, 1987). Rights to this invention are owned by the United States Government as represented by the U.S. Army Cold Regions Research and Engineering Laboratory (USACRREL). Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of Title 35, U.S.C., the Department of the Army as represented by USACRREL intends to grant an exclusive license on the Blister Pressure Relief Valve to Cor-A-Vent, Inc., 16250 Petro Drive, Mishawaka, Indiana 46544.

Pursuant to 37 CFR 404.7(a)(1)(i) any interested party may file written objections to this prospective exclusive license arrangement. Written objections should be directed to: CPT Charles W. Calkins, Office of the Chief Counsel, U.S. Army Corps of Engineers, ATTN: CECC-R, Washington, DC 20314-1000.

Written objections must be filed within 60 days from the date of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: CPT Charles W. Calkins, Office of the Chief Counsel, U.S. Army Corps of Engineers, ATTN: CECC-R, Washington, DC 20314-1000 (202) 355-2160.

Kenneth L. Denton,

Certifying Officer for the Federal Register.

[FR Doc. 88-5073 Filed 3-8-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Commercial Use of a Portion of Naval Supply Center, Oakland, CA

Pursuant to regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) and the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs, the Department of the Navy and the Port of Oakland, Oakland, California will prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the proposed lease of Navy land to the Port of Oakland for commercial and maritime industrial development. The Navy will be the Lead Agency under NEPA and the Port of Oakland will be the Lead Agency under the California Environmental Quality Act (CEQA).

Public Law 100-180 of December 4, 1987 authorizes the Secretary of the Navy to lease, at fair market rental value, to the Port of Oakland not more than 195 acres of real property, together with improvements thereon, at the Naval Supply Center, Oakland (NSCO), Alameda County, California.

The project proposes the lease of approximately 130 acres of land and existing facilities at NSCO to the Port of Oakland for long-term commercial uses and redevelopment for maritime and transportation-related facilities. The Port of Oakland proposes to establish maritime and transportation activities and to redevelop the site for port operations support to the Oakland Harbor area.

Redevelopment projects may include intermodal rail facilities, marine facilities, container facilities, and other maritime and transportation support facilities. The facility would be used as a transfer and staging area for container cargo being transferred between the intermodal rail system and inner and outer Port of Oakland harbors.

The 130 acres under consideration have been divided into two parcels for planning purposes. Development of Area A (82 acres) would include demolition of some existing facilities and construction of new intermodal rail and maritime facilities. Subarea A-1 would contain an intermodal rail facility with tracks and container storage area where container cargo is transferred between rail and ships. Area A could include a U.S. Customs Service office, gatehouse, and administration, operation, and maintenance facilities. Subarea A-2 would consist of an existing marginal wharf, now in disrepair. It is contemplated that, at some future time, the wharf would be rehabilitated for use as a general cargo terminal with transit shed and transit storage area, and/or tug operating facilities. Rehabilitation of this wharf for use by vessels larger than tugs may require some dredging in this area.

Development of Area B (48 acres) would include demolition of existing facilities and construction of new container facilities and an intermodal rail facility. Container facilities would include container transfer and storage areas. The intermodal rail facility would also include tracks and a container staging area. Area B could also include a U.S. Customs Service office, gatehouse, and administration, operation, and maintenance facilities.

The project would also include demolition and construction of Navy facilities to be displaced by the lease agreement. This construction will include recreational, administration and storage facilities. These facilities will be sited at various locations on the NSCO outside of the proposed lease area.

The alternatives to be evaluated will include:

1. The proposed project as discussed above.

2. Alternative configurations, land usage, and amount of property to be leased.

3. The No Action alternative.

We wish to learn the views of affected agencies and individuals regarding the scope and content of the environmental documentation to be prepared for the proposed action. Please respond with written comment within 30 days of the published date of this notice to Ms. Loretta Meyer, Environmental Division, Port of Oakland, 77 Jack London Square, Oakland, California 94607. Questions or comments to be directed to the Navy should be mailed to Mr. Thorn Johnston, Head, Planning Implementation Branch, Western Division Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California, 94066.

Date: March 3, 1988.

William R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-5070 Filed 3-8-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031G]

Invitation for Applications for New Awards Under the Endowment Challenge Grant Program for Fiscal Year 1988

Purpose: Provide grants to eligible institutions of higher education so that they can establish or increase their endowment funds.

Eligibility: Potential applicants, including current grantees under any of the Institutional Aid Programs authorized by Title III of the Higher Education Act, are advised that a notice was published in the **Federal Register** on December 14, 1987, 52 FR 47446-47447, informing interested parties how to be designated as eligible to receive Endowment Challenge Grant funds.

Deadline for Transmittal of Applications: June 9, 1988.

Applications Available: April 11, 1988.

Available Funds: $19.148 million.

Estimated Range of Awards:

Regular grants: $50,000-$500,000.

Large grants: Over $1,000,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 30 to 50.

Project Period: 240 months.

Applicable Regulations: The Endowment Challenge Grant Program Regulations, 34 CFR Part 628.

For Applications or Information Contact: Ms. Anne Price-Collins, Chief, Challenge Grant and Endowment Branch, U.S. Department of Education, 400 Maryland Avenue SW., Room 3042, ROB-3, Washington, DC 20202, Telephone: (202) 732-3335. Applications will be sent to those institutions designated as eligible under the Title III Programs.

Program Authority: 20 U.S.C. 1065a.

Dated: March 1, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88-5180 Filed 3-8-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[DOE/EIS-0120]

Waste Management Activities for Groundwater Protection, Savannah River Plant, Aiken, SC; Record of Decision

The Department of Energy (DOE) prepared this Record of Decision pursuant to Regulations of the Council on Environmental Quality (40 CFR Part 1505) and Implementing Procedures of the Department of Energy (52 FR 47662, December 15, 1987). This Record of Decision is based on DOE's *Draft and Final Environmental Impact Statements, Waste Management Activities for Groundwater Protection, Savannah River Plant, Aiken, South Carolina* (DOE/EIS-0120), the public scoping meetings and review hearings on the Draft EIS, and the distribution of approximately 850 copies to Congress, state and Federal agencies, and concerned groups and individuals. DOE considered all public and regulatory comments received on the EIS in the preparation of this Record of Decision.

Decision

DOE has decided to modify hazardous, low-level radioactive, and mixed waste management activities at the Savannah River Plant (SRP) by implementing the Combination strategy discussed in DOE/EIS-0120. Specific project-level actions to be implemented are discussed in the EIS and include:

1. The closure of six inactive low-level radioactive waste sites in the SRP R-Area and one "mixed" waste site in the F-Area where waste constituent concentrations demonstrate a need for removal (even though total waste removal is impossible under any strategy)

These sites were selected for waste removal as a part of the Combination strategy because waste removal now would significantly reduce the extent of or eliminate the need for groundwater remedial actions after site closure. Additional sites may be selected in the future, based on further site-specific investigations and regulatory interactions.

2. The construction of a new "vault-design" low-level radioactive waste disposal facility adjacent to the existing low-level waste burial ground near the center of SRP at site "G"

Currently, the Department of Energy also plans to construct and operate new storage/disposal facilities for hazardous and/or mixed waste in accordance with the Resource Conservation and Recovery Act (RCRA), the Hazardous and Solid Waste Amendments of 1984 (HSWA), and/or the South Carolina Hazardous Waste Management Act (SCHWMA), as amended. The prime candidate sites for the disposal facilities (either a RCRA landfill, an aboveground or below ground vault, or a cement/flyash matrix vault) are at sites "L" and "B" as discussed in the EIS. Storage facilities will be sited, designed, and constructed in these or other areas based on operating considerations and in compliance with regulatory requirements. The site-specific, project-specific actions will be addressed in future planning and in response to regulatory permitting and decisionmaking processes.

3. Reactor disassembly-basin purge water discharges to active seepage and containment basins in the C-, K-, and P-Areas at SRP will continue

DOE will continue to evaluate the general applicability of tritiated-water discharge mitigation measures at SRP.

DOE's decision is based on the assessments and analyses in the EIS. Based on these assessments and analyses, DOE has concluded that implementation of the Combination waste management strategy at SRP will provide adequate environmental and human health protection in accordance with existing requirements.

Background

The Savannah River Plant is a major DOE installation that produces nuclear materials for national defense and research purposes and its operations generate hazardous, radioactive, and mixed (radioactive and hazardous) wastes. Previous acceptable waste disposal practices have included the use of seepage basins for liquids, disposal pits and waste piles for solids, and a burial ground for solid low-level radioactive wastes.

Groundwater contamination of water-table aquifers has occurred at some sites as a result of waste management practices at SRP. Detected contaminants include volatile organic compounds (degreasing solvents), heavy metals (lead, chromium, mercury, and cadmium), radionuclides (tritium, uranium, fission producers, and plutonium), and other chemicals (e.g., nitrates); measured levels of waste constituents have exceeded maximum contaminant levels (MCLs) and other regulatory standards or guideline concentrations.

As a result of legislative actions [Pub. L. 98–181; RCRA; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and SCHWMA], their implementing regulations, and DOE Administrative Orders, as well as concerns to protect the environment, many remedial or corrective actions have been started at SRP. These actions include the removal and storage of buried wastes and contaminated soils; the design, construction, and operation of liquid effluent treatment facilities; the use of recovery wells and an air stripper to remove volatile organic compounds from groundwater; the design of a two-stage, rotary kiln incinerator to detoxify hazardous wastes; and waste disposal demonstration programs (e.g., the greater confinement disposal demonstration).

In addition, there are ongoing demonstration programs that affect waste management activities including a "beta-gamma" incinerator, and a box/drum compactor. DOE expects these and other programs to result in improved methods for treatment and disposal of mixed and low-level radioactive wastes or reduction in waste volumes to meet applicable regulations.

The terms "hazardous," "low-level radioactive," and "mixed" (i.e., hazardous and low-level radioactive) are used throughout the EIS as common use terms without specific regard to technical or regulatory definitions unless indicated. DOE does *not* intend this Record of Decision to be a permit application for existing SRP facilities or a vehicle to resolve the applicability of the requirements of RCRA, HSWA, CERCLA, the Superfund Amendments and Reauthorization Act (SARA), and counterpart State of South Caroline regulations to existing SRP facilities or waste sites. Ongoing regulatory interactions and the expanded SRP groundwater monitoring and characterization program will provide the bases for the application of specific regulations and/or permit requirements to existing facilities and waste sites following the publication of this Record of Decision.

Additional documentation in compliance with 40 CFR 1502.20 may be prepared if necessary to implement the project-specific actions discussed in and related to the modification of SRP waste management activities assessed in DOE/EIS–0120.

Description of Alternatives

DOE's proposed action is to modify waste management activities for hazardous, low-level radioactive, and mixed wastes at SRP to protect groundwater, human health, and the environment by implementation of a waste management strategy.

DOE considered Combination, Dedication, Elimination, and No Action waste management strategies for existing waste sites, new disposal facilities, and the discharge of disassembly-basin purge water. Table 1 illustrates the project-level actions which were combined to develop the overall strategies for analysis in the EIS.

As shown in Table 1, each strategy results in different combinations of project-specific actions. The number of waste sites from which waste is removed varies with each strategy. Waste removal subsequently determines the acreage which must be devoted to waste management purposes, affects monitoring costs, security concerns, etc. Similarly, selection of one of the alternative strategies will determine whether new disposal and/or storage facilities are constructed, whether discharges of disassembly-basin purge water to reactor area seepage basins will continue, and the costs and effects associated with the implementation of each strategy. The Combination strategy selected by DOE combines features of the Dedication and Elimination strategies in terms of project-specific actions.

No Action Strategy

No major onsite environmental benefits are expected from the No Action strategy; however, the offsite environment would be protected as a result of continuing waste management practices such as groundwater cleanup in the A/M-Areas. This strategy would result in the following:

Onsite groundwater impacts.

TABLE 1.—ALTERNATIVE WASTE MANAGEMENT STRATEGIES ANALYZED IN THE FEIS (DOE/EIS–0120)

Alternative strategy	Facility category		
	Existing waste sites	New disposal facilities	Disassembly-basin purge water discharge
No action; continue to ensure protection of offsite environment.	No waste removal and no remedial or closure actions.	No new disposal facilities	Continued discharge to seepage basins.
Compliance through Dedication of existing and new disposal areas.	No waste removal; remedial and closure actions as required.	Aboveground or belowground disposal	Continued discharge to seepage basins.
Compliance through Elimination of existing waste sites and storage of wastes.	Remove waste at all sites; remedial and closure actions as required.	Retrievable storage	Direct discharge to onsite streams or evaporation.

TABLE 1.—ALTERNATIVE WASTE MANAGEMENT STRATEGIES ANALYZED IN THE FEIS (DOE/EIS-0120)—Continued

Alternative strategy	Facility category		
	Existing waste sites	New disposal facilities	Disassembly-basin purge water discharge
Compliance through a Combination of dedication and elimination of waste sites, and both storage and disposal of wastes.	Remove waste at selected sites; remedial and closure actions as required.	Aboveground or belowground disposal and retrievable storage.	Continued discharge to seepage basins and study of other mitigation measures.

Elevated concentrations of tritium, strontium-90, and nitrate in Four Mile Creek
Potential terrestrial impacts from open pits and basins
Accidental releases from stored wastes with possible impacts on aquatic and terrestrial ecology and socioeconomics
Continued minor habitat and wetlands impacts
Occupational exposures and risks of fires, spills, and leaks due to waste transportation and accidents
Dedication of 300 acres
Potential future exposures to persons occupying the Savannah River Plant

The estimated total capital cost to continue current practices is about $17 million. Total 20-year operating costs for the No Action strategy are estimated at about $86 million. Estimated lifetime maintenance and monitoring costs are about $51 million.

Dedication Strategy

The major environmental benefits predicted to occur from the implementation of the Dedication strategy include improvement of onsite groundwater quality from remedial and closure actions at existing waste sites; improvement of onsite surface water quality; reduction of potential public health effects; and reduction in atmospheric releases. A disadvantage would be the removal of some sites from public use through their dedication for waste management purposes; as much as 700 acres would be affected. Environmental impacts under this strategy could include the following:

Local and transitory onsite groundwater drawdown effects
Minor short-term terrestrial impacts due to the use of borrow pits for backfill
Impacts to wildlife habitat due to land clearing and development
The dedication of about 400 acres of land to new above and belowground disposal facilities
The dedication of about 300 acres at existing waste sites
Accidental and occupational risks

The total capital cost for implementation of this strategy ranges from about $281 million to $788 million. Total 20-year operating costs range from about $51 to $258 million. Estimated costs for closure range from about $19 to $31 million. Estimated post-closure maintenance and monitoring costs range from about $65 million to $119 million. The cost ranges are based on the types of facilities that would be selected.

Elimination Strategy

The environmental benefits expected from the implementation of the Elimination strategy include improvement to onsite groundwater and surface water quality from the removal and closure of all existing waste sites and remedial actions, as required; reduction of potential public health effects and atmospheric releases (except increased tritium air releases under the evaporation option); and no requirement for dedication of sites at the SRP. Disadvantages include higher occupational risks than with other strategies and the absence of assurance of the future availability of disposal sites in other areas. Environmental impacts that could occur under this strategy include:

Onsite groundwater drawdown effects (local and transitory)
Added tritium releases to surface streams from direct discharge or increased atmospheric (evaporation) releases
The highest occupational risks of all the strategies during waste removal, closure, and remedial actions
Terrestrial impacts at borrow pits that were greater than those for other strategies
Some loss of habitat (up to 400 acres) due to land clearing and development during the construction of the retrievable storage facilities
The greatest risk of spills, leaks, and fires, and the greatest worker exposures due to waste removal, transportation, treatment, and disposal.

The total capital cost for implementation of this strategy during the 20-year operational period would range between $2.0 billion and $4.8 billion. Total 20-year operating costs would range from about $370 million to $2.4 billion. Estimated post-closure maintenance and monitoring costs are about $37 million. The costs for the eventual treatment and disposal of stored waste are not included in these monitoring and maintenance estimates.

Combination Strategy

Major environmental benefits to be derived from implementation of the Combination strategy include secure, retrievable storage and disposal of wastes; improvement to onsite surface water and groundwater from removal of wastes at selected sites, closure of selected waste sites, and remedial actions, as required; reduction of potential public health effects; and reduction of atmospheric releases. The dedication of some sites for waste management purposes would be required. This strategy could cause the following impacts:

Local and transitory groundwater drawdown effects
Some habitat disruption on up to 400 acres of land required by new disposal facilities
Dedication of up to 400 acres of land for new storage/disposal facility(s)

The estimated total capital cost of implementation of the Combination strategy ranges from about $459 to $957 million. Total 20-year operating costs range from about $73 to $273 million. Closure costs range from about $37 to $48 million. Estimated post-closure maintenace and monitoring costs range from $90 to $105 million.

Environmentally Preferable Alternative

The Elimination strategy is the "environmentally preferable alternative" when long-term impacts are considered. In the short-term, however, implementation of the Elimination strategy results in increased occupational exposures. The Elimination strategy results in the removal of hazardous, low-level radioactive, and mixed wastes at existing waste sites; retrievable storage for wastes resulting from remedial actions and ongoing operations; and ultimately will result in the elimination of discharges of disassembly-basin purge water to

reactor seepage and containment basins. Actual reductions in health effects associated with reduced environmental concentrations of waste constituents are, however, extremely limited. In some cases, health effects associated with the elimination strategy are actually higher than for other strategies, including the Combination strategy, because of occupational exposures resulting from waste removal actions and the re-suspension of waste particles during waste removal actions.

Basis for Decision

In compliance with the National Environmental Policy Act and its implementing regulations, DOE has analyzed the environmental impacts of the alternatives described in the EIS through extensive impact assessment, modeling, and human health and environmental risk assessment. Comments were received by DOE through the scoping process and as a result of distribution of the Draft EIS. DOE considered and responded to these comments as part of the preparation of the Final EIS. DOE's preferred alternative for modifying waste management activities at SRP is the Combination strategy. The Combination strategy was selected by DOE as the preferred alternative over the environmentally preferable alternative because it provides adequate human health and environmental protection, has lower occupational risk, the cost associated with closure actions and the construction of new retrievable storage facilities is significantly lower, and terrestrial ecological impacts are lower.

Considerations in the Implementation of the Decision

Implementation of the preferred waste management strategy will involve separate but related activities for regulatory compliance, Congressional funding authorization, and designs for new storage and disposal facilities.

Conclusion

DOE has considered all environmental factors, benefits and costs, institutional and programmatic needs, and schedules, and has concluded that it will implement the Combination strategy discussed in DOE/EIS-0120. DOE will continue its interactions with regulatory agencies to ensure that actions implemented in accordance with this Record of Decision comply with applicable regulatory requirements. DOE will proceed with implementation of this waste management strategy subject to the authorization and appropriation of funds by Congress.

Dated: March 2, 1988.

Troy E. Wade II,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 88-5197 Filed 3-8-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Admnistration

[ERA Docket No. 87-43-NG]

Entrade Energy Corp.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting EnTrade Corporation (EnTrade) blanket authorization to import Canadian natural gas for sale in the domestic spot market. The order issued in ERA Docket No. 87-43-NG authorizes EnTrade to import up to 175 Bcf of gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 3, 1988.

Constance L. Buckley,

Director, Natural Gas Division Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-5195 Filed 3-8-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC), Energy.

Date and Time: April 6, 1988, 9:00 a.m.-5:00 p.m.; April 7, 1988, 9:00 a.m.-4:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Room 5E-069.

Contact: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545, Telephone: 301-353-3081.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative agenda: Briefings and discussions of:

April 6, 1988

- BES FY 1988/FY 1989 Budget
- Status of BES Programs
- Review of BESAC Reports
- Public Comment (10 Minute Rule)

April 7, 1988

- Committee Agenda for 1988
- Committee Structure
- Geosciences, Engineering, Energy Biosciences
- Public Comment (10 Minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 4, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-5196 Filed 3-8-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of December 21, 1987 Through January 29, 1988

During the period of December 21, 1987 through January 29, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of

objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

March 1, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Belcher Oil Co. Inc., Murray, Kentucky

KXE-0158; Reporting Req 'MTS

Belcher Oil Co., Inc. filed an Application for Exception from the requirement to complete and file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On January 29, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 5191 Filed 3-8-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-269-000, et al.]

Public Service Co. of New Mexico, et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Public Service Company of New Mexico

[Docket No. ER88-269-000]

March 3, 1988.

Take notice that on February 26, 1988, Public Service Company of New Mexico (PNM) tendered for filing Amendment No. 6 to Contract for Electric Service (CES) between PNM and Texas-New Mexico Power Company (TNP). Amendment No. 6 allows TNP to reduce the amount of power for which TNP must pay and provides for a reduction in the energy rate charged for energy taken during offpeak periods. Amendment No. 6 is intended to be effective from January 1, 1988 through April 30, 1988, according to its terms; PNM accordingly requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon TNP and the New Mexico Public Service Commission.

Comment date: March 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. James E. O'Neil, Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities & Carriers v. Montaup Electric Co.

[Docket No. EL88-14-000]

March 2, 1988.

Take notice that on February 17, 1988, James E. O'Neil, Attorney General of the State of Rhode Island, for himself and the Rhode Island Division of Public Utilities & Carriers (Rhode Island) tendered for filing a Petition for Investigation and Complaint against Montaup Electric Company concerning CWIP-related Seabrook Unit 1 charges and return on equity pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206, and sections 205, 206, 306 and 307 of the Federal Power Act.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. James E. O'Neil, Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities & Carriers v. New England Power Co.

[Docket No. EL88-12-000]

March 2, 1988.

Take notice that on February 17, 1988, James E. O'Neil, Attorney General of the State of Rhode Island, for himself and the Rhode Island Division of Public Utilities & Carriers (Rhode Island) tendered for filing a Petition for Investigation and Complaint against New England Power Company related to an asserted violation of fuel clause regulations pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206, and sections 205, 206, 306 and 307 of the Federal Power Act.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. James E. O'Neil, Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities & Carriers v. New England Power Co.

[Docket No. EL88-13-000]

March 2, 1988.

Take notice that on February 17, 1988, James E. O'Neil, Attorney General of the State of Rhode Island, for himself and the Rhode Island Division of Public Utilities & Carriers (Rhode Island) tendered for filing a Petition for Investigation and Complaint against New England Power Company concerning CWIP-related Seabrook Unit 1 charges, return on equity, and the *Sunray* decision pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206, and sections 205, 206, 306 and 307 of the Federal Power Act.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Co.

[Docket No. ER88-270-000]

March 3, 1988.

Take notice that on February 26, 1988, Puget Sound Power & Light Company (Puget) tendered for filing a revised Appendix 1 of Puget's Residential Purchase and Sale Agreement, Contract DE-MS79-81BP-90604. Puget states that this filing is made pursuant to the revised Average System Cost (ASC) methodology approved by the Federal Energy Regulatory Commission effective October 1, 1984. Puget also states that procedures under the revised methodology require that a utility file a revised Appendix 1 with the Bonneville Power Administration within twenty (20) days following the commencement date of the new exchange period.

Comment date: March 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5137 Filed 3-8-88; 8:45am]

BILLING CODE 6717-01-M

[Project Nos. 6602-003 and 8958-000]

D.J. Pitman International Corp; Hydroelectric Development Inc.; Availability of Environmental Assessment and Request for Comments

March 7, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the competing applications for minor license for the proposed Macallen Dam Hydroelectric Project on the Lamprey River in Rockingham and Strafford Counties, New Hampshire, and has prepared an Environmental Assessment (EA) for the propsed project. In the EA, the Commission's staff has determined the potential adverse impacts of the proposed project. The staff is requesting comments on the EA and any additional information on the expected impacts of the project.

Interested persons and agencies are invited to identify and submit substantive evidence regarding study results, natural resource management policies, and reports from state and local resource agencies. The evidence should be limited to the Macallen Dam Hydroelectric Project and its expected environmental effects.

After evaluating the comments, the staff will determine if preparation of an Environmental Impact Statement is necessary.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed by the close of business, April 15, 1988, and should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 6602-003 or Project No. 8958-000, as appropriate, to all comments.

For further information please contact Dianne Rodman, Environmental Assessment Coordinator, at (202) 376-9045.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5182 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued March 3, 1988.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On February 2, 1988, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 347 leases were issued as a result of OCS Sale 112 for the Western Gulf of Mexico on August 12, 1987. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Lease No. OCS-G	Area	Block	Effective date
8950	PS	1100	Oct. 1, 1987.
8951	PS	1115	Do.
8952	PS	1116	Do.
8953	PS	1120	Do.
8954	PN	947	Dec. 1, 1987
8955	PN	1010	Nov. 1, 1987
8956	PN	889	Do.
8957	PN	890	Do.
8958	PN	892	Do.
8959	PN	893	Do.
8960	PN	972	Do.
8961	PN	991	Do.
8962	PN	996	Do.
8963	PNA	10	Do.
8964	PNA	15	Oct. 1, 1987.
8965	PNA	30	Nov. 1, 1987.
8966	PNA	31	Do.
8967	PNA	40	Do.
8968	PNA	41	Do.
8969	PNA	47	Do.
8970	PNA	56	Do.
8971	MU	729	Do.
8972	MU	759	Oct. 1, 1987.
8973	MU	761	Do.
8975	MU	785	Do.
8976	MU	789	Nov. 1, 1987.
8977	MU	807	Dec. 1, 1987.
8978	MU	815	Nov. 1, 1987
8979	MU	855	Oct. 1, 1987.
8980	MUA	5	Dec. 1, 1987
8981	MUA	7	Do.
8982	MUA	28	Oct. 1, 1987
8983	MUA	35	Do.
8984	MUA	51	Do.
8985	MUA	52	Do.
8986	MUA	90	Nov. 1, 1987
8987	MUA	99	Do.
8988	MUA	100	Do.
8989	MUA	107	Do.
8990	MUA	108	Do.
8991	MUA	120	Do.
8993	MI	529	Dec. 1, 1987.
8994	MI	621	Oct. 1, 1987.
8995	MI	634	Do.
8996	MI	637	Do.
8997	MI	646	Do.
8998	MI	650	Nov. 1, 1987
9001	MI	705	Do.
9003	MI	714	Do.
9004	MIA	2	Oct. 1, 1987.
9005	MIA	3	Do.
9008	BA	365	Dec. 1, 1987
9009	BA	366	Nov. 1, 1987
9010	BA	375	Dec. 1, 1987
9011	BA	376	Do.
9012	BA	397	Do.
9013	BA	400	Do.
9014	BA	413	Do.
9015	BA	416	Do.
9016	BA	430	Do.
9017	BA	431	Do.
9018	BA	432	Do.
9020	BA	458	Do.
9021	BA	475	Oct. 1, 1987
9022	BA	513	Nov. 1, 1987
9023	BA	532	Do.
9024	BA	548	Do.
9025	BAA	2	Do.
9026	BAA	10	Oct. 1, 1987
9027	BAA	18	Do.
9028	BAA	73	Do.
9030	GA	227	Dec. 1, 1987
9031	GA	237	Do.
9032	GA	239	Oct. 1, 1987
9033	GA	242	Do.
9034	GA	254	Do.
9035	GA	267	Do.
9036	GA	268	Do.
9037	GA	273	Do.

Lease No. OCS-G	Area	Block	Effective date
9038	GA	275	Do.
9039	GA	283	Do.
9040	GA	288	Nov. 1, 1987.
9041	GA	289	Do.
9042	GA	302	Oct. 1, 1987.
9043	GA	315	Do.
9044	GA	316	Do.
9045	GA	317	Do.
9046	GA	327	Do.
9047	GA	351	Do.
9048	GA	352	Do.
9049	GA	353	Do.
9050	GA	382	Nov. 1, 1987.
9051	GA	420	Oct. 1, 1987.
9052	GA	421	Do.
9053	GA	427	Do.
9054	GA	429	Dec. 1, 1987.
9055	GAA	125	Do.
9056	GAA	176	Do.
9057	GAA	177	Do.
9058	GAA	200	Do.
9059	GAA	201	Do.
9060	GAA	205	Do.
9061	GAA	206	Do.
9062	GAA	207	Do.
9063	GAA	218	Do.
9064	GAA	230	Do.
9065	GAA	231	Do.
9066	GAA	236	Do.
9067	GAA	237	Do.
9068	GAA	245	Do.
9069	GAA	249	Do.
9070	GAA	250	Do.
9071	HI	19	Do.
9072	HI	37	Do.
9073	HI	48	Oct. 1, 1987.
9074	HI	50	Dec. 1, 1987.
9075	HI	51	Nov. 1, 1987.
9076	HI	72	Oct. 1, 1987
9077	HI	131	Dec. 1, 1987
9078	HI	137	Do.
9079	HI	138	Do.
9080	HI	143	Nov. 1, 1987
9081	HI	154	Do.
9082	HI	162	Dec. 1, 1987.
9083	HI	163	Oct. 1, 1987
9084	HI	169	Dec. 1, 1987
9085	HI	192	Nov. 1, 1987.
9086	HI	200	Oct. 1, 1987.
9087	HI	228	Nov. 1, 1987.
9088	HI	236	Do.
9089	HIA	2	Dec. 1, 1987.
9090	HIA	4	Do.
9091	HIA	5	Nov. 1, 1987.
9093	HIA	9	Do.
9094	HIA	10	Dec. 1, 1987.
9095	HIA	11	Do.
9096	HIA	24	Nov. 1, 1987
9097	HIA	66	Dec. 1, 1987.
9098	HIA	71	Oct. 1, 1987.
9099	HIA	72	Do.
9100	HI	120	Do.
9101	HIA	168	Nov. 1, 1987.
9102	HIA	169	Oct. 1, 1987.
9103	HIA	170	Do.
9104	HIA	171	Nov. 1, 1987.
9105	HIA	187	Oct. 1, 1987.
9106	HIA	205	Nov. 1, 1987
9107	HIA	206	Do.
9108	HIA	207	Do.
9109	HIA	224	Dec. 1, 1987.
9110	HIA	250	Do.
9111	HIA	253	Do.
9112	HIA	254	Do.
9113	HIA	255	Do.
9114	HIA	417	Nov. 1, 1987
9115	HIA	418	Dec. 1, 1987
9116	HIA	419	Nov. 1, 1987
9117	HIA	426	Dec. 1, 1987.
9118	HIA	439	Nov. 1, 1987.
9119	HIA	440	Do.
9120	HIA	444	Do.
9121	HIA	445	Dec. 1, 1987.
9123	HIA	465	Nov. 1, 1987.
9124	HIA	481	Oct. 1, 1987.
9125	HIA	484	Nov. 1, 1987.
9126	HIA	505	Do.
9127	HIA	522	Dec. 1, 1987.
9128	HIA	525	Nov. 1, 1987.
9129	HIA	527	Do.
9130	HIA	529	Oct. 1, 1987.
9131	HIA	539	Nov. 1, 1987.
9132	HIA	540	Do.
9133	HIA	544	Dec. 1, 1987.
9134	HIA	560	Oct. 1, 1987.
9136	HIA	576	Dec. 1, 1987.
9139	HIA	584	Nov. 1, 1987.
9140	HIA	264	Dec. 1, 1987
9142	HIA	306	Nov. 1, 1987.
9143	HIA	307	Do.
9145	HIA	321	Oct. 1, 1987
9146	HIA	333	Nov. 1, 1987
9147	HIA	338	Oct. 1, 1987.
9148	HIA	344	Do.
9151	HIA	347	Dec. 1, 1987.
9152	HIA	348	Do.
9153	HIA	352	Do.
9154	HIA	354	Nov. 1, 1987.
9155	HIA	361	Oct. 1, 1987
9156	HIA	363	Dec. 1, 1987.
9157	HIA	371	Nov. 1, 1987.
9158	HIA	372	Do.
9159	HIA	386	Dec. 1, 1987.
9160	HIA	387	Do.
9161	HIA	390	Nov. 1, 1987
9162	HIA	391	Do.
9163	CC	521	Oct. 1, 1987
9164	CC	566	Do.
9165	CC	609	Do.
9166	CC	610	Do.
9167	EB	73	Do.
9168	EB	114	Dec. 1, 1987.
9170	EB	383	Oct. 1, 1987
9171	EB	384	Do.
9172	EB	428	Do.
9173	EB	577	Do.
9174	EB	578	Do.
9175	EB	593	Do.
9176	EB	621	Do.
9177	EB	622	Do.
9178	EB	637	Do.
9179	EB	638	Do.
9180	EB	639	Do.
9181	EB	640	Do.
9182	EB	641	Do.
9183	EB	642	Do.
9184	EB	643	Do.
9185	EB	644	Oct. 1, 1987.
9186	EB	645	Do.
9187	EB	646	Do.
9188	EB	684	Do.
9189	EB	685	Do.
9190	EB	686	Do.
9191	EB	688	Nov. 1, 1987.
9192	EB	689	Do.
9193	EB	728	Oct. 1, 1987.
9194	EB	732	Do.
9195	EB	943	Do.
9196	GB	22	Do.
9197	GB	26	Do.
9198	GB	68	Nov. 1, 1987.
9199	GB	69	Do.
9200	GB	70	Oct. 1, 1987
9201	GB	71	Do.
9203	GB	81	Do.
9204	GB	97	Nov. 1, 1987.
9205	GB	112	Do.
9206	GB	115	Dec. 1, 1987
9207	GB	124	Nov. 1, 1987
9208	GB	125	Oct. 1, 1987
9209	GB	129	Nov. 1, 1987.
9210	GB	141	Do.
9211	GB	143	Oct. 1, 1987
9212	GB	154	Nov. 1, 1987
9213	GB	181	Do.
9214	GB	204	Oct. 1, 1987.
9215	GB	205	Do.
9216	GB	215	Do.
9217	GB	216	Do.
9218	GB	230	Nov. 1, 1987.
9219	GB	251	Oct. 1, 1987.
9220	GB	274	Do.
9221	GB	275	Nov. 1, 1987
9222	GB	295	Oct. 1, 1987
9223	GB	302	Do.
9224	GB	305	Do.
9225	GB	348	Do.
9226	GB	349	Do.
9227	GB	371	Do.
9228	GB	372	Do.
9229	GB	515	Do.
9230	GB	562	Do.
9231	GB	563	Oct. 1, 1987
9232	GB	588	Do.
9233	GB	633	Dec. 1, 1987
9234	GB	634	Do.
9235	GB	653	Oct. 1, 1987
9236	GB	697	Do.
9237	GB	741	Do.
9238	GB	754	Do.
9239	GB	782	Do.
9240	GB	785	Do.
9241	GB	803	Nov. 1, 1987.
9242	GB	804	Do.
9243	GB	826	Oct. 1, 1987.
9244	PI	298	Do.
9245	PI	526	Do.
9246	PI	570	Do.
9247	PI	876	Do.
9248	AC	20	Do.
9249	AC	65	Do.
9250	AC	192	Do.
9251	AC	236	Do.
9252	AC	237	Do.
9253	AC	280	Do.
9254	AC	336	Do.
9255	AC	337	Do.
9256	AC	380	Do.
9257	AC	390	Do.
9258	AC	398	Do.
9259	AC	441	Do.
9260	AC	442	Do.
9261	AC	475	Do.
9262	AC	518	Do.
9263	AC	558	Do.
9264	AC	578	Do.
9265	AC	595	Do.
9266	AC	602	Do.
9267	AC	622	Do.
9268	AC	645	Do.
9269	AC	647	Do.
9270	AC	648	Do.
9271	AC	691	Do.
9272	AC	719	Do.
9273	AC	720	Do.
9274	AC	728	Do.
9275	AC	730	Do.
9276	AC	734	Do.
9277	AC	736	Do.
9278	AC	763	Do.
9279	AC	764	Do.
9280	AC	766	Do.
9281	AC	767	Do.
9282	AC	774	Do.
9283	AC	776	Do.
9284	AC	778	Do.
9285	AC	779	Do.
9286	AC	780	Do.
9287	AC	781	Do.
9288	AC	796	Do.
9289	AC	797	Do.
9290	AC	810	Do.
9291	AC	811	Do.

Lease No. OCS-G	Area	Block	Effective date
9292	AC	814	Do.
9293	AC	818	Do.
9294	AC	822	Do.
9295	AC	827	Do.
9296	AC	854	Do.
9297	AC	856	Do.
9298	AC	865	Do.
9299	AC	900	Do.
9300	AC	901	Do.
9301	AC	903	Do.
9302	AC	904	Do.
9303	AC	908	Do.
9304	AC	947	Do.
9305	AC	951	Do.
9306	AC	954	Do.
9307	AC	955	Do.
9308	AC	998	Do.
9309	AC	999	Do.
9310	KC	156	Do.
9311	KC	157	Do.
9312	KC	191	Do.
9313	KC	192	Do.
9314	KC	236	Do.
9315	KC	583	Do.
9316	KC	584	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accodance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5138 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued March 3, 1988.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On September 2, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 30 leases were issued as a result of OCS Sale 94 for the Eastern Gulf of Mexico on December 18, 1985. Notice of these determinations was issued by the Commission on September 12, 1986. On February 2, 1988, MMS notified the Commission that 25 additional leases have been granted under this same sale. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Lease No. OCS-G	Area	Block	Effective date
8308	PE	904	Mar. 1, 1987.
8309	PE	906	Do.
8310	PE	907	Do.
8317	PE	989	Do.
8318	PE	990	Do.
8319	PE	991	Do.
8323	DD	021	Do.
8324	DD	022	Do.
8325	DD	023	Do.
8326	DD	024	Do.
8327	DD	064	Do.
8328	DD	065	Do.
8329	DD	066	Do.
8330	DD	067	Do.
8331	DD	068	Do.
8332	DD	069	Do.
8337	DD	109	Do.
8338	DD	111	Do.
8339	DD	112	Do.
8340	DD	113	Do.
8341	DD	154	Do.
8342	DD	155	Do.
8343	DD	199	Do.
8344	DD	201	Do.
8345	DD	201	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol, St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5139 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-311-000 et al.]

Energy Development Corporation, et al.; Natural Gas Certificate Filings

March 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Energy Development Corporation

[Docket No. CI88-311-000]

Take notice that on February 19, 1988, Energy Development Corporation (Applicant), P.O. Box 570, Newark, New Jersey 07101, filed an application pursuant to section 7 of the Natural Gas Act for (1) blanket limited-term authorization to abandon certificated sales of natural gas released by interstate pipelines: and (2) blanket pregranted abandonment authority for subsequent sales of such released gas made under Applicant's small producer certificate for a period of one year, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 18, 1988, in accordance with Standard Paragraph J at the end of the notice.

2. Sun Exploration and Production Company

[Docket No. CI86-675-001]

Take notice that on February 22, 1988, Sun Exploration and Production Company (Sun), P.O. Box 2880, Dallas, Texas 75221, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act requesting that the Commission modify paragraph (B) of its May 1, 1987, Order Granting Limited-Term Blanket Certificate with Pregranted Abandonment by extending the term from one year to a three year term expiring May 1, 1981. Sun seeks authorization to continue to make sales for resale in interstate commerce of uncommitteed natural gas to be produced from its 15% working interest in High Island 310, Offshore Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 18, 1988, in accordance with Standard Paragraph J at the end of the notice.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings 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, 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 the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-581 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-252-000 et al.]

Riverhead Cogeneration Corp., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

DATE: *Comment date:* April 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Riverhead Cogeneration Corp.; Riverhead Energy Center

[Docket No. QF88-252-000]

March 1, 1988.

On February 10, 1988, Riverhead Cogeneration Corporation of 420 Lexington Avenue, Suite 440, New York, New York 10170, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in Riverhead, Suffolk County, New York. The facility when completed will incorporate up to three separate generating modules. Each module will consist of combustion turbines in a combined cycle configuration with heat recovery steam generators and a steam turbine generator. Thermal energy recovered from the facility will be for space heating and cooling, and process uses. The net electric power production capacity of the facility will be approximately 79.9 MW with one module, 135 MW with two modules, and 190.1 MW with three modules. The primary energy source of the facility will be natural gas, backed up with No. 2 distillate fuel or propane.

2. Occidental Chemical Corp.

[Docket No. QF82-83-001]

March 3, 1988.

On February 22, 1988, Occidental Chemical Corporation (Applicant), of 5005 LBJ Freeway, Dallas, Texas 75244, submitted for filing an application for recertification of a facility as a qualifying cogneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Applicant's existing chemical manufacturing plant in Niagara Falls, New York. The facility consists of two incinerator boilers, two steam turbine generators, a combustion turbine generator and a waste heat recovery steam generator. Extraction steam from the steam turbines is used in Applicant's chemical plant for heating and a variety of process applications. The maximum power production capacity of the facility is 79 MW. The primary energy source is biomass in the form of municipal solid waste with natural gas as a secondary fuel source.

3. Ogden Martin Systems of Bushkill Township, Inc.

[Docket No. QF88-235-000]

March 3, 1988.

On February 3, 1988, Ogden Martin Systems of Bushkill Township, Inc. (Applicant), of 40 Lane Road, CN 2615, Fairfield, New Jersey 07007-2615 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Northampton County, Pennsylvania. The facility will consist of two (2) mass-burn steam generators and a single steam turbine generator. The net electric power production capacity will be 26.5 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for flame stabilization, start-up, and shut-down, however, such fossil fuel usage will not exceed 25% of the total energy input to the facility during any calendar year period. Construction of the facility is expected to begin on or about May 1989.

4. Waste Energy Recovery Systems of Alpena

[Docket No. QF88-226-000]

March 3, 1988.

On February 1, 1988, Waste Energy Recovery Systems of Alpena (Applicant), of 1000 John R. Rd., Suite 210, Troy, Michigan 48083 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Alpena, Michigan. The facility will consist of a fluidized bed boiler and a steam turbine generator. The electric power production capacity will be 16 megawatts. The primary energy source will be biomass in the form of wood-waste, sawdust, bark and wood chips. Fuel oil will be used for start-up purposes only.

5. Woodpower Corporation of Edwards

[Docket No. QF88-238-000]

March 3, 1988.

On February 5, 1988, Woodpower Corporation of Edwards, c/o Long Lake Energy Corporation, 420 Lexington Avenue, New York City, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lawrence County, New York. The facility will consist of a biomass-fired steam generator, and a steam turbine coupled to an electric generator. The net electric power production capacity will be 18 megawatts. The primary energy source will be biomass in the form of waste-wood. Oil will be used for start-up and pilot light operations, however, such fossil fuel usage will not exceed 5% of the total energy input to the facility during any calendar year period.

6. Woodpower Corporation of Malone

[Docket No. QF88-237-000]

March 3, 1988.

On February 5, 1988, Woodpower Corporation of Malone, c/o Long Lake Energy Corporation, 420 Lexington Avenue, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant

to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Franklin County, Town of Malone, New York. The facility will consist of a biomass-fired steam generator, and a steam turbine generator. The maximum net electric power production capacity will be 18 megawatts. The primary energy source will be biomass in the form of waste-wood. Fuel oil will be used for start-up and pilot light operations, however, such fossil fuel usage will not exceed 5% of the total energy input to the facility during any calendar year period.

7. Woodpower Corporation of Tupper Lake

[Docket No. QF88-236-000]

March 3, 1988.

On February 5, 1988, Woodpower Corporation of Tupper Lake, c/o Long Lake Energy Corporation, 420 Lexington Avenue, New York, New York 10170 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Franklin County, in the Village of Tupper Lake, New York. The facility will consist of a biomass-fired steam generator, and a steam turbine generator. The maximum net electric power production capacity will be 18 megawatts. The primary energy source will be biomass in the form of wood-waste. Oil will be used for start-up and pilot light operations, such fossil fuel usage will not exceed 5% of the total energy input to the facility during any calendar year period.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5140 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6344-003]

Delta Canal Co. et al.; Surrender of Exemption

March 3, 1988.

Take notice that Delta Canal Company et al., exemptee for the proposed Leamington Canyon Project No. 6344, has requested that its exemption be terminated. The exemption was issued January 28, 1983. The project would have been located on the Central Utah Canal on the Sevier River, in Juab and Millard counties, Utah. The project would have consisted of a diversion structure, a penstock, a powerhouse with a total rated capacity of 1,800 kW, a tailrace, and a transmission line. Construction of the project has not commenced.

The exemptee filed the request on February 17, 1988, and the exemption for Project No. 6344 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 exemption 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, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5141 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6345-003]

Delta Canal Company et al.; Surrender of Exemption

March 3, 1988.

Take notice that Delta Canal Company et al., exemptee for the proposed Sevier Bridge Reservoir Project No. 6345, has requested that its exemption be terminated. The exemption was issued November 17, 1982. The project would have been located on the Sevier River, in Juab County, Utah. The project would have consisted of an existing Bureau of Land Management dam, a penstock, a powerhouse with a total rated capacity of 1,800 kW, and a transmission line. Construction of the project has not commenced.

The exemptee filed the request on February 17, 1988, and the exemption for Project No. 6345 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 exemption 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, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5142 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-62-000]

Equitable Gas Co., a Division of Equitable Resources, Inc.; Proposed Change in FERC Gas Tariff

March 3, 1988.

Take notice that Equitable Gas Company (Equitable) on February 26, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Substitute Tenth Revised Sheet No. 6f and its Substitute Eleventh Revised Sheet No. 6f to its FERC Gas Tariff, First Revised Volume No. 1, to become effective March 1, 1988 and September 1, 1987, respectively.

Substitute Tenth Revised Sheet No. 6f
Substitute Eleventh Revised Sheet No. 6f.

Equitable states the filing is made pursuant to Ordering Paragraph M of the Commissions Order dated January 20, 1988, in Docket No. CP86-676-00, in which Equitrans Inc. (Equitable) was instructed to file a restatement of the base tariff rate under Rate Schedule GS-1, as required by § 154.38 of the Commission's Regulations.

Equitable states that the cost-of-service study supports an increase in rates for Rate Schedule GS-1, but Equitable does not propose an increase in base rates at this time.

Equitable further states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before

March 10, 1988. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5143 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-676-002 and RP88-64-000]

Equitrans, Inc.; Compliance

March 3, 1988.

Take notice that on February 26, 1988, Equitrans, Inc. ("Equitrans") tendered for filing the following FERC Gas Tariff in compliance with the Commission's Order issuing Certificate and Approving Abandonment, issued January 20, 1988, in this docket.

Docket Volume No. 1

Original Sheets 1 through 182.

Docket Volume No. 2

Original Sheets 1 through 147

Docket Volume No. 3

Original Sheets 1 through 39.

Equitrans, formerly Equitable Transmission Company, succeeded to the FERC jurisdictional interests of Equitable Gas Company, a division of Equitable Resources, Inc., as a result of the above-referenced Commission Order.

Equitrans states that copies of this filing have been served on all its jursidictional customers and affected state regulatory commissions. Equitrans requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective April 1, 1988.

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 10, 1988. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5144 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

March 3, 1988

Take notice that North Penn Gas Company (North Penn) on February 26, 1988, tendered for filing 87th Revised Sheet No. PGA-1, 3rd Revised Sheet No. 156, and 3rd Revised Sheet No. 15G (1) to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause to be effective March 1, 1988. Specifically, North Penn states that it included in its semiannual PGA the following:

1. A change in rates (Appendix A) to reflect changes in Cost of Gas Purchased.

2. A surcharge credit of 48.809¢ per Mcf (Appendix B) resulting from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period July, 1987 through December 31, 1987; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with the regulations of the Federal Energy Regulatory Commission (Commission); a carry-over balance from the surcharge credit effective for the period March 1, 1987 through August 31, 1987; and a credit to reflect the average pipeline commodity cost of gas for the period March, 1987 to August, 1987 pursuant to Article XIII of the Stipulation and Agreement in Docket No. RP85-193.

3. A TOP surcharge credit of 1.468¢ (Appendix C) to repay customers of North Penn for the overrecovery of Take-or-Pay payments made to Tennessee Gas Pipeline Company under the procedures approved by the Commission in Docket No. RP83-8 et al., issued April 16, 1985.

North Penn states that it eliminated § 15 of the General Terms and Conditions of its Tariff to remove all references to incremental pricing. FERC Order No. 478 issued July 27, 1987 in Docket No. RM87-28-000 et al., requires the removal of all references to incremental pricing in the first PGA filing made in 1988. North Penn is therefore filing Third Revised Sheet No. 15G and Third Revised Sheet No. 15G(1) and has eliminated Sheet No. 15H of the General Terms and Conditions.

North Penn respectfully requests waiver of the Commission's Rules and Regulations pertaining to the thirty (30) day notice requirement, stating that a late notice of rate change from one of its pipeline suppliers for effectiveness March 1, 1988 and several other pressing regulatory matters before the FERC and its State Commission prevented the Company from making a timely filing.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective March 1, 1988, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective March 1, 1988, as proposed.

Copies of this filing are being mailed to each of North Penn'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 protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motion or protests should be filed on or before March 10, 1988. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5145 Filed 3-8-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-400012; FRL-3338-6]

Emergency Planning and Community Right-To-Know; Toxic Chemical Release Reporting; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: A public meeting is scheduled to present the EPA planned approach for making a toxic chemical release inventory publicly available on a computer data base. The inventory and

public access to it on a computer are required under section 313(j) of the Emergency Planning and Community Right-to-Know Act of 1986.

DATE: The meeting will be held on Wednesday, March 30, 1988, from 1 p.m. to 4 p.m..

ADDRESS: The meeting will be held at: Environmental Protection Agency, North Conference Room 3, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Janet Bearden, Emergency Planning and Community Right-to-Know Hotline (WH-562A), 401 M Street SW., Washington, DC 20460, Telephone: (800) 535-0202, in Washington, DC and Alaska: (202) 479-2449.

SUPPLEMENTARY INFORMATION: A public meeting is scheduled to present the EPA planned approach for making a toxic chemical release inventory publicly available on a computer data base as mandated under section 313(j) of the Emergency Planning and Community Right-to-Know Act.

The Emergency Planning and Community Right-to-Know Act contains chemical information-gathering provisions of widespread interest to the public, the industry, and to State and local governments. The EPA Office of Toxic Substances (OTS) is specifically responsible for implementing section 313. Under section 313, owners and operators of certain industrial facilities which manufacture, process, or otherwise use any of more than 300 listed toxic chemicals must report annually their releases of such chemicals to all environmental media. The first reports are due by July 1, 1988, for calendar year 1987 data, and annually thereafter on July 1, for the previous calendar year.

Under section 313(j) the public must have access to the toxic chemical release inventory information through computer telecommunications. EPA investigated, in detail, four possible options suggested and discussed at a public meeting on April 20, 1987.

The four options for making the section 313 toxic chemical release inventory available to the public are: (1) An EPA clearinghouse with direct access to an EPA data base; (2) a commercial computer data base vendor; (3) another government agency with an established computer data base network; and (4) a non-profit university data base information provider. The public would access the information using the search, retrieval and display features provided by the computer system of the selected option. Section 313 data on magnetic tape will also be available through the National Technical Information Service (NTIS).

The EPA planned approach for making section 313 toxic release inventory available to the public is option three (interagency agreement with another government agency). The selection of this approach is based on a comparison of (1) system features based on potential user requirements; (2) cost to the user; (3) cost to EPA; and (4) timeliness of implementation and long-term availability of all four options. EPA believes that option three best meets the criteria at the basic level of required system features, while offering the availability of extensive complementary health and environmental effects files. Potential data base users identified such files as a desirable system feature.

A public meeting is scheduled on March 30, 1988 to discuss the four options for making the section 313 toxic chemical inventory publicly available on a computer database, the EPA planned approach, and the process by which EPA arrived at the planned approach. A document entitled "Options for Making the Toxic Release Inventory (TRI) Data Base Accessible to the Public" is available to assist the public in providing written and/or oral comment. EPA encourages anyone interested in attending the public meeting to review the document. Persons wishing to attend this meeting and/or interested in obtaining a copy of the document should call the Emergency Planning and Community Right-to-Know Information Hotline at the telephone number listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments are invited in advance, by March 23, 1988, and should be submitted to: Linda A. Travers, Director, Information Management Division, Office of Toxic Substances (TS-793), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Written comments are also welcome at the meeting.

Persons wishing to present oral comments at the meeting are urged to contact the telephone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible. Time slots of approximately 10 minutes each will be allocated on a first come, first served basis for oral comments.

Dated: March 3, 1988.

Linda Travers,

Director, Inventory Management Division, Office of Toxic Substances.

[FR Doc. 88-5153 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180761; FRL-3336-8]

Receipt of an Application for a Specific Exemption To Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as the "Applicant") for use of avermectin B_1 (Agrimec 0.15 EC Miticide/Insecticide™) to control two-spotted spider mites (*Tetranychus urticae*); yellow spider mites (*Eotetranychus carpini*); and McDaniel spider mites (*Tetranychus mcdanieli*) on 18,000 acres of pears in Oregon. Avermectin B_1 (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin B_{1a} (5-0-demethyl avermectin A_{1a}) and ≦20% avermectin B_{1b} (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl) avermectin A_{1a}). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before March 24, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180761 "should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Libby Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin B_1, manufactured as Agrimec 0.15 EC Miticide/Insecticide™, by MSD AGVET, a division of Merck & Co., Inc., on pears in Oregon. No tolerances have been established for avermectin B_1 on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 10 to 20 ounces of product per acre per application. A maximum of two applications will be made but no more than 20 ounces product may be applied per acre per crop season. Treatment would not be allowed 7 days prior to harvest. Applications would be made from April 20, 1988 through September 1, 1988.

The Applicant indicates that during the past three years there has been an increasing and alarming mite resistance to registered miticides. Growers have been making four and five applications (either individual or combinations of pesticides using cyhexation, hexakis, oxamyl, amitraz, dicofol, formetanate, chinomethionat, ethion and/or parathion.

The Applicant indicates that without adequate control of the mites economic losses expected would primarily come in the form of loss of fruit size, set, and quality. Losses in fruit size and lower fruit quality, without the requested acaricide this year, could total over $4.5 million.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-4616 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-492; FRL-33369]

Pesticide Tolerance Petitions; Initial Filings and Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities and one amended petition.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Production manager	Office location/ telephone number	Address
Richard Mountfort (PM 23).	Rm. 237, CM #2, 703-557-1830.	EPA, 1921 Jefferson Davis Highway, Arlington, VA 22202.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.
Jeff Kempter (PM 32).	Rm. 711, CM #2, 703-557-7471.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows, proposing the establishment and or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 8F3599.* Hoechst Celanese Corp., Route 202-206, Somerville, NJ 08876, proposes amending 40 CFR 180.430 by establishing a regulation to permit the residues of the herbicide fenoxaprop-ethyl ((±)-ethyl 2-[4-[6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate) and its metabolites, 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydro-benzoxazol-2-one, in or on cottonseed, wheat grain, peanuts, and peanut hulls at 0.05 ppm. The proposed analytical method for determining residues in gas chromatograph. (PM 23).

2. *PP 8F3600.* Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposes amending 40 CFR 180.431 by establishing a regulation to permit the residues of the herbicide clopyralid (3, 6-dichloro-2-pyridinecarboxylic acid) in or on sugar beet roots and tops at 0.5 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23).

3. *FAP 8H5551.* Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposes amending 21 CFR 561.439 by establishing a regulation to permit the residues of the herbicide clopyralid (3, 6-dichloro-2-pyridinecarboxylic acid) in or on sugar beet molasses at 7.0 ppm. (PM 23).

4. *PP 8F3601.* Bionox Corp., 6890 E. Loma del Bribon, Tucson, AZ 85715, proposes amending 40 CFR Part 180 by establishing an exemption from the

requirement of a tolerance for the pesticide chemical sodium hypochlorite in or on soybean, alfalfa, clover, vetch, cabbage, lupine, barley, oats, wheat, rice, corn, rye, cotton, peanuts, pine, pea, sunflower, safflower, celery, asparagus, eggplant, cauliflower, cucumber, pepper, sugar beet, tomato, watermelon, popcorn, carrot, sorghum, and tobacco seed. (PM 32).

5. *PP 8F3603.* Gilmore, Inc., 1755 N. Kirby Parkway, Suite 300, Memphis, TN 38199-4367, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide pyridate [o-(6-choloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate], its main metabolite CL-9673 [6-chloro-3-phenyl-pyridazine-4-ol] and conjugates of CL-9673 in or on alfalfa (forage, seed, and hay), broccoli, cabbage (with or without wrapper leaves), corn (grain, forage, silage, and fodder), onion (bulb), peanut (nutmeat, vines, and hulls), sorghum (grain, forage, fodder, silage, and hay), and tomato fruit at 0.03 ppm and peanut hay at 0.10 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM-25)

6. *FAP 8H5552.* Dow Chemical U.S.A., Agricultural Products Department, P.O. Box 1706, Midland, MI 48640, proposes amending 21 CFR Part 561 by establishing a regulation to permit the residues of the herbicide methyl 2-(4-((3-chloro-5(trifluoro-methyl)-2-pyridinyl)oxy)phenoxy) propanoate (haloxyfop-methyl) and its metabolite, 2-(4-[(3-chloro-5-(trifluoro-methyl) pyridingyl)oxy)phenoxy) propanoic acid (haloxyfop), free and conjugated, all expressed as haloxyfop, in or on soybean hulls at 2.0 ppm, soybean meal at 4.0 ppm, soybean oil at 3.0 ppm, and soybean soapstock at 2.0 ppm. (PM 23).

Amended Petition

PP 6F3431. In the **Federal Register** of October 8, 1986 (51 FR 36063), EPA issued a notice announcing that E.I. du Pont de Nemours & Co., Walkers Mill Bldg., Barley Mill Plaza, Wilmington, DE 19898, had filed pesticide petition 6F3431 proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate in or on the commodities barley grain and wheat grain at 0.05 ppm. The company is amending its petition to include wheat straw and barley straw at 0.1 ppm.

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

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-4615 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180762; FRL-3336-7]

Receipt of Application for an Emergency Exemption From Mississippi To Use Tricyclazole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Mississippi Department of Agriculture (hereafter referred to as "Applicant") to use the fungicide tricyclazole (CAS 41814 78 2) to treat 60,000 acreas of rice for control of blast fungus, *Pyricularia oryzae*. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATE: Comments should be received on or before March 24, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180762," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 246, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (7093-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of tricyclazole, 5-Methyl-1,2,4-triazolo (3,4-b) benzothiazole, for control of blast fungus on rice.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Tricyclazole is not currently registered in the United States. Tricyclazole is applied to rice in many areas of the world where rice blast is a commercial problem.

According to the Applicant, blast surfaced as a major problem in Mississippi over the last two years causing a loss of approximately 20 bushels per acre over 45 percent of the acres planted in rice in Mississippi. The problem with blast is a result of a build up of races IC 17 and IB 49 of *Pyricularia oryzae* and the widespread planting of susceptible varieties of rice. Mississippi states that due to its high yield potential of high quality rice, the Newbonnet variety has become one of the mostly commonly planted varieties in Arkansas and Mississippi since its introduction several years ago. The Newbonnet variety is somewhat resistant to sheath blight caused by the fungus *Rhizoctonia solani* but is susceptible to blast. Sheath blight has been the cause of a majority of the loss in rice yield in recent years according to the Applicant. Varieties of rice such as Lemont that have some resistance to blast are highly susceptible to sheath blight. Plant breeders indicate that by 1990 a rice variety with good agronomic characteristics will be available which has excellent resistance to blast; thus rice growers will need a fungicide to control rice blast probably through the 1988 and 1989 growing seasons. Mississippi indicates that without the availability of a more effective fungicide

for blast control, rice producers may avoid the planting of Newbonnet which will force them into planting much of the rice acreage to Lemont leading to the potential for widespread damage from a varietal monoculture.

According to the Applicant, currently registered fungicides do not provide adequate control of blast. Tilt and Rovral which suppress the development of sheath blight have little or no activity on blast. Benlate only suppresses blast development and under optimum conditions for blast occurrence even with proper timing of Benelate applications, losses from blast can be as much as 25 percent. Whereas Benelate only suppresses blast development, Beam (tricyclazole) manufactured by Elanco Inc. provides as much as 90 percent control.

The Applicant proposes to make two split applications of tricyclazole at a maximum rate of 0.5 lb. a.i./acre (2/3 lb. of Beam 75W) followed by a second application, ten to fourteen days later, at a rate of a 0.5 lb. a.i./acre. Applications would be made in five to ten gallons of water by air and ten to twenty gallons of water by ground equipment.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a new chemical (i.e. an active ingredient not contained in any currently registered pesticide). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-4617 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50676; FRL-3337-4]

Issuance of Experimental Use Permits; E.I. du Pont de Nemours and Co., Inc. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By Mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

352-EUP-129. Extension E.I. du Pont deNemours & Company, Inc., Agricutural Chemicals Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 231.25 pounds of the herbicide methyl 2-[[[[[(4,6-dimethoxy pyrmidin-2-yl)-amino)carbonyl)amino)sulfonyl)methyl]benzoate ona total of 3,700 acres of rice to evalute the control of various weeds. The program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from January 21, 1988 to February 1, 1989. A temporary tolerance for residues of the active ingredient in or on rice has been established. (Richard Mountfort, PM 23, Rm. 237, CM #2, (703-557-1830))

8340-EUP-10. Extension. Hoechst Celanese Corporation, Route 202-206 North, Somerville, NJ 08876. This experimental use permit allows the use of 1,371 pounds of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate on a total 914 acres of citrus, pome fruit, stone fruit, soybeans, vine crops, and non-crop areas to evaluate the control of weeds. The program is authorized in the States of Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, and West Virginia. The experimental use permit is effective from January 12, 1988 to January 12, 1989. A temporary tolerance for residues of the active ingredient in or on citrus, grapes, pome fruit, stone fruit, and soybean seed has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

50658-EUP-2. Renewal. Merck Sharp and Dohme Research Laboratory, Hillsborough Road, Three Bridges, NJ 08887. This experimental use permit allows the use of 161.25 pounds of the miticide avermectin and its delta 8,9-geometric isomer on a total of 4,700 acres of cotton to evaluate the control of various cotton insects. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit was previously effective from November 15, 1986 to November 15, 1987; the permit is not effective from January 21, 1988 to January 21, 1989. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400))

53219-EUP-1. Renewal. Mycogen Corporation, c/o W.R. Landis Associates, Inc., P.O. Box 5126, Valdosta, GA 31603-5126. This experimental use permit allows the use of 150 pounds of the fungicide *alternaria cassiae* on a total of 455 acres of cotton, peanuts, and soybeans to evaluate the control of coffee senna and sicklepod. The program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, and North Carolina. The experimental use permit was previously effective from May 10, 1985 to May 10, 1986; the permit is now effective from January 13, 1988 to January 12, 1989. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on cotton, peanuts, and soybeans has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: February 23, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-4737 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-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: 224–200092

Title: Port of New Orleans Lease Agreement.

Parties:

Board of Commissioners of the Port of New Orleans
H.N.V. Central River Front Corporation (H.N.V.)

Synopsis: The proposed agreement sets forth the terms and conditions for a public export warehouse (H.N.V.) to handle grain and rice for the U.S. Department of Agriculture and private exporters.

Agreement No: 224–200093

Title: Port of New Orleans Terminal Agreement.

Parties:

Port of New Orleans
Asland Cement Corporations (Asland)

Synopsis: The proposed agreement provides for the lease of a portion of the Perry Street Wharf on the Mississippi River to be used by Asland for the loading/unloading and storage of cement, cement products, ceramic products and other associated materials.

Agreement No: 224–200094

Title: Port of Tampa Lease Agreement.

Parties:

Tampa Port Authority
Louisville Scrap Material Co., Inc. (Louisville)

Synopsis: The proposed agreement provides for the lease of approximately 11.45 acres of land in Hillsborough County, Florida, by Louisville. The term of the lease is for three years, with two five-year options for renewal.

Agreement No: 224–200095

Title: Ponce Terminal Agreement.

Parties:

Administrative Board of the Municipal Piers of Ponce
Ponce Port Administrative Corporation (PPAC)

Synopsis: The proposed agreement provides for the 18 years lease of terminal facilities at Ponce Harbor, Puerto Rico, to be operated by PPAC to dock vessels and load/unload, marshal and warehouse cargo.

Agreement No: 224–200091

Title: Port of Houston Authority Terminal Agreement.

Parties:

Port of Houston Authority of Harris County, Texas
Port Houston Terminals, Inc.

Synopsis: The proposed agreement assigns the Port Houston Terminals, Inc. to perform or have performed public freight handling services at the Port's Wharves and Transit Sheds Number 16 through 18. The freight handling services include the loading of cargo onto, or unloading cargo from, land carriers at the facility subject to charges, rates and rules in the Port's Tariff No. 8.

By Order of the Federal Maritime Commission.

Dates: March 3, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–5146 Filed 3–8–88; 8:45 am]

BILLING CODE 6730–01–M

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.: 203–011164–001

Title: U.S./Middle East Discussion Agreement.

Parties:

The "8900" Lines
Jugolinija

Synopsis: The proposed amendment would delete ports and points in Canada from the geographic scope of the agreement. The parties have requested a shortened review period.

Agreement No.: 207–011174

Title: Transnave-Navconsa Joint Service Agreement.

Parties:

Transportes Navieros Ecuatorianos
Naviera Consolidada, S.A.

Synopsis: The proposed agreement would establish a joint service between the parties in the trade between U.S. Gulf and Florida ports, and inland points via such ports, and ports and points in Mexico, Costa Rica, Panama and Ecuador. The service would operate under the trade name of Gran Golfo Express.

Agreement No.: 232–011175

Title: American Transport Line, Ltd./Senator Linie GmbH & Co., KG, (Senator) Space Charter Agreement.

Parties:

American Transport Line, Ltd.
Senator Linie GmbH & Co., KG, (Senator)

Synopsis: The proposed agreement would permit the parties to charter space on one another's vessels, to rationalize sailings and to interchange equipment in the trade between U.S. East Coast ports and ports in North Europe. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 4, 1988.

[FR Doc. 88–5147 Filed 3–8–88; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 88–4]

Delhi Petroleum Pty. Limited v. U.S. Atlantic & Gulf/Australia-New Zealand Conference and Columbus Line, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Delhi Petroleum Pty. Limited ("Complainant") against U.S. Atlantic and Gulf/Australia-New Zealand Conference and Columbus Line, Inc. ("Respondents") was served March 3, 1988.

Complainant alleges that Respondents have violated sections 10(b)(1), 10(b)(6)(A), 10(b)(6)(E) and 10(b)(12), Shipping Act of 1984, 46 U.S.C. app. § 1709(b)(1), (b)(6)(A), (b)(6)(E) and

(b)(12), and sections 14 and 15, Shipping Act, 1916, 46 U.S.C. app. sections 812 and 814 through the assessment of freight charges in excess of those lawfully applicable on a shipment of oilwell equipment and supplies moving from the Port of Houston, Texas U.S.A. to the Port of Brisbane, Australia.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by March 3, 1989, and the final decision of the Commission shall be issued by July 3, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-5148 Filed 3-8-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 2, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340)

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

Report title: Ongoing Intermittent Survey of Households.

Agency form number: FR 3016.

OMB Docket Number: 7100-0150.

Frequency: Monthly if needed.

Reporters: Households and individuals.

Annual reporting hours: 156.

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 225a, 263, 1828(c), 1842, 1843, 4008, and 15 U.S.C. 1693b(a)]. No issues arise either under the Freedom of Information Act (FOIA) or under the Privacy Act.

The survey provides the Federal Reserve with considerable flexibility in obtaining household-based information specifically tailored to the Federal Reserve's policy and regulatory and operational responsibilities.

Board of Governors of the Federal Reserve System, March 2, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-5063 Filed 3-8-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notification listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Bank's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on 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 24, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Michael W. Cahoone* or Sharon L. Cahoone, Cottonwood Falls, Kansas; to acquire an additional 38.38 percent of the voting shares of Elmdale Bancshares, Inc., Elmdale, Kansas, and thereby indirectly acquire The Peoples Exchange Bank, Elmdale, Kansas.

Board of Governors of the Federal Reserve System, March 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5064 Filed 3-8-88; 8:45 am]

BILLING CODE 6210-01-M

Columbia Bancorp; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-4325) published at page 6202 of the issue for Tuesday, March 1, 1988.

Under the Federal Reserve Bank of Richmond, the entry for Columbia Bancorp is revised to include the following:

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Columbia Bancorp*, Columbia, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of the Columbia Bank, Columbia, Maryland, a *de novo* bank.

Comments on this application must be received by March 24, 1988.

Board of Governors of the Federal Reserve System, March 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5065 Filed 3-8-88; 8:45 am]

BILLING CODE 6210-01-M

Farmers National Bancorp et al.; Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 255.23(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 on 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.

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 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 applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Farmers National Bancorp*, Annapolis, Maryland; to engage *de novo* through its subsidiary Farmers National Mortgage Corporation, Annapolis, Maryland, in making residential mortgages and packaging them for resale in the secondary mortgage market, while retaining service processing rights pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.*, Peoria, Illinois; to engage *de novo* through its subsidiary, Midwest Financial Mortgage Banking Company, Peoria, Illinois, in marketing and servicing loans secured by mortgages or real estate pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Independence Financial Corporation*, Bellvue, Nebraska; to engage *de novo* in mortgage banking activities through a subsidiary to be known as Standard State Mortgage Company, Independence, Missouri, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 3, 1988.

James McAffee,

Associate Secretary of the Board.

[FR Doc. 88-5066 Filed 3-8-88; 8:45 am]

BILLING CODE 6210-01-M

Guaranty Bancshares Corp., et al.; 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 (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. 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 Governors not later than March 30, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Guaranty Bancshares Corporation*, Shamokin, Pennsylvania; to acquire Brant Leasing, Inc., Trevosc, Pennsylvania, and thereby engage in the leasing of personal property to commercial enterprises pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the State of Pennsylvania.

Board of Governors of the Federal Reserve System, March 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5068 Filed 3-8-88; 8:45 am]

BILLING CODE 6210-01-M

The Royal Bank of Canada Montreal, Canada; Application To Engage in Various Securities Activities

The Royal Bank of Canada, Montreal, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(2) and (3) of the Board's Regulation Y (12 CFR 225.23(a) (2) and (3)), to acquire Dominion Securities Corporation, New York, New York, and thereby engage in:

(1) Providing brokerage and investment advisory services to institutional customers and Company's affiliates on a combined basis;

(2) Providing advice in connection with mergers and acquisitions, divestitures, loan syndications, interest rate swaps, interest rate caps and similar transactions to unaffiliated financial and nonfinancial institutions; and

(3) Providing financial advice to the Canadian federal, provincial and municipal governments, such as with respect to the issuance of their securities in the U.S.

Applicant has also applied to engage in providing discount brokerage services to non-institutional customers together with related securities credit services pursuant to the Board's Regulation T (12 CFR Part 221) and incidental activities such as securities borrowing and lending; furnishing general economic information and advice, general economic statistical forecasting services and industry studies to institutional customers and Company's affiliates; providing portfolio investment advice and research to institutional customers and Company's affiliates; and underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335. The Board has previously found these latter activities to be generally permissible for bank holding companies. 12 CFR 225.25(b)(15), (4)(iv), 4(iii) and (16) respectively.

The Board previously has determined that the combined offering of investment advice with securities brokerage services to institutional customers from the same bank holding company

subsidiary is a permissible nonbanking activity and does not violate the Glass-Steagall Act. *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) ("*NatWest*"); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987) ("*Manufacturers Hanover*"). That position has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in its affirmance of the Board's *NatWest* Order. *Securities Industry Ass'n v. Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), *cert. denied*, 56 U.S.L.W 3451 (U.S. Jan. 11, 1988) (No. 87-562). Applicant has proposed to conduct its brokerage activity in accordance with the limitations approved by the Board in *Manufacturers Hanover* except that, in this case, Applicant does not propose to have any officer or director interlocks with Company.

Applicant has also proposed to engage in providing advice in connection with financing transactions for unaffiliated financial and nonfinancial institutions, as previously approved by the Board in *Signet Banking Corpration*, 73 Federal Reserve Bulletin 59 (1987).

With regard to Applicant's proposed activity of providing financial advice to Canadian federal, provincial and municipal governments, the Board has previously approved providing financial advice to the Canadian federal and provincial governments. *Bank of Nova Scotia*, 74 Federal Reserve Bulletin _____ (Order dated February 12, 1988). Applicant contends that the proposed activity is virtually indistinguisable from the activities that the Board has previously approved. Moreover, Applicant states that Company has long-standing relationships with Canadian federal, provincial and municipal governments and has developed special expertise in advising such entities.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 25, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5069 Filed 3-8-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Address for Meeting; National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems; Correction

ACTION: Notice of correction.

SUMMARY: The address for a meeting of the NCVHS Subcommittee on Medical Classification Systems 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, to be held in Washington, DC on March 21-22, 1988, was inadvertently omitted from the notice published in the **Federal Register** February 29, 1988, (53 FR 6036). The address for the meeting is Room 703-A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The dates and times for the meeting remain unchanged: March 21—9:00 a.m.-5:00 p.m.; March 22—8:30 a.m.-noon.

Dated: March 3, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-5123 Filed 3-8-88; 8:45 am]

BILLING CODE 4160-18-M

Address for Meeting; National Committee on Vital and Health Statistics (NCVHS) Work Group on Data Dissemination Issues; Correction

ACTION: Notice of correction.

SUMMARY: The address for a meeting of the NCVHS Work Group on Data Dissemination Issues established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, to be held in Washington, DC on March 28-29, 1988, was inadvertently omitted from the notice published in the **Federal Register** March 3, 1988 (53 FR 6873). The address for the meeting is Room 337-A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The dates and times for the meeting remain unchanged: March 28—9:00 a.m.-5:00 p.m.; March 29—9:00 a.m.-noon.

Dated: March 3, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-5122 Filed 3-8-88; 8:45 am]

BILLING CODE BILLING CODE 4160-18-M

Food and Drug Administration

[Docket Nos. 87P-0214/CP through 87P-0214/CP0013]

Magnetic Resonance Diagnostic Device; Panel Recommendation and Report on Petitions for MR Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Radiologic Devices Panel (the Panel) that FDA reclassify the magnetic resonance diagnostic device from class III (premarket approval) into class II (performance standards). The Panel made this recommendation after review of reclassification petitions filed by 13 manufacturers. FDA is also issuing for public comment its tentative findings on the recommendation. After reviewing any public comment on the recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petitions by order in the form of a letter to each petitioner. FDA's decision on these reclassification petitions will be announced in the **Federal Register**

DATE: Comments by May 9, 1988.

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

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: On June 18, 1987, FDA filed reclassification petitions submitted by the 13 manufacturers below. Twelve manufacturers requested reclassification of the magnetic resonance diagnostic device from class III into class II and one requested reclassification into class I. The petitions were submitted under section 513(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f) and 21 CFR 860.120).

Petitioner	Model
Advanced NMR Systems, Inc.	Instascan.
Bruker Medical Instruments.	Tomikon BMT-1100.
Diasonics MRI Division	Diasonics MT/S.
Fonar Corp.	Beta-3000, Beta-3000M.
General Electric Co	Signa.
Instrumentarium	ULF MR Imaging System.
NMR Imaging, Inc	PermaScan.
Philips Medical Systems	Gyroscan R, Gyroscan S5, Gyroscan S15, Gyroscan S20.
Picker International, Inc.	Vista MR 1100, Vista MR 2055, Vista MR 2055 HP.
Resonex, Inc.	Rx-4000.
Siemens Medical Systems, Inc.	Magnetom M, Magnetom H.
Stuart Medical, Inc	MD800-1A.
Thomson-GGR Medical Corp.	Magniscan 5000.

The versions of the generic type of device (magnetic resonance diagnostic device) listed above are automatically classified into class III under section 513(f)(1) of the act because they are not preamendments devices (i.e., devices which were in commercial distribution before May 28, 1976), and they are neither substantially equivalent to a preamendments device, nor substantially equivalent to any postamendments device (i.e., a device that has been placed in commercial distribution since May 28, 1976) which subsequently has been reclassified to class II or class I.

Section 513(f)(2) of the act provides that the manufacturer or importer of a device classified into class III under section 513(f)(1) of the act may file a petition for reclassification of the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for filing and review of a petition for reclassification of such class III devices. For the purpose of reclassification of the magnetic resonance diagnostic device, it is necessary to show that the proposed new class has sufficient controls to provide reasonable assurance of the safety and effectiveness of the device.

Consistent with the act and the regulations, the agency referred the reclassification petitions to the Panel and on July 27, 1987, during an open public meeting, the Panel recommended that FDA reclassify the magnetic resonance diagnostic device from class III into class II, and that it be assigned a low priority for the establishment of a performance standard for the device. The Panel's recommendation appears as part II below.

I. Device History and Description

Laboratory magnetic resonance instruments have been routinely used since the early 1950's by chemists and physicists to study the molecular structure and dynamics of small homogeneous specimens (Ref. 1). The basic scientific principles of nuclear magnetic resonance were scientifically established well before devices using these same principles were developed for use on humans to obtain medical diagnostic information.

The fundamental scientific technology of magnetic resonance diagnostic devices is the phenomenom of magnetic resonance whereby certain nuclei when placed in a magnetic field experience a resonance condition and can absorb and emit energy at well-defined frequencies. In 1946, Felix Block and Edward Purcell first demonstrated the nuclear magnetic resonance principle, and they jointly received the Nobel Prize for Physics in 1952 for their discoveries. In 1971 Raymond Damadian of the State University of New York, Brooklyn, proposed use of measured magnetic relaxation times to discriminate between malignant tumors and normal tissue. In 1973, Paul Lauterbur of the State University of New York, Stony Brook, proposed using the basic principles of tomography to form a two- or three-dimensional magnetic resonance image. Since that time, a variety of other imaging and spectroscopic techniques have been used with the device.

As described by the Panel (part II, below), the magnetic resonance diagnostic device presents images or nuclear magnetic resonance parameters of the human body such as density or flow of resonant nuclei, relaxation times T1 and T2, and chemical shift. Electromagnetic signals are acquired from the body using nuclear magnetic resonance phenomena with a static magnetic field, gradient magnetic fields,and radiofrequency magnetic fields. Computers process this information and present an image, a spectrum, or localized nuclear magnetic resonance parameter data. Various imaging techniques and spectroscopy acquisition protocols are used.

The device consists of a main magnet system, magnetic gradient coil assemblies, radio frequency coil assemblies, associated power supplies, filters, amplifiers, signal analysis, display, recording, storage, and communication equipment, patient support and positioning equipment, as well as physiological motion gating and compensating devices and accessories. The main (static) magnetic field is generated by either a permanent magnet, a resistive magnet, or superconducting magnet. The systems subject to the petitions may include radiofrequency coils for use on the whole body, head, and various surfaces.

II. Recommendation of the Panel

At its meeting on July 27, 1987, the Panel considered petitions submitted by the following 13 manufacturers of magnetic resonance diagnostic devices: Advanced NMR Systems, Inc., Bruker Medical Instruments, Diasonics MRI Division, Fonar Corp., General Electric Co., Instrumentarium, NMR Imaging, Inc., Philips Medical Systems, Picker International, Inc., Resonex, Inc., Siemens Medical Systems, Inc., Stuart Medical, Inc., and Thomson-CGR Medical Corp.

Twelve of the petitioners requested reclassification of the magnetic resonance diagnostic device from class III into class II, and one requested reclassification into class I. The Panel was asked to: (1) Identify risks to health posed by the devices, (2) determine which class could reduce these risks, (3) decide whether or not to recommend reclassification, and (4) if reclassification to class II is recommended, recommend the priority for development of a performance standard. After considering the petitions and answering the questions posed to it, the Panel recommends that the magnetic resonance diagnostic device be reclassified from class III to class II and that FDA assign a low priority to development of a performance standard for the device.

III. Scope of the Panel's Recommendation

The reclassification covers the 20 petitioned models of the device and all devices substantially equivalent to them.

The magnetic resonance diagnostic device presents images which reflect the spatial distribution, and magnetic resonance spectra which reflect the frequency distribution, of nuclei exhibiting nuclear magnetic resonance. Other physical parameters derived from the images and spectra may also be produced. The functions of the device for which reclassification is requested include hydrogen-1 (proton) imaging, sodium-23 imaging, hydrogen-1 spectroscopy, phosphorus-31 spectroscopy, and chemical shift imaging (preserving simultaneous frequency and spatial information).

The magnetic resonance diagnostic devices for which reclassification is recommended meet the following

exposure characteristics: (1) The head or trunk of a patient is exposed to static magnetic fields insufficient to produce significant adverse effect; (2) the patient is exposed to time-varying magnetic fields insufficient to produce peripheral nerve stimulation or other adverse effects; (3) the patient is exposed to radiofrequency magnetic fields insufficient to produce a core temperature increase in excess of 1°C and localized heating to greater than 38°C in the head, 39°C in the trunk, and 40°C in the extremities, or other adverse effect. A device which meets these characteristics and is accompanied by adequate labeling (Ref. 2) is expected to be safe and effective.

IV. Summary of the Panel's Reasons for the Recommendation

The panel recommends reclassification from class III into class II of the magnetic resonance diagnostic device for the following reasons:

1. General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

2. There is sufficient publicly available information to demonstrate that the risks to health have been determined for the magnetic resonance diagnostic devices for which reclassification has been requested. The relationships between the device's safety and performance parameters and risks have been established by valid scientific evidence, and there is sufficient publicly available information to establish a performance standard to control the device's safety and effectiveness.

The Panel recommended that FDA assign a low priority to the establishment of a performance standard for the generic type of device under section 514 of the act (21 U.S.C. 360(d)). The Panel believes the quality of the data in the petitions was sufficiently strong in describing the safety and effectiveness of the devices subject to the petitions, so that assigning a low priority for standards development is appropriate. All currently marketed magnetic resonance diagnostic devices have undergone premarket approval, and as a result there is a reasonable assurance of the device's safety and effectiveness. Additionally, devices subject to the petitions but not currently marketed are supported by substantial amounts of valid scientific evidence describing device safety and effectiveness.

The Panel based its recommendation for reclassification of the generic type of device on data in the petitions (Refs. 3 to 15) and additional valid scientific data presented to the Panel during its open meeting held on July 27, 1987 (Refs. 16 and 17). In sum, the Panel believes that premarket approval of the generic type of device is unnecessary to provide reasonable assurance of the device's safety and effectiveness, and that lesser controls can be expected to assure safety and effectiveness of the device.

V. The Panel's View of Device Related Risks and Benefits

A. Risks to Health

Risks to health identified in the petitions include: (1) Adverse effects of whole or partial body exposure to the static magnetic field, (2) adverse effects of exposure to time-varying magnetic fields, (3) adverse effects of absorption of energy from radiofrequency magnetic fields, (4) hazards from high acoustic noise levels, (5) hazards from laser beams, (6) electrical and mechanical hazards, (7) insufficient image or spectral quality resulting in reduced clinical utility, and (8) other potential hazards addressed by labeling.

Sufficient publicly available information exists to write a performance standard for the magnetic resonance diagnostic device to obviate these concerns.

B. Benefits

In the past few years, magnetic resonance imaging of hydrogen protons has become a well-established diagnostic technique. Its clinical uses are particularly numerous for the diagnostic evaluation of disorders of the head, spine, and central nervous system (Ref. 18). Because of the abundance of hydrogen protons in water throughout the body, the technique is useful for imaging all major organ systems and tissues (Ref. 19). Since sodium is one of the more abundant elements in the body, it is used to image many different anatomical sites. Sodium imaging is of clinical relevance due to the correlation of relative sodium concentrations in extra- and intracellular space as a function of disease or trauma (Ref. 20). Hydrogen proton spectroscopy is used in detection of ischemia, investigating metabolic pathways and kinetics, and cancer detection (Ref. 21). Phosphorus-31 spectroscopy is used to study normal energy metabolism in tissue, to describe diseased tissue energy metabolism, and to better understand and diagnose diseases (Ref. 22). In sum, use of the magnetic reasonance diagnostic device allows, with minimal risk, access to diagnostic information not available by any imaging techniques.

VI. Summary of Data Upon Which the Panel Recommendation is Based

The Panel considered a number of potential concerns regarding the safe and effective operation of a magnetic resonance diagnostic device. The following identifies the Panel's concerns and its determination, based on data, that a standard and general controls can provide a reasonable assurance of safety and effectiveness:

1. The static magnetic field produced by the main magnet determines the resonant radiofrequency of the nuclei of interest. Available literature indicates a consensus that no adverse effects are expected from whole body exposure or exposure of the head to magnetic fields with strength of 2 tesla or less for a period of 1 hour or less (Ref. 16). Many thousands of patients have been exposed to 2 tesla or less static magnetic fields with no adverse effects. A standard could be written to limit the static field to a level less than that which would produce significant biological hazard.

2. Time-varying magnetic fields (dB/dt) occur during switching of the magnetic gradients used for spatial localization of the acquired NMR signal. Circulating currents in biological systems may be induced, causing peripheral nerve stimulation. This risk can be reduced by limiting patient exposure to time-varying magnetic fields with strengths significantly less than those required to produce peripheral nerve stimulation (Refs. 3–18). Many thousands of patients have been exposed to such limited strength time-varying magnetic fields without exhibiting deleterious effects attributable to these fields. A standard could be written to limit the time-varying magnetic fields to levels less than those that would produce significant biological hazard.

3. Radiofrequency magnetic fields occur at the resonant frequency of the nuclei of interest. Radiofrequency energy absorption in the patient may cause systemic thermal overload and local thermal injury. Limiting that thermal increase to a rise in a patient's core body temperature of less than 1 °C controls this risk (Ref. 16). Standards could be written to adequately address this risk. In addition, radiofrequency power deposition may cause heating around metallic implants, tattoos, or permanent eyeliner. These risks can be controlled by placing appropriate warnings in the labeling.

4. High acoustic noise levels may be generated upon pulsing of the electrical current energizing the gradient coils.

Acoustic noise may be annoying, cause discomfort, or beyond certain levels be hazardous (Ref. 23). These risks can be reduced by following a standard which limits acoustic noise to levels below the occupational limits recommended by the American Conference of Governmental Industrial Hygienists for exposures of up to 1 hour per day (Ref. 24), or below the permissible time-averaged and peak noise exposure given by the Occupational Safety and Health Association (Ref. 23).

5. A laser system may be used in patient positioning. A laser has the potential for causing permanent eye injury, although no such injury has been reported. The lasers, which are considered electronic products capable of producing a beam of low power visible light radiation, meet power output limits of the Federal performance standard for class II laser products under the Radiation Control for Health and Safety Act of 1968.

6. Potential electrical and mechanical hazards can be controlled by a standard that requires that devices have adequate design specifications and adherence to good design practices.

7. Reduced clinical utility may result from insufficient image or spectral quality. Sufficient information, included in the petitions (refs. 3–15), exists to write a performance standard for image quality and spectroscopy performance measures. Indeed, the petitions referenced draft standards developed by the National Electrical Manufacturers Association that specifically address image quality measures, including signal-to-noise ratio, geometric distortion, uniformity, and slice thickness and spacing (Ref. 25), and spectroscopy performance measures, including spectral resolution, spectral calibration and labeling, and localization (Ref. 26), which could be used in writing a performance standard.

8. Concerns addressed by labeling (Ref. 2):

a. The field near the magnet, that is, the fringe field, may be strong enough to attract ferromagnetic objects such as tools with great force, causing a collision. This potentially hazardous situation can be controlled by placing warning statements in the labeling, such as warnings to restrict access to only authorized personnel, and requiring in-place procedures for emergency services of patients in areas where the fringe field is weaker. The field in or near the magnet may fatally interfere with the operation of devices such as cardiac pacemakers. This risk can be controlled by placing contraindications in the labeling prohibiting use of the magnetic resonance diagnostic device on patients with these devices. The static magnetic field may move or dislodge ferromagnetic materials within the patient's body, such as interacranial aneurysm clips, shrapnel fragments, and prostheses constructed of ferromagnetic material, which could cause life-threatening situations. The risk can be controlled by placing contraindications in the labeling against scanning patients with intracranial aneurysm clips or warning of the risk of scanning patients with other implanted ferromagnetic material.

b. Special concerns arise when scanning fetuses or infants who are particularly susceptible to thermal overload and require careful monitoring for signs of cardiocirculatory and respiratory distress. The risk can be controlled by placing appropriate warnings in the labeling.

c. Liquid helium and nitrogen cryogens are used to cool the superconducting wire in a superconducting magnet. Some boiloff of the gases occurs during normal operation. If the magnet quenches, the boiloff rate of the cryogens will increase, and gas could suddenly be released into the room causing asphyxiation of site personnel or patients. Labeling can describe proper venting of the system to ensure safety should this problem occur.

d. Due to the configuration of the system and the length of the exam, some patients become claustrophobic. Labeling to include a precautions section addressing the scanning of patients who are likely to develop claustrophobic reactions controls this risk.

e. Operator quality assurance tests and routine preventive maintenance procedures are required in the device labeling. These routine checks and maintenance procedures assist in optimizing image or spectral quality.

References

The petitions, the transcript of the Panel meeting, and the following material are on public file in the Dockets Management Branch (address above), where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Andrew, E. R., *Nuclear Magnetic Resonance*, Cambridge University Press, Cambridge, 1955.

2. Draft of magnetic resonance diagnostic device labeling, September 1987.

3. Reclassification petition from General Electronic Company, 87P-0214/CP.

4. Reclassification petition from Bruker Medical Instruments, 87P-0214/CP0002.

5. Reclassification petition from Stuart Medical, Inc., 87P-0214/CP0003.

6. Reclassification Petition from Siemens Medical Systems, Inc., 87P-0214/CP0004.

7. Reclassification petition from Diasonics MRI Division, 87P-0214/CP0005.

8. Reclassification petition from Fonar Corp., 87P-0214/CP0006.

9. Reclassification petition from Philips Medical Systems, 87P-0214/CP0007.

10. Reclassification petition from NMR Imaging, Inc., 87P-0214/CP0008.

11. Reclassification petition from Thomson-CGR Medical Corp., 87P-0214/CP0009.

12. Reclassification petition from Instrumentarium, 87P-0214/CP00010.

13. Reclassification petition from Resonex, Inc., 87P-0214/CP0011.

14. Reclassification petition from Picker International, 87P-0214/CP0012.

15. Reclassification petition from Advanced NMR Systems, Inc., 87P-0214/CP0013.

16. Czerski, P., and T. W. Athey, "Safety of Magnetic Resonance In Vivo Diagnostic Examinations: Theoretical and Clinical Considerations," presented July 27, 1987.

17. Reilly, J. Patrick, "Peripheral Stimulation by Pulsatile Currents: Applications to Time-Varying Magnetic Field Exposure," Report MT 87–100, June 1987.

18. Kressel, Herbert Y., editor, *Magnetic Resonance Annual* 1987, Raven Press, New York, 1987.

19. ACR Commission on MRI, "Clinical Applications of Magnetic Resonance," November 1985.

20. Perman, William H.; Patrick A. Turski; Lanning W. Houston; Gary H. Glover; and Cecil E. Hayes, "Methodology of in Vivo Human Sodium MR Imaging at 1.5 T," Radiology, 160: 811–820, 1986.

21. Luyten, P.R. and J.A. den Hollander, "H–1 MR Observation of Metabolites in Human Tissues In Situ," presented at the Society of Magnetic Resonance in Medicine, fifth annual meeting, Montreal, August 18 to 22, 1986.

22. Radda, George K., "The Use of NMR Spectroscopy for the Understanding of Disease," *Science*, 233: 640–645, 1986.

23. Occupational Safety and Health (OSHA) 1910.95, "Occupational Noise Exposure."

24. American Conference of Governmental Industrial Hygienists, "TLVs, Threshold Limit Values for Chemical Substances in the Work Environment, Adopted by ACGIH for 1983–84, Noise and Impulsive or Impact Noise," pp. 80–82.

25. National Electrical Manufacturers Association (NEMA) draft of performance standards, "Determination of Signal-to-Noise Ratio in Diagnostic Magnetic Resonance Imaging," "Determination of Two-Dimensional Geometric Distortion in Diagnostic Magnetic Resonance Imaging," "Determination of Slice Thickness in Diagnostic Magnetic Resonance Imaging," and "Determination of Uniformity in Diagnostic Magnetic Resonance Imaging," 1987.

26. National Electrical Manufacturers Association, draft document of "Measurement Methods for MR Spectroscopy," 1987.

FDA's Tentative Findings

FDA tentatively agrees with the Panel's recommendation that the magnetic resonance diagnostic device described in the petitions be reclassified from class III into class II and that it be assigned a low priority for the establishment of a performance standard for the device.

Economic Considerations

After considering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Approval of this petition would not have a significant economic impact on a substantial number of small entities. However, it may permit small potential competitors to enter the marketplace by lowering the barriers to entry. The petitioners and all future manufacturers of the reclassified magnetic resonance diagnostic devices would be relieved of the costs of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360(e)). There are no offsetting costs that the petitioners would incur from reclassification into class II other than those associated with meeting a standard once established. The actual cost of complying with a standard cannot be determined until the standard is developed. The magnitude of the economic savings from approval of this petition depends on the extent of the studies that the petitioners would have conducted in support of new premarket approval applications or supplements to existing premarket approval applications, and the number of future competitors satisfying the requirements of premarket approval. None of these parameters can be reliably calculated to permit quantification of the economic savings. Because of statutory deadlines (section 513(f)(2) of the act) and requirements in the regulations (21 CFR 860.134(b)(5), FDA is required to publish this notice in the **Federal Register** as soon as practicable. As authorized by section 8(a)(2) of Executive Order 12291, FDA is publishing in the **Federal Register** this notice without clearance of the Director, Office of Management and Budget. FDA will notify that office of the publication of this notice.

Interested persons may, on or before May 9, 1988, submit to the Dockets Management Branch (address above) written comments on this recommendation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated February 27, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-5116 Filed 3-8-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit; Texas A&M University et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-725379]

Applicant: Texas A & M University, College Station, TX

The applicant requests a permit to import 150 blood samples collected from captive Kemp's (=Atlantic) Ridley sea turtles (*Lepidochelys kemsii*) at the Cayman Turtle Farm Ltd., Grand Caymen Islands, British West Indies for the purpose of continuing ongoing reproductive physiology and behavior studies.

[PRT-725518]

Applicant: Ralph V. Smith, Calimesa, CA

The applicant requests a permit to import eight pairs of scarlet-chested (splendid) parakeets (*Neophema splendida*) and eight pairs of turquoise parakeets (*Neophema pulchella*) from Mr. L. Lemmens, Putte, Belgium, for the purpose of enhancement of propagation of the species.

[PRT-725432]

Applicant: Rare Feline Breeding Center, Center Hill, FL

The applicant request a permit to export one male and one female captive born clouded leopard (*Neofelis nebulosa*) to the Zurich Zoo, Zurich, Switzerland for the purposes of propagation of the species and exhibition.

[PRT-724393]

Applicant: Circo Tihany San Angel, Mexico

The applicant requests a permit to import and reexport one pair of tigers (*Panthera tigris*), one male leopard (*P. pardus*), two male and one female chimpanzees (*Pan troglodytes*) and one pair of orangutans (*Pong pygmaeus*) for exhibition in the United States. All of the animals were born in captivity in Mexico. Conservation education will be provided for each of the above-listed species when they are on display in the U.S.

[PRT-725825]

Applicant: Ringling Brothers-Barum Bailey Circus, Washington, DC

The applicant requests a permit to import three male tigers, one female tiger (*Panthers tigris*) and two female leopards (*Panthero pardus*) born in captivity in Switzerland for Switzerland for the purpose of exhibition in a manner designed to educate the public about the ecological role and conservation needs of the species.

Documents and other information submitted with these applications are availble to the public during normal business hours (7:45 am to 4:15 pm) Room 400, 1375 K Street, NW., Washington, DC 20005, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Mangement Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by sumbitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: March 4, 1988.

Larry LaRochelle,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88-5175 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-AN-M

Bureau of Land Management

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

March 1, 1988.

The plat of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m. April 15, 1988.

The plat representing the dependent resurvey of a portion of the Tenth Standard Parallel North (south boundary, T. 41 N., R. 12 W.), the survey of Private Land Claims, and a Public Land Tract, and the independent resurvey of the east boundary, T. 40 N., R. 12 W., New Mexico Principal

Meridian, Colorado, Group No. 738, was accepted June 20, 1986.

These surveys were expected to meet certain administrative needs of the U.S. Forest Service.

The protraction diagram of the following described townships will be filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado effective 10:00 a.m. April 15, 1988.

Protraction Diagram No. 47, prepared to delineate the remaining unsurveyed public lands in T. 40 N., R. 11 W., T. 39 N., R. 12 W., and T. 40 N., R. 12 W., New Mexico Principal Meridian, Colorado was approved August 20, 1986.

This diagram was prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-5171 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-TB-M

National Park Service

Revision of Park Boundary; Allegheny Portage Railroad National Historic Site

AGENCY: National Park Service, Allegheny Portage Railroad National Historic Site.

ACTION: Notice of revision of park boundary.

Pursuant to section 307(a) of the Act of November 10, 1978 (92 Stat. 3467), the Park boundary was designated by publication of a Notice in the **Federal Register**, Vol. 45, No. 189, Friday, September 26, 1980 to include the lands depicted on boundary map numbered 423/80,008A dated July 1980.

Public Law 95-42 (91 Stat. 211) dated June 10, 1977 provides that the Secretary may make boundary changes to an area whenever he determines that to do so will contribute to, and is necessary for, the proper preservation, protection, interpretation, or management of such an area.

SUMMARY: Pursuant to Pub. L. 95-42, 16 U.S.C. section 460l-9(c), notice is given that the boundary of Allegheny Portage Railroad National Historic Site has been revised in the areas of Incline No. 8, Incline No. 9 and Incline No. 10 to include an addition of approximately 130 acres of abandoned railroad right-of-way. This area contains significant physical remains original to the Portage Railroad which were mentioned in the enabling legislation for the park.

SUPPLEMENTARY INFORMATION: Boundary Map numbered 423/80,008A dated July 1980, as above, attempted to portray the boundaries of all the separate units comprising Allegheny Portage Railroad National Historic Site. This map was too imprecise to correctly define these areas.

Therefore, notice is hereby given that the boundary of the Allegeny Portage Railroad National Historic Site has been revised in the areas as above, pursuant to Pub. L. 95-42, and to clarify the area of the Staple Bend Tunnel Area to contain the lands as depicted on boundary map numbered 423/80,010 dated September 1986.

The map is on file and available for inspection in the administrative office of the Allegheny Portage Railroad National Historic Site, P.O. Box 247, Cresson, Pennsylvania, 16630; in the office of the Mid-Atlantic Region, Land Resources Division, Custom House, Room 502, Second and Chestnut Streets, Philadelphia, Pennsylvania, 19106; and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, DC 20240.

Dated: December 31, 1986.

James W. Coleman, Jr.,

Regional Director, Mid-Atlanic Region.

EDITORIAL NOTE: This document was received at the Office of the Federal Register March 4, 1988.

[FR Doc. 88-5149 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Potomac Greens Development; Intent To Prepare an Environmental Impact Statement

The National Park Service, by legislative mandate, intends to prepare and transmit to the Congress by March 5, 1989, an Environmental Impact Statement which shall review the traffic impact of only the proposed 38-acre Potomac Greens development opposite Daingerfield Island west of the George Washington Memorial Parkway, provided further that the National Park Service shall also review the impact of the development on the visual, recreational and historical integrity of the Parkway.

The Environmental Impact Statement shall also provide an evaluation of alternative acquisition strategies to include but not be limited to appraisal estimates for the access rights, the entire 38-acre parcel, that portion of the 38-acre parcel as defined approximately by the historic district boundary line, and any other recommendations by the National Park Service to mitigate the Parkway degradation effects of the proposed development so as to adequately protect and preserve the Parkway.

In order to provide the opportunity for public participation, a public meeting will be held on Wednesday, March 30, at the Potomac Landing Restaurant, Daingerfield Island, Alexandria, at 7:00 p.m., at which time public comments on the scope of the Environmental Impact Statement will be solicited.

Any questions on this matter may be addressed to Mr. Albert J. Benjamin, Office of Land Use Coordination, National Park Service, National Capital Region, 100 Ohio Drive SW., Washington, DC 20242, telephone: 202/426-6715.

Date: March 3, 1988.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 88-5135 Filed 3-8-88; 8:45 am]

BILLING CODE 4310-70-M

Subsistence Resource Commission of the Gates of the Arctic National Park; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The National Park Service announces an upcoming meeting of the Subsistence Resource Commission of the Gates of the Arctic National Park. The following items will be discussed:

(1) Review of minutes from last meeting.

(2) Review of status of subsistence hunting plan.

(3) Review of Anaktuvuk Pass/National Park Service land exchange proposal.

(4) Review of 1988 park plans and activities.

(5) Any new business.

DATES:

March 17, 1988 (Thursday) 9 a.m. to 5 p.m.

March 18, 1988 (Friday) 9 a.m. to 1 p.m. or until adjournment.

Public comment March 17, 4 p.m. to adjournment.

ADDRESS: Meetings will be held at the Polaris Hotel, 427 First Avenue, Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger J. Siglin, Superintendent, P.O. Box 74680, Fairbanks, Alaska 99707, telephone (907) 456-0350 in Fairbanks or (907) 692-5494 in Bettles, Alaska.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are

authorized by § 808 of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), and operate in accordance with the provisions of the Federal Advisory Committee Act.

Richard J. Stenmark,

Acting Regional Director.

[FR Doc. 88–5177 Filed 3–8–88; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

3.5 Inch Microdisks and Media Therefor From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–389 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of unrecorded flexible magnetic disk recording media, with or without protective covering, for ultimate use in recording and storing data with a 3.5" floppy disk drive, provided for in item 724.45 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days or in this case by April 11, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 26, 1988.

FOR FURTHER INFORMATION CONTACT: Jennifer Hinshaw (202–252–1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contract the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on February 26, 1988, by Verbatim Corp., Charlotte, North Carolina.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on March 21, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contract Jennifer Hinshaw (202–252–1179) not later than March 15, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commisssion on or before March 23, 1988, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of §201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason

Secretary.

Issued: March 2, 1988.

[FR Doc. 88–5176 Filed 3–8–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–278]

Certain Programmable Digital Clock Thermostats; Commission Decision Not To Review Initial Determination Terminating Investigation as to One Respondent on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of respondent Hunter-Melnor, Inc. on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 4) issued by the presiding administrative law judge (ALJ) terminating respondent Hunter-Melnor, Inc. from the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: George W. Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 252–1090.

SUPPLEMENTARY INFORMATION: On February 4, 1988, the presiding ALJ

issued an ID terminating the investigation with respect to Hunter-Melnor, Inc. The ID granted the joint motion of complainant Emerson Electric Co. and Hunter-Melnor, Inc. to terminate the investigation with respect to Hunter-Melnor on the basis of a settlement agreement. No petitions for review of the ID or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 2, 1988.

[FR Doc. 88-5178 Filed 3-8-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-274]

Certain Toggle Clamps for Clamping, Fixturing, Processing, and Original Equipment Manufacturing; Commission Decision Not To Review Initial Determination Terminating the Investigation as to all Respondents and Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination terminating the above-captioned investigation as to all respondents; termination of investigation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting motions to terminate the investigation as to all respondents on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: Mitchell Dale, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202-252-1087.

SUPPLEMENTARY INFORMATION: On August 10, 1987, the Commission instituted the instant investigation on the basis of a complaint filed by DE-STA-CO Division, Dover Corporation ("DE-STA-CO") alleging a violation of section 337(a) (19 U.S.C. 1337(a)) in the importation and sale of certain toggle clamps for clamping, fixturing, processing, and original equipment manufacturing by reason of (1) infringement of complainant's federally registered trademarks; (2) common law passing off; (3) infringement of common law trademark; (4) failure to design the country of origin; and (5) misappropriation of trade dress. 52 FR 31097 (Aug. 19, 1987). An investigation was instituted naming as respondents Tai-Wu Industry Co., Ltd. ("Tau-Wu"), Good Hand Enterprises Co. ("Good Hand"), All American Products Co. ("All American"), and Material Supply International, Inc. ("MSI").

On January 19, 1988, complainant filed a motion (Motion No. 274-11) to terminate the investigation as to Tai-Wu on the basis of a settlement agreement. On January 21, 1988, complainant and respondents Good Hand and MSI filed a joint motion (Motion No. 274-13) to terminate the investigation as to Good Hand and MSI on the basis of a settlement agreement. On January 25, 1988, complainant and All American filed a joint motion (Motion No. 274-14) to terminate the investigation as to All American on the basis of a settlement agreement. The Commission investigative attorney filed public interest statements supporting said motions to terminate the investigation.

On February 5, 1988, the presiding administrative law judge issue an initial determination (ID) (Order No. 6) granting the motions to terminate the investigation as to all respondents on the basis of the settlement agreements. No petitions for review or public or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.A. 1337) and Commission Rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 1, 1988.

[FR Doc. 88-5179 Filed 3-8-88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Air Products and Chemicals et al.

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on February 24, 1988, a proposed consent decree in *United States* v. *Air Products and Chemicals, et al.*, Civil Action No. JH-88-365 was lodged with the United States District Court for the District of Maryland.

The proposed consent decree requires the defendants to implement the first phase of remedial action selected by the Environmental Protection Agency (EPA) to address the imminent and substantial endangerment to human health and the environment posed by the release or threat of release of hazardous substances at the Maryland Sand, Gravel and Stone Site, Cecil County, Maryland. The first phase of the remedy, to be conducted by the defendants, will focus on site security, drum removal, and shallow groundwater contamination. The decree also requires defendants to pay a small portion of the past costs incurred by EPA in connection with the site. The parties to the consent decree are the United States and all defendants named in *United States* v. *Air Products and Chemicals, Inc., et al.*, Civil Action No. JH-88-365, filed on February 24, 1988 in the United States District Court for the District of Maryland.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 2050, and should refer to *United States* v. *Air Products and Chemicals, et al.*, DJ Ref. 90-11-2-225.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, 8th Floor, U.S. Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201 and at the Region III office of the

Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $5.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5074 Filed 3-8-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: This notice provides the date, time, place and agenda summary for the third meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 8:30 a.m. and 5:00 p.m. on March 24 and 25, 1988 at the Holiday Inn Westport, 1973 Craigshire, St. Louis, Missouri 63146; phone (314) 434-0100.

This nine-member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesels in underground coal mines.

The agenda for this meeting will include presentations by a group of health researchers. These presentations will examine the results of the studies on the chemical and physical nature of diesel emissions, health effects of diesel emissions in laboratory animals, and the potential risk from human exposure to diesel emissions. At this meeting, the Committee will begin to discuss the potential health effects of diesel emissions on underground coal miners, and how diesel emissions may be monitored and controlled in the underground coal mining environment.

Official records of the meeting will be available for public inspection at the Office of Technical Support, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 913A, Arlington, Virginia 22203; phone (703) 235-1570.

Signed at Arlington, Virginia this 4th day of March 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-5231 Filed 3-8-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMUNICATIONS SYSTEM

High Frequency Radio Automatic Link Establishment Subcommittee; Meeting

AGENCY: Office of Technology and Standards, National Communications System.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, U.S. Dept of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303 (303) 497-3723.

High Frequency (HF) Radio Automatic Link Establishment Committee, Federal Telecommunications Standards Committee; Open Meeting.

A meeting of the HF Radio Automatic Link Establishment (ALE) Subcommittee will be held April 15, 1988, 9:30 AM to 3:30 PM, Mitre Corp., Hayes Building, Conference Rooms A and B, 7525 Colshire Drive, McLean, VA. The HF Radio Automatic Link Establishment Subcommittee was formed to develop a proposed Federal Standard (pFS 1045) defining the technical requirements for design of adaptive high frequency (HF) radios which employ ALE techniques.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of the Statement of Requirements.
3. Presentation of comments by organizations represented.

This meeting will be for the benefit of those who are interested in the development of this standard. A statement of requirements (SOR), drafted by the SOR Working Group will be presented at this meeting. A copy of the SOR is available upon request. Those wishing to attend must call the Chairman, Robert T. Adair, by April 8, 1988, for authorization to attend. Each organization will be allowed 20 minutes to present pertinent information to the subcommittee. Attendance will be limited to two (2) representatives per organization. Written statements and comments may be submitted before or after the meeting.

For further information, or copies of the minutes of this meeting, please call: Robert T. Adair, U.S. Dept of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303 (303) 497-3723.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 88-5172 Filed 3-8-88; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 16, 1988 through February 26, 1988. The last biweekly notice was published on February 24, 1988 (53 FR 5484).

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 requests 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 Comission 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 and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 8, 1988, 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 if 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 whch 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 statisfies these requirements with respect to a 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 before the issuance of any 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, D.C. 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-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: January 21, 1988.

Description of amendment request: The proposed amendment would revise Technical Specification 3.4.8.3, relating to the operability of the Overpressure Protection Systems. This Specification requires that the overpressure protection system for the reactor coolant system (RCS) be operable whenever the RCS is cooling down and is below 255°F, or is heating up and is below 295°F, to assure that the pressure-temperature (P-T) limits of the reactor vessel are not exceeded. The proposed change would add a footnote to the heatup portion of the specification which would allow a heatup rate of 10°F/hour or less without overpressure protection provided that the RCS temperature is between 255°F and 295°F.

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; (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 the proposed change, as it related to these standards is presented below.

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Figure 3.4-2 in Technical Specification 3/4.4.8 provides pressure-temperature (P-T) limit curves for various heatup rates of the RCS. The proposed change to Technical Specification 3.4.8.3, to permit a heatup rate of 10°F/hour for RCS temperatures between 255°F and 295°F, is within the acceptable range of Figure 3.4-2. Therefore, the proposed change does not increase the probability or consequences of any accident previously considered.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change only affects the need to have the overpressure protection system operable during heatup of the RCS when the temperature is between 255°F and 295°F. The proposed change is in conformance with the acceptable P-T limits and allowable heatup rates currently in Figure 3.4-2 of the Technical Specifications. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The proposed change does not involve a significant reduction in a margin of safety since the change is in conformance with the current P-T limits of Figure 3.4-2 in the Technical Specifications.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: February 2, 1988.

Description of amendment request: The proposed amendment would clarify the surveillance requirements for the waste gas holdup system in Technical Specification 3.11.2.5 to be consistent with the operability requirements specified for that system in Technical Specification 3.3.3.8. The proposed change would also make Specification 3.11.2.5 consistent with Technical Specification 3.11.2.5 previously approved by the staff for Palo Verde Units 2 and 3.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance for determining whether a proposed amendment to an operating license for a facility involves a significant hazards consideration and has provided examples of amendments that are not likely to involve a significant hazards consideration (51 FR 7751). Example (i) in 51 FR 7751 is as follows: (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

The staff considers the proposed amendment to be similar to example (i) since it involves a clarification to achieve consistency in the Technical Specifications.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Description of amendment request: The proposed amendment would change Sections 2.1.2, 3.1.4.3 and 3.2.3.1 and Table 3.2.3.2-1 of the Brunswick Steam Electric Plant (BSEP), Unit 2 Technical Specifications (TS). The purpose of this amendment is to incorporate revised Minimum Critical Power Ratio (MCPR) fuel cladding integrity safety limit and associated operating limit MCPR values for the operation of BSEP, Unit 2 during Fuel Cycle 8.

Proposed Change 1:

Currently, BSEP, Unit 2 TS 2.1.2 and 3.1.4.3 reference the use of a safety limit MCPR value of 1.07. The proposed amendment would change the safety limit MCPR value from 1.07 to 1.04.

Proposed Change 2:

Currently, BSEP, Unit 2 TS 3/4.2.3 and TS Table 3.2.3.2-1 specify operating limit MCPR values based on the safety limit MCPR limit of 1.07. The proposed amendment would adjust the MCPR operating limits to be consistent with the revised MCPR value of 1.04.

Safety limits are established to protect the integrity of the fuel cladding during normal operations and anticipated plant transients. The fuel cladding integrity safety limit is defined as the critical power ratio in the limiting fuel assembly for which more than 99.9% of the fuel rods in the core are expected to avoid boiling transition, considering the power distribution within the core and all uncertainties. This limit is set such that no fuel damage is calculated to occur if the limit is not violated. The operating limit MCPR values are established for each cycle, based on the safety limit MCPR and the changes in critical power ratio projected to occur during anticipated transients, using approved methodologies. The transients which produce the largest reduction in the critical power ratio are considered to be the most limiting and therefore require the greatest margin between the safety limit MCPR and the operating limit MCPR values.

The current MCPR fuel cladding integrity safety limit of 1.07 for reload cores was established in 1978. This safety limit was designed to provide a level of conservatism for establishing operating limit MCPR values, based on fuel design characteristics typical of those utilized at that time. The level of conservatism built into the safety limit provides adequate margin to assure that more than 99.9% of the fuel rods in the core are expected to avoid boiling transition. Because of current fuel designs, this level of conservatism has been recognized to have shown a marked increase. This increase in conservatism was part of the rationale used in developing the upgraded MCPR safety limit of 1.04, specified in Amendment 14 to NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel" (GESTAR II). This document has been reviewed by the NRC and found to be acceptable for D-lattice plants, when applied to the second successive reload cores of P8X8R, BP8X8R, GE8X8E or GE8X8EB fuel types with high bundle R-factor fuel designs. The Brunswick Plant, Unit 2 is such a D-lattice plant, with Cycle 8 being the third successive reload core with high bundle R-factor fuel designs. The proposed change reflects the upgrade in the safety limit MCPR approved in Amendment 14 to NEDE-24011-P-A. The NRC-accepted methodology utilized by General Electric to derive the upgraded safety limit MCPR value of 1.04 was the same methodology used to derive the original safety limit MCPR value to 1.07. Because of the new fuel design characteristics of the reload cores, the safety limit MCPR value of 1.04 derived by this methodology meets the same criteria as the original safety limit MCPR value of 1.07. Since the safety limit MCPR is used to determine the operating limit MCPR values for applying the margin of protection to plant operations, the operating limit MCPR values are being adjusted to be consistent with the upgraded safety limit MCPR. These adjustments are being made in accordance with guidelines provided by General Electric. The guidelines simply reduce the original operating limit MCPR values, originally identified in the Supplemental Reload Licensing Report (submitted by the licensee's letter dated September 4, 1987), by 0.03. This approach results in a slightly greater and more conservative margin between the adjusted operating limit MCPR values and the safety limit MCPR of 1.04 than the margin which existed for previous cores.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether or not a no significant hazards consideration exists. A proposed amendment to an operating license for a facility 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. Carolina Power & Light Company (the licensee, CP&L) has reviewed the proposed TS changes and has determined that their adoption would not involve a significant hazards consideration. The licensee's findings are summarized below:

Proposed Change 1:

The proposed amendment changes the MCPR safety limit, specified in the BSEP-2, TS, from 1.07 to 1.04.

The changes does not involve a significant hazards consideration for the following reasons:

1. The accidents analyzed in Chapter 15 of the Updated FSAR are not affected by the change in the safety limit MCPR. The safety limit MCPR is designed to limit the consequences of operational transients previously evaluated, but has no effect on the probability of those transients. the NRC-accepted methodology, used to derive the original safety limit MCPR value of 1.04, applied the same acceptance criteria as that used to derive the original safety limit MCPR value of 1.07 and thus assures that equivalent fuel cladding protection is maintained. Based on this reasoning, CP&L has determined that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Adoption of an upgraded safety limit does not change or alter the function of any component or system, including the method of evaluating the MCPR for given operational conditions. As stated previously, the safety limit MCPR is designed to limit the consequences of those operational transients previously evaluated. The safety limit MCPR merely set the bounds for acceptable consequences of these operational transients. Therefore, CP&L has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. As stated previously, the NRC-accepted methodology utilized to derive the upgraded safety limit MCPR value of 1.04 provides the equivalent protection of the fuel cladding as the original safety limit MCPR value of 1.07. Based on this reasoning, CP&L has determined that the proposed change does not involve a significant reduction in the margin of safety.

Proposed Change 2:

The proposed amendment revises the operating limit MCPR values, specified in TS 3/4.2.3, to be consistent with the upgraded safety limit MCPR value of 1.04.

The change does not involve a significant hazards consideration for the following reasons:

1. The accidents analyzed in Chapter 15 of the Updated FSAR are not affected by the change in the operating limit MCPR values. Operating limit MCPR values are designed to limit the consequences of operational transients previously evaluated, but have no effect on the probability of these transients. Equivalent protection is assured in the upgraded operating limit MCPR values since they were adjusted to be consistent with the upgraded safety limit MCPR. The guidance provided by General Electric to adjust the operating limit MCPR values (originally based on the safety limit MCPR value of 1.07) adds slightly to the conservatism established within these operating limits. Based on this reasoning, CP&L has determined that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Adjustment of the operating limit MCPR values to be consistent with the upgraded safety limit MCPR does not affect the function of any component or system. The adjusted operating limit MCPR values will continue to provide an adequate margin to assure that the safety limit MCPR is not

exceeded for even the most limiting operational transient. Therefore, CP&L has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. As stated previously, the NRC-accepted methodology utilized to derive the upgraded safety limit MCPR value of 1.04 provides the equivalent fuel cladding protection as the original safety limit MCPR value of 1.07. This equivalent protection has also been applied to the operating limit MCPR values since they were adjusted to be consistent with the upgraded safety limit MCPR in accordance with the guidance provided by General Electric. This guidance adds slightly to the conservatism established within the adjusted operating limits which were originally based on the safety limit MCPR value of 1.07. Based this reasoning, CP&L has determined that the proposed change does not involve a significant reduction in the margin of safety.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards considerations. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: R.E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam.

Carolina Power & Light Company, North Carolina Eastern Municipal Power Agency, Docket No. 50–400, Shearon Harris Nuclear Power Plant (SHNPP), Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: January 4, 1988.

Description of amendment request: The proposed change revises Technical Specification 6.2.2.e, which currently requires that the Manager-Operations hold a Senior Reactor Operator (SRO) license. The proposed TS revision is such that the Manager-Operations must: (1) Hold an SRO license; (2) have at one time held an SRO license; or (3) meet the qualifications for plant managers specified in Section 4.2.1 of the September 1979 draft of the American Nuclear Society Standard 3.1 (ANS 3.1).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether or not a no 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 amendment against the standards in 10 CFR Part 50.92 and had determined:

1. The proposed change to the qualification requirements for the Manager-Operations does not involve a significant increase in the probability or consequences of any accident previously evaluated because the change does not physically alter the facility in any manner and, as such, does not affect the means in which any safety-related system performs its intended safety function.

2. The proposed change to the qualification requirements for the Manager Operations does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, there is no physical change to the plant resulting from the proposed amendment and, therefore, no possibility of creating a new accident.

3. The proposed change to the qualification requirements for the Manager-Operations does not involve a significant reduction in a margin of safety. Two major benefits are derived from the proposed change.

Alleviating the time which the Manager-Operations is currently required to spend in classroom and simulator requalification and preparation for NRC testing required to maintain an SRO license allows him to dedicate that time to the performance of his intended duties. Requiring the Manager-Operations to: (1) Hold an SRO license; (2) have at one time held an SRO license; or (3) meet the qualifications for plant managers specified in Section 4.2.1 of the September 1979 draft of ANS 3.1 ensures that candidates for the position have the background and knowledge of nuclear plant operations necessary to perform these duties.

Removing the requirement for the Manager-Operations to have a valid SRO license would allow CP&L Management additional flexibility when choosing an individual to fill the Manager-Operations position. This ensures that the best available candidate can be chosen for a vacant Manager-Operations position. A major factor in such a decision must currently be the status of the candidates' SRO licenses. Those individuals, whose SRO license is not current, require approximately 78 weeks of training to receive a valid SRO license. As such, it is conceivable that a more qualified person would be overlooked due to the need for filling a vacant Manager-Operations position.

The Operations Supervisor will continue to hold an SRO license. The combination of the Manager-Operations and the Operations Supervisor positions at SHNPP fulfill the guidance of the September 1979 draft of ANS 3.1 for the Operations Manager's position. The benefits derived from the proposed change, as discussed above, serve to enhance overall nuclear safety and, therefore, increase the margin of safety.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Attorney for licensees: R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 12, 1988.

Description of amendments request: The amendments would revise Technical Specifications to allow more accurate measurement of lower effluent discharge flow rates by installing a three-inch diameter bypass around the existing six-inch diameter line.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined 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 physical changes to the plant involve the installation of a 3" diameter bypass around the existing 67" diameter liquid radwaste effluent discharge line flow rate element and flow control/isolation valves. The bypass includes a new flow rate element and flow control/isolation valves, and is fabricated of the same quality group materials as the original. The purpose of the new bypass is to provide the capability to measure lower flow rates (0 to 150 gpm) than is possible with the existing system (180 to 550 gpm). The existing radiation monitor will not be bypassed, and will have the capability to provide an isolation signal to the isolation valves in both loops. Controlled key (only one key issued at a time) locks on the valve operator switches will assure that only one loop may be used at a time.

The new bypass will perform the same function as the existing liquid radwaste the effluent discharge lines. The addition of the new flow rate element to the Technical Specifications will system operability and controlled keylocks will assure that only one loop may be used at a time. Therefore, this added bypass does not increase the probability of an accident previously evaluated.

The consequences of previously evaluated accident would not be significantly increased because the operability of the required radwaste system train will not be decreased.

The operability of the flow rate elements will continue to be verified by performing the related Technical Specification required surveillances. Because the added bypass loop performs the same function and is constructed of the same quality group materials as the existing loop, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The added bypass flow element performs the same function as the original monitor, but at a lower flow rate. The same radiation monitor provides isolation signal on high radiation levels on both the original and the new bypass line isolation valves. Therefore, there is not a significant reduction in the margin of safety.

Therefore, based upon the previous analysis, the staff concludes that the proposed amendment to the Technical Specifications does not involve significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 12, 1988.

Description of amendments requests: The amendments would revise Technical Specifications to separate the Gaseous Waste Management System Oxygen Analyzer into two analyzers based on their application.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined 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.

This change separates the Gaseous Waste Managment System oxygen analyzers into two analyzers based upon their application. One analyzer (OAT–GW8003) is capable of continuously analyzing oxygen concentration from the various source tanks and any one of the Gas Decay Tanks. The other analyzer (OAIT–GW004) requires the Waste Gas Compressor to be in operation for it to function. The proposed change clarifies the functional requirements and revises the Action Statement to reflect this change.

The changes to Table 3.3–13 made to separate the two oxygen analyzers into individual monitors, based on their separate application in the system, do not impact the Accident Analysis of the Byron/Braidwood FSAR. Rather it more cleraly defines the application and function of the two oxygen analyzers. As a result, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

No physical change or modification to the Gaseous Waste Management System is being made, and its intended operation as described in the FSAR will remain unchanged. The application of the two oxygen analyzers will be more clearly defined by these changes. As such, the changes do not create the possibility of a new or different kind of accident from any previously analyzed.

Since the Gaseous Waste Management System operation is not affected by this change, which is being made to more clearly define the application of the two oxygen analyzers, this change does not affect the margin of safety.

Therefore, based upon the previous analysis, the staff concludes that the proposed amendment to the Technical Specifications does not involve significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller.

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 amendment request: January 29, 1988.

Description of amendment request: The proposed amendment would revise Technical Specifications to delete the upper tolerance bound requirements of the Reactor Low-Low Water Level setpoint, and correct certain typographical errors in the bases.

There are two types of changes accociated with this proposed amendment request: the first change deletes the +4/−0 inch tolerance for the Reactor Low Low Level Trip Setpoint while the second change corrects a wording error in the Limiting Condition for Operation basis of Section 3.2 of the Technical Specifications. A review of the Technical Specification Bases has shown that the upper limit has no safety significance. Deleting the upper tolerance will also help facilitate calibration of the Reactor Low Low Water Level instrumentation.

The second change interchanges the words "high" and "low" in a sentence that explains the setting of the Reactor Low Low Water Level Trip. This change is administrative in nature and is being sought to insure that the Bases are consistent with the information

pertaining to the setpoint in the Technical Specifications.

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; (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. Pursuant to 10 CFR 50.91(a), the licensee provided the following analysis of their amendment request which addresses those three standards.

CECo has evaluated the proposed amendment in accordance with the criteria of 10 CFR 50.92(c) and determined it does not involve significant hazards consideration. Consequently, the licensee maintains that operation of Quad Cities Nuclear Power Station in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the actual setpoint for the Reactor Low Low Level is not being changed.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the upper bound of the tolerence range associated with the Reactor Low Low Water Level Trip Setpoint serves no safety function and the conservatism associated with the actual setpoint is not being reduced. The actual setpoint which would have been used in accident evaluation is unchanged. Hence, the proposed amendment does not create the possibility of a new or different kind of accident than which was previously evaluated.

(3) Involve a significant reduction in the margin of safety because the proposed amendment does not change the actual trip setpoint but merely reflects a change to the tolerence. As a result, the margin of safety has not been decreased as a result of this proposed amendment.

The NRC staff has reviewed the licensee's amendment request and concurs with the significant hazards consideration analysis detailed above. Furthermore, correcting typographical errors in the TS is considered an administrative change. The Commission's guidance (51 FR 7751) clearly establishes that a purely administrative change to technical specifications "is an example of an amendment not likely to involve significant hazards considerations." Therefore, the NRC staff proposes to determine that this application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Mr. Michael I. Miller of Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: December 14, 1987.

Description of amendment request: The proposed amendment would allow inclusion of all reloads of the "I" fuel design in the Big Rock Point Plant Technical Specifications. Past practice has been to identify each cycle reload individually and routinely change the Technical Specifications even though fuel design is not being altered. This change will permit future reloads of "I" fuel to be performed by the licensee under 10 CFR 50.59. Any future reloads containing fuel with a different design other than the "I" fuel would require a Technical Specification amendment.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.91, the licensee has provided an analysis on the issue of no significant hazards consideration using the standards of 10 CFR 50.92 as follows:

The mechanical, thermal hydraulic, and neutronic analysis for all Big Rock Point "I" fuel is the same as that for Reloads I-1 and I-2. The design report previously issued for Big Rock Point Reload I-1 (Exxon Nuclear Company (ENC) Report XN-NF-85-38(P), Rev. O) entitled, "Design Report for Big Rock Point I-1" is applicable for all Reloads of "I" fuel.

This change does not involve a significant increase in the probability or consequence of an accident previously evaluated because the limits are derived in a manner identical to that described in Exxon Nuclear Corporation (ENC) Report XN-NF-79-21, Revision 1, Big Rock Point LOCA Analysis using the ENC WREM NJP-BWR ECCS Evaluation Model-MAPLHGR Analysis. This report has previously been reviewed and accepted by the NRC and has been used as a basis for issuing previous reload amendments.

This change does not create the possibility of a new or different kind of accident from any previously evaluated because the XN-NF-79-21 report covers the required spectrum of break locations and configurations for the Big Rock Point Plant. This change does not involve a significant reduction in the margin of safety because, as stated in the XN-NF-79-21 report, reactor operation within the NRC approved limits assure conformance with 10 CFR 50.46 criteria for maximum cladding temperature, metal-water reaction and hydrogen release.

The Commission's staff concurs in the licensee's analysis. 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 (Example (iii)) of actions involving no significant hazards considerations relates to reload amendments involving no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question. This assumes that no significant changes are made to the acceptance criteria for the Technical Specifications, that the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

As shown in the above discussion, the proposed amendent is similar to this example and is supported by the licensee's analysis. Therefore, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: November 19, 1987 (Letter NRC-87-0201).

Description of amendment request: The proposed amendment would correct errors in Section 3/4.8.4.5, Standby Liquid Control System Associated Isolation Devices, by deleting from Table 3.8.4.5-1 the specification of Motor Control Center (MCC) 72B-4C, Position 1A circuit, breaker, and MCC 72E-5B, Position 1C circuit breaker, for required periodic testing. The circuit breakers have been found not to exist in the plant, and as such, the proposed amendment would correct the Technical Specification to be consistent with the

as-built plant design. The breakers that perform the isolation function are still in the Table.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the Commission agrees, that the proposed change to Technical Specification Table 3.8.4.5–1:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change corrects errors in the Technical Specifications by deleting the specification of MCC circuit breakers which do not exist in the Standby Liquid Control System (SLCS) Associated Isolation Devices circuit, thereby revising Technical Specification Table 3.8.4.5–1 to be consistent with the as-built plant. The proposed change would not result in any modification to the plant or system operations, and no safety-related equipment or function would be altered.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated. As is stated in (1) above, the proposed change would correct errors in the Technical Specifications making them consistent with the as-built plant, would not result in any modification to plant systems and equipment or the operations and functions, and thus would not create any new accident mode.

(3) Does not involve a significant reduction in a margin of safety. As is stated in (1) and (2) above, the proposed change would revise Table 3.8.4.5–1 of the Technical Specifications to be consistent with the as-built plant, and does not involve any modifications to the plant which would result in a significant reduction in a margin of safety.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Martin J. Virgilio.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 2, 1986, and October 6, 1987.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Catawba Nuclear Station to reflect recent changes to that regulation. The proposed amendments would modify paragraphs 2.E. of Facility Operating Licenses Nos. NPF–35 and NPF–52 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and October 6, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards consideration (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the amendment involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Darl Hood, Acting Director.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 5, 1988.

Description of amendment request: The proposed amendments would increase the minimum volumes of borated water required by McGuire Technical Specifications (TS) 3.1.2.5 and 3.1.2.6 to be maintained in the Boric Acid Storage System during shutdown and operating modes, respectively.

Basis for proposed no significant hazards consideration determination: The Boric Acid Storage system provides the borated water needed to ensure that negative reactivity control is available during each mode of facility operation. To ensure sufficient boration capability to provide shutdown margin from operating conditions through cooldown and shutdown, a certain minimum contained borated water volume is specified as a limiting condition for operation by TS 3.1.2.5 for Modes 5 and 6, and by TS 3.1.2.6 for Modes 1, 2, 3 and 4.

The licensee has reevaluated the System and finds that the unusable volume of borated water is greater than initially calculated because of piping configuration. Accordingly, the minimum volumes of borated water presently required by TS 3.1.2.5 and 3.1.2.6 are not sufficently conservative and should be increased. The proposed amendments would correct the non-conservative values by specifying more restrictive (i.e., increased) borated water volumes.

The Commission has provided certain examples (51 FR 7750) of actions likely to involve no sigificant 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 amendments and has 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 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. This conclusion is reached because the borated water sources are designed to mitigate the consequences of accidents and have no effect or causal mechanisms. The change is more restrictive and of a corrective nature because the sole effect is to restore the boration capability to that which will satsify the originally intended shutdown margins. Therefore, the change enhances safety by restoring the intended safety margins.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina, 28242.

NRC Project Director: Darl Hood, Acting.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: January 22, 1988.

Description of amendment request: The proposed amendment would make changes to the technical specifications associated with the boric acid makeup (BAMU) system. Specifically, the required boron concentration requirements would be reduced, the borated water volume would be increased, and the requirement to heat trace the BAMU system would be deleted. Commensurate with the boron concentration reduction, the sodium hydroxide concentration would be slightly lowered to maintain pH requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Credit is not taken for boron addition to the reactor coolant system from the boric acid makeup tanks (BAMTs) for the purpose of reactivity control in the accidents analyzed in Chapter 15 of the St. Lucie Unit 1 Final Safety Analysis Report (FSAR). Response to events such as steam line break, overcooling, boron dilution, etc., will not be affected by a reduction in the BAMT boron concentration. The ACTION Statements from Technical Specification 3.1.1.2 require that boration be commenced at greater than 40 gallons per minute using a solution of at least 1720 ppm boron in the event that shutdown margin is lost. The BAMT boron concentration after the proposed reduction will remain greater than or equal to 1720 ppm. The reduction in boron concentration is accounted for by increasing the volume of boric acid solution that must be contained in the tanks (and by also crediting borated water from the Refueling Water Tank (RWT)).

Since the components (or their function) necessary to perform a safe shutdown have not been changed or modified, this change does not significantly increase the probability or consequences of any accident previously evaluated. In addition, administrative controls on the BAMT temperature and boron concentration ensure that the lack of heat tracing does not result in precipitation of the boron.

The proposed change also reduces the concentration of caustic available in the Chemical Storage Tank in order to maintain the containment sump and containment spray nozzle pH within the design limits of 8.5 to 11.0. No change is made to the design bases of the Iodine Removal System or its subsystems, the Chemical Storage Tank and the caustic addition system. The reduction in boric acid concentration in the BAMTs [would cause] a corresponding reduction in the post-LOCA containment sump minimum boron concentration. A reanalysis of the sump pH and containment spray system pH has been performed. An adjustment to the rate of sodium hydroxide addition has been made to maintain the original equipment Environmental Qualification pH band of 8.5 to 11.0.

An evaluation of the general corrosion rate of metallic materials and the effects on non-metallic materials has been performed. It has been determined that there is no adverse [effect] on in-containment materials if the pH level is maintained in the original pH band. With the sodium hydroxide concentration reduction and reduction in the final boron concentration, the harsh environment Equipment Qualification of the in-containment equipment will be unaffected as will the post-LOCA containment sump pH. Therefore, there is no impact on the equipment in the post-LOCA scenario nor a reduction in the post-LOCA containment iodine removal capability.

In connection with the second standard, the licensee stated:

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ACTION statements from Technical Specification 3.1.1.2 require that boration be commenced at greater than 40 gallons per minute using a solution of at least 1720 ppm boron in the event that shutdown margin is lost. The BAMT boron concentration after the proposed reduction will remain greater than or equal to 1720 ppm. The reduction in boron concentration is accounted for by increasing the volume of boric acid solution that must be contained in the tanks (and by also crediting borated water from the Refueling Water Tank (RWT). The reason for requiring a heat tracing circuit was to ensure that the dissolved boric acid remained in solution and available for injection into the RCS to adjust core reactivity throughout core life. By lowering the boron concentration to a maximum of 3.5 weight percent, chemical analyses have shown there is no possibility of the boron precipitating out of solution as long as the temperature of the boric acid remains above 50°F, thus, there is no longer a need for heat tracing. Since the boron will remain in solution when the BAMT flowpaths are credited for reactivity control during a safe shutdown scenario, heat tracing is no longer required to maintain the Boric Acid Makeup (BAMU) system operable. Therefore, this change does not create the possibility of a new or different kind of accident from those previously evaluated.

The reduction in caustic concentration available in the chemical storage tank does not alter the design function of the Iodine Removal System. The Iodine Removal System will operate with slightly reduced NaOH [concentration] in response to reduced boric acid in the BAMTs.

With regard to the third standard, the licensee provided the following rationale:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The intent of the Boration Systems and Borated Water Sources Technical Specifications is to ensure that there are two redundant flowpaths from the borated water sources to the RCS to allow control of core reactivity throughout core life. This requires that sufficient quantities of boron be stored in the BAMTs and that this borated water can be delivered to the RCS in the event of a single active failure of a system component or a seismic event. Reducing the maximum boric acid concentration to less than 3.5 weight percent has been compensated for by increasing the required minimum volumes of borated water. In addition, reducing the maximum boron concentration allows a deletion of the requirement to heat trace the BAMU system since chemical analyses have shown that a 3.5 weight percent solution of boric acid will remain in solution at temperatures above 50°F. Administrative controls on the boric acid makeup tank temperature and boron concentration ensure that a lack of heat tracing does not result in

precipitation of the boron. Therefore, the reduction of boric acid concentration and the deletion of heat tracing in the BAMU system does not cause a significant reduction in the margin of safety.

Also, the margin of safety as defined by the Technical Specifications has not been significantly reduced due to the reduction in NaOH [concentration] since the change does not alter the effectiveness of the caustic addition subsystem. That is, the NaOH reduction change is equally balanced by the reduction of boric acid in the boric acid makeup tanks.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards. The licensee proposes increases to the borated water volume contained in the BAMTs to offset the boren concentration reduction. Since the boren concentration is significantly reduced, there appears to be no need for heat tracing. The NaOH slight concentration reduction is needed to maintain proper pH range.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: December 21, 1987.

Description of amendment request: This amendment would modify the Technical Specifications for Hatch Unit 1 as follows: Specification 4.7.D.1 would be modified to require full-stroke testing of the main steam isolation valves (MSIVs) in accordance with the ASME Code, Section XI.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR Part 50.29(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, in its December 21, 1987 submittal, provided the following evaluation of the proposed change with regard to these three standards:

The proposed change is an administrative change and will make the Unite 1 specification regarding full-stroke testing of the MSIVs more similar to the specifications currently in the Unit 2 Technical Specifications and the Standard Technical Specification (STS). Incorporation of this change will not involve a significant hazards consideration, because:

1. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety are not increased above those previously evaluated, because the operation of the MSIVs will remain the same. The MSIVs will continue to isolate automatically upon receipt of the current isolation signals, and the required isolation (stroke) time will remain unchanged. Surveillance requirements will remain unchanged.

2. The possibility of a different kind of accident from any analyzed previously is not created by this change, because the MSIVs will continue to operate and respond as they did prior to the change. No new modes of valve operation are introduced by this change.

3. Margins of safety are not significantly reduced by this charge, because it is an administrative change to revise the wording of the specification so that it is similar to the wording of the Unit 2 Technical Specifications and the STS.

The staff has considered the proposed amendment and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has concluded that the requested change meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Applying County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Darl S. Hood, Acting Director.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: December 28, 1987.

Description of amendment request: The proposed amendment would change the title of the Manager-Nuclear Performance and Analysis to Manager-Nuclear Performance and Radiological Safety on Technical Specification (TS) Figure 6.2–I, "Off-Site Organization," and TS Figure 6.6. The proposed amendment would revise TS Figure 6.2.2, "Plant Organization" as follows.

On TS Figure 6.2.2 add the new position of Outages and Planning Manager reporting to the Plant Support Manager. Delete the Unit 1 Planning, Scheduling, and Work Control Methods Superintendent. Change the title for the Maintenance Superintendent III position to Manager Maintenance. Add the new position of Manager Health Physics and Chemistry, who has authority over the Health Physics Superintendent, the Chemistry Superintendent, and the new position of Technical Support Health Physics/Chemistry Superintendent.

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. 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 previosuly evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and has 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. The proposed changes maintain program responsibility aligned to appropriate organizations, and is similar to another NRC approved plant organization.

Also, the licensee's proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the physical plant design is not being changed. Finally, the licensee's

proposed changes would not (3) involve a significant reduction in a margin of safety because no operating parameters or setpoints are changed.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 4th Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: Darl Hood, Acting.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: January 29, 1988 (TSCR 163).

Description of amendment request: The proposed amendment would revise Technical Specifications 5.3 and the corresponding bases allowing fuel with higher enrichments to be stored in the fuel storage facilities onsite.

Basis for proposed no significant hazards consideration determinatoin:

The licensee proposed Technical Specification Change Request (TSCR) No. 163 to allow fuel with higher enrichments to be stored in the fuel storage facilities onsite. The licensee has evaluated TSCR 163 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):

The proposed change is based upon a re-evaluation of the High Density Poison Racks (HDPRs) summarized in the report, entitled "Criticality Safety Analysis Oyster Creek High Density Poison Racks With Increased Enrichment Fuel." The re-evaluation performed on the HDPR included several enrichment levels taking credit for gadolinium burnable poison. The HDPRs were analyzed for criticality safety with fuel of uniform average enrichments ranging up to 3.8% assuming 3 weight percent gadolinium oxide in seven (7) fuel rods of each assembly. The analysis confirms that the multiplication factors K_{eff} is within the limit of 0.95, in conformance with NRC Regulatory Guide 1.13.

The proposed change to the Technical Specification relates only to the new fuel storage vault and the HDPR. No other plant system or component is affected.

The licensee states:

Based upon the preceeding discussion, we [the licensee] have evaluated that this change request involves no significant hazards considerations. In summary, we have determined that the proposed amendment would not:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated;

The original enrichment requirement of 3.01% U–235 was based upon the initial criticality analysis which did not take the allowed credit for burnable poisons. A re-evaluation of the criticality analysis was performed taking credit for burnable poisons as allowed in NRC Regulatory Guide 1.13. The results indicate that fuel with an average planar enrichment of 3.8% can safely be stored in the HDPR.

The only type of accident potentially affected by this proposed Technical Specification amendment is an inadvertant criticality. Since the requirement to maintain K_{eff} less than or equal to 0.95, will be retained, and the potential effects of this change are already bounded by a previous analysis, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Create the possibility of a new or different kind of accident from any accident previously evaluated:

The criteria for K_{eff} to be less than or equal to 0.95 will be retained. However, the limitation on enrichment will be deleted and the requirement for K_{eff} less than or equal to 0.95 will be ensured using a newly established check list.

The spent fuel storage pool is designed to withstand the design earthquake acceleration, to prevent inadvertent criticality, and to provide efficient shelding and cooling. The only aspect of the design to be considered for this proposed charge is the prevention of inadvertent criticality. Since the criterial for K_{eff} to be less than or equal to 0.95 will be retained under the proposed change, and the potential effects of this change are already bounded by a previous analysis, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. Involve a significant reduction in the margin of safety;

The only type of accident potentially affected by this proposed Technical Specification amendment is an inadvertent criticality. Since the requirement to maintain K_{eff} less than or equal to 0.95, will be retained, and the potential effects of this change are already bounded by a previous analysis, this proposed change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's evaluation. Therefore, the staff proposes to determine that the licensee's application does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, D.C. 20037.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. I, Dauphin County, Pennsylvania

Date of amendment request: January 29, 1988.

Description of amendment request: The January 29, 1988 request, identified as TSCR No. 177 by the licensee, would revise various sections in Chapter 6 of the Technical Specifications (Administrative Controls) for clarity and consistency with the Standard Technical Specifications. These sections deal with GPU procedural controls over the review process for procedures, modifications to structures, systems and components, and proposed tests and experiments. This change would also add a definition of substantive changes as related to these activities.

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 form any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The change proposed by TSCR No. 177 is an administrative change to achieve terminology more consistent with the terminology of the Babcock and Wilcox Standard Technical Specifications, NUREG–0113 Rev. 4, and to provide clarification of previously existing requirements for technical and safety review. The proposed revised Technical Specifications would not involve significant hazards considerations for reasons as follows (see criteria in 10 CFR 50.92 above):

(1) The probability of occurrence or the consequences of previously evaluated accidents are not affected by this change since the change is administrative in nature, and provides clarification and consistency. The technical and safety review requirements for substantive changes in

the existing Technical Specifications are not changed.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created by this change, since the change is administrative in nature, and provides clarification and consistency. The technical and safety review requirements for substantive changes in the existing Technical Specifications are not changed.

(3) This change does not reduce the margin of saftey, since the change is administrative in nature, and is provided for clarification and consistency. The technical and safety review requirements for substantive changes in the existing Technical Specifications are not changed.

Based on the above discussion, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037.

NRC Project Director: John F. Stolz.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Dates of application for amendment: November 24, 1986, and September 1, 1987.

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee has submitted a proposed amendment to the Physical Security Plan for the Grand Gulf Nuclear Station, Units 1 and 2, to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E. of Facility Operating License No. NPF–29 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 24, 1986, and September 1, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the supplementary materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is [sic] appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether or not a no significant hazards consideration exists by providing certain examples of actions not likely to involve significant hazards considerations and examples of actions likely to involve significant hazards considerations (51 FR 7750). One of the examples of actions not likely to involve significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 2, 1988.

Description of amendment request: The amendments would modify the Technical Specifications to: (1) change the instrument identification numbers (Tables 3.2.B ands 4.2.B) for reactor pressure switches which provide closing signals to the reactor recirculation system discharge valves and permissive input signals to the core spray and low pressure coolant injection systems, (2) change the instrument identification number (Table 3.2.B) for the residual heat removal system crosstie valve position indicator switch, (3) change the instrument identification numbers (Tables 3.2B and 4.2.B) for drywell pressure instruments associated with the high pressure coolant injection (HPCI) system, and (4) modify the "Reactor Water Level Indication Correlation" drawing (Figure 2.1.1) to reflect modifications extending the range of reactor vessel water level instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: (i) a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example a more stringent surveillance requirement.

Change (1) would reflect a plant modification in which two duplex pressure switches (NBI–PS–52A, and 52C) for which spares are no longer readily available, will be replaced by four single pressure switches (NBI–PS–52A1, A2, C1, and C2). The replacement switches will be seismically and environmentally qualified and will serve the same function as those being replaced.

Change (2) would correct an editorial error. The crosstie valve position indicator switch is identified as "RHR–LMS–2" in the Technical Specifications but as "RHR–LMS–8" in the facility design drawings. The proposed amendment would revise the Technical Specifications Identification number to be consistent with the drawings. No change would be made to the actual instrument.

Charge (3) would revise the HPCI instrument identification numbers to be consistent with the identification numbers used for the same instruments elsewhere in the Technical Specifications. This change is thus being made for consistency only. No changes are being made to the actual instruments.

Change (4) would reflect modifications to be made to extend the range of water level instruments in

accordance with the licensee's commitments to provide improved capability to monitor reactor vessel water level. The modifications extend the range of water level monitoring down to 6 inches below the bottom of active fuel and up to the top of the steam separator in accordance with Regulatory Guide 1.97 recommendations.

Changes (1), (2), and (3) are simple changes in nomenclature to either correct errors or inconsistencies, or reflect the replacement of existing components with new components with similar design and function. These changes will have no effect on safety, involve no changes to limiting conditions for operation or surveillance requirements, and are within the scope of example (i). Change (4) reflects new requirements imposed by the NRC and it is within the scope of example (ii).

Since the application for amendment involves proposed changes that are encompassed by the criteria or an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: 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: Jose A. Calvo.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 29, 1988.

Description of amendment request: The proposed amendment would revise Technical Specifications 3.2.6 and 4.2.6 for Nine Mile Point Nuclear Station Unit 1. The revisions to Technical Specifications 3.2.6 and 4.2.6 would move the references concerning the Inservice Inspection (ISI) and Inservice Testing (IST) Programs in effect from the limiting condition for operation and surveillance requirement sections of the Technical Specifications to the Bases section.

The proposed amendment would also revise Technical Specification 4.2.6.a.2 to delete the list of systems containing non-conforming components. The systems containing non-conforming components are identified in the augmented ISI program.

The proposed amendment is in accordance with the licensee's application of January 29, 1988.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed changes will not (1) Involve a significant increase in the probability or consequences of an accident, (2) create the possibility of a new or different kind of an accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety for the following reasons:

The first change concerns the reference regarding the ISI and IST programs in effect from the Technical Specifications to the Bases. This change is an administrative change. 10 CFR 50.55a requires the ISI and IST programs to be updated to the latest ASME Code approved by the Nuclear Regulatory Commission every ten years. This regulation further requires that relief from or alternative requirements to the ASME Code in effect must be authorized by the NRC. The revised Technical Specifications will also require the licensee to meet these requirements. The proposed amendment would allow the licensee to update the ISI and IST programs in accordance with these requirements without submitting an amendment request.

The second change involves deleting the lsit of systems containing non-conforming components from section 4.2.6.a.2 of the Technical Specifications. This list will still be included in the ISI program. This change will also allow the ISI program to be updated in accordance with the regulations without requiring a Technical Specification amendment and is also administrative.

As these changes are administrative and will not affect the ISI and IST programs, they will not (1) involve a significant increase in the probability or consequences of an accident, 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 upon the above consideration, the staff proposes to determine that the proposed charges do not constitute a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of amendment request: February 3, 1988.

Description of amendment request: The proposed amendment would revise Technical specification 3/4.8.2.1.b.2, "D.C. Sources-Operating". The proposed change would allow an alternate method of determining battery operability when visible corrosion appears at either terminals or connectors. The proposed amendment is in accordance with the licensee's application of February 3, 1988.

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.

1. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

The proposed amendment establishes an alternative method of verifying the integrity of battery connections. The amendment does not adversely affect the function or design of the safety-related DC power systems. Further, the proposed change does not adversely affect the environmental qualification of the batteries or their associated chargers. The performance and reliability of the DC power sources will not be affected, thus assuring there will still be power available to supply the safety-related equipment required for (1) the safe shutdown of the facility and (2) the mitigation and control of accident conditions within the facility. Therefore, the proposed amendment will not involve a significant increase in the probability of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the

possibility of a new of different kind of accident from any previously evaluated for the following reasons:

Verification of resistance is a positive method of establishing the reliability of station batteries. Reg. Guide 1.129, Rev. 1 endorses IEEE Standard 450–1975 with comments. IEEE Standard 450–1975 recognizes resistance values of 120% of initial installation values or less as acceptable. The licensee has reviewed the as-installed resistance values and has determined that a 20% increase in the measured resistance of the batteries will have no effect on the ability of the batteries to carry the rated load. This assures that the design capabilities of the IE AC and DC systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident from any previously assessed.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety for the following reasons:

The Technical Specification bases recognize that verifying connection resistance values, in conjunction with the other tests and inspections required by the surveillances, assures the effectiveness of the charging system and the ability of the batteries to handle high discharge rates. The resistance measurement will provide a positive indication of battery operability in the event visual inspection indicates corrosion. As discussed above, a 20% increase in the measured resistance of the batteries will have no effect or the ability of the batteries to carry their rated load. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

Based upon the above considerations, the staff proposes to determine that the proposed changes do not constitute a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of amendment request: February 3, 1988.

Description of amendment request: The proposed amendment would revise the allowable value and isolation trip setpoint for the residual heat removal (RHR)/reactor core isolation cooling(RCIC) steam flow-high. As noted in the Technical Specifications, the existing values are preliminary with the actual values to be determined during the startup test program. The proposed changes are based on system testing during the startup test program. The proposed amendment is in accordance with the licensee's application of February 3, 1988.

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 prevously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

The RHR/RCIC Steam Line break analysis assumes system isolation when steam flow reaches 125% of rated steam flow. This is in accordance with the leadk detection and isolation reqirements of GDC 54. This proposed change to the Technical Specification would assure that the as-built plant is in agreement with the design basis. Revising the setpoint to the as-built conditions equivalent to the 125% rated flow value assures that a RHR/RCIC steam line break will be detected and isolated as designed without impacting the qualification or operation of other safety systems or safe shutdown of the plant. The new values are conservative relative to the old values. In summary, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident previously evaluated for the following reasons:

The reactor building response to previously evaluated accidents remains within previously assessed limits of temperature and pressure. Further, all safety-related systems and components remain within their applicable design limits. Thus, system and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

In addition, since the design basis for RHR/RCIC steam line system isolation has not changed, the environmental qualification of plant equipment is not adversely affected by this proposed amendment, further assuring that components are not challenged in a manner not previously assessed. In summary, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not involve a significant reduction in a margin of safety for the following reasons:

The proposed change will not cause existing Technical specification operational limits or system performance criteria to be exceeded. The proposed change ensures that the design requirements are met, allowances for instrument drift, instrument accuracy, and calibration capability have been maintained in accordance with Bases Section B3/4.3.2. of the Technical Specifications. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

Based upon the above considerations, the staff proposed to determine that the proposed changes do not constitute a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No., 3, New London County, Connecticut

Date of amendment request: February 5, 1988.

Description of amendment request: The amendment would revise Millstone Unit No. 3 Technical Specification Section 3/4.4.6 Reactor Coolant System Leakage to allow continued plant operation for 30 days with both the Containment Atmosphere Gaseous Radioactivity Monitoring System (CAGRMS) and the Containment Atmosphere Particulate Radioactivity Monitoring System (CAPRMS) inoperable. The existing Technical Specification requires plant shutdown within 6 hours for this condition. The compensatory measures would be improved by increasing the frequency of analyzing the containment atmosphere for radioactivity via grab samples from once per 24 hours to once per 12 hours.

Basis for proposed no significant hazards consideration determination: The license has reviewed the proposed

charges in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. The proposed changes do not affect the probability of occurrence or the consequences of the design basis accidents. Therefore, previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no changes in the way the plant is operated, and no new failure modes are introduced; therefore, the possibility of an unanalyzed accident is not created.

3. Involve a significant reduction in a margin of safety. The proposed changes do not have any impact on the containment integrity and do not affect the consequences of any accident previously analyzed, therefore, there is no reduction in the margin of safety.

The staff has reviewed the licensee's submittal and agrees with its no significant hazards determination.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: January 22, 1988 (LAR 88–01)

Description of amendment request: The proposed amendments would change the Diablo Canyon Nuclear Power Plant (DCPP) combined Technical Specifications for Units 1 and 2 to allow reduced Residual Heat Removal (RHR) flow during Mode 6 operation. Specifically, the proposed change would amend Technical Specification (TS) 4.9.8.1, "Residual Heat Removal and Coolant Circulation High Water Level." and TS 4.9.8. 2, "Residual Heat Removal and Coolant Circulation Low Water Level," to revise the currently required minimum residual heat removal (RHR) system flowrate on 3000 gpm during Mode 6 (Refueling). TS 4.9.8.1 and 4.9.8.2 are proposed to require verification of an RHR flowrate of 3000 gpm once per 12 hours when the reactor has been subcritical less than 57 hours and to require verification of an RHR flowrate of 1300 gpm per 12 hours when the reactor has been subcritical greater than 57 hours. Bases 3/4.9.8 is proposed to be revised to indicate that a reduced RHR flow can provide adequate decay heat removal and also additional margin to vortexing in the RHR system. TS 3.4.1.4.2, "Cold Shutdown—Loops Not Filled," which is applicable to Mode 5 partial drain operating, allows the operation RHR pump to be deenergized for one hour. TS 3.4.1.4.2 is proposed to be amended to not allow deenergization of the RHR pump unless reactor vessel water level is above the vessel flange.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated: or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the Westinghouse evaluation provided in WCAP–11688 for DCPP Units 1 and 2 demonstrates that throttling of the RHR system flowrate to between 1300 and 3000 gpm depending on Reactor Coolant System (RCS) water level and time after shutdown does not increase the probability or consequences of the accidents analyzed in Chapter 15 of the FSAR. The boron dilution accident evaluation results concluded that there is a reduction in time to criticality during RCS partial drain operation; however, this reduction in time is independent of the RHR flowrate. The reduction in RHR system flowrate during RCS partial drain operation reduces the probability of a loss of decay heat removal due to vortexing and cavitation, while the probabilities of accidents analyze in the FSAR are unaffected. The added restriction to the TS 3.4.1.4.2 footnote will prohibit intentional deenergization of the RHR pump when vessel water is below the reactor vessel flange. This added restriction will not increase the probability or consequences of any accident previously evaluated. Therefore, this proposed license amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibilty of a new or different kind of accident from any accident previously evaluated because implementation of the proposed reduction in RHR system flowrate during RCS partial drain operation does not introduce significant changes to the plant design basis. Throttling RHR system flow in manually controlled from the main control board and does not involve hardware modifications or irreversible actions when in effect. The added restriction to the TS 3.4.1.4.2 footnote to not allow deenergization of the operating RHR pump will enhance safety during operation with the RCS water level below the reactor vessel flange. Therefore, the proposed license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated; (3) Involve a significant reduction in the margin of safety because the Westinghouse evaluation provided in WCAP–11688 shows that an RHR flowrate reduced to 1300 gpm will meet the decay heat removal requirements when the reactor is subcritical for greater than 57 hours. An RHR flowrate of 1300 gpm during Modes 5 and 6 does not impact the FSAR analyses for the boron dilution accident and promotes sufficient reactor coolant mixing so that boron stratification is not a concern. The probability of a loss of RHR flow initiated by RHR system vortexing will be reduced, increasing the RHR system reliability. The added restriction to not allow deenergization of the operating RHR pump for one hour will enhance safety by requiring continuous RHR flow when reactor vessel water level is below the vessel flange. Therefore, the changes do not involve a significant reduction in the margin of safety.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards consideration.

The NRC staff has reviewed the proposed amendments and the licensee's determination and find them acceptable. Therefore, the staff proposes to determine that the amendment requests do not involve a significant hazard.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company,

P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton.

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 28, 1986.

Description of amendment request: The amendment would revise Sections 2.2 and 3.3 of the Trojan Technical Specifications regarding setpoints and allowable values for the steam generator (SG) low-low water level reactor trip and pressurizer low-pressure safety injection. These values will be revised so that the initiation of reactor protection system operation will occur at a time sooner than that which corresponds to the current Technical Specification values.

The Trojan Updated Final Safety Analysis Report (UFSAR) and Technical Specifications (TS) reflect steam generator low-low level reactor trip and pressurizer low-pressure safety injection setpoints established by the original plant design. However, administrative interim setpoints conservatively higher than the TS allowables have been in use for several years to account for additional instrument inaccuracies that became known subsequent to plant startup. Reference leg heating effects and Barton transmitter defect notifications were major contributors to these increased inaccuracies.

Subsequent improvements to Barton Transmitters, plus installation of reference legs on the steam generator level instruments, have resulted in reduced inaccuracies. Thus, the proposed amendment would reduce the setpoints and allowable values from the "interim" setpoints used by the licensee, to lower values which would still be conservative as compared to the original TS setpoints and allowables. The proposed TS limits would ensure that the original allowables assumed in the UFSAR will not be exceeded when considering existing instrumentation inaccuracies.

The SG low-low level reactor trip setpoint and allowable as provided by the current TS are: greater than or equal to 5% and 4%, respectively. The interim value used by the licensee for both setpoint and allowable is: greater than or equal to 20%. The proposed setpoint and allowable are: greater than or equal to 11% and 10%, respectively.

The current pressurizer low pressure safety injection setpoint and allowable are: greater than or equal to 1765 psig and 1755 psig, respectively. The interim value used by the licensee for both setpoint and allowable is: greater than or equal to 1831 psig. The proposed setpoint and allowable are: greater than or equal to 1766 psig and 1759 psig, respectively.

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

The only change to the plant or its operation is in the setpoints themselves. The Barton transmitters were placed with functionally equivalent components with less susceptibility to environmental conditions. The adjustment of the setpoints to more restrictive limits results in the same level of protection that the TS provide and thus does not create the possibility of a new or different kind of accident, or significantly reduce a margin of safety.

The staff concurs with the conclusions of the licensee's no signficant hazards analysis, and as such, proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland.

General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: George W. Knighton.

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 15, 1988, as revised February 15, 1988.

Description of amendment request: This amendment request would revise Trojan Technical Specifications (TS) Section 6.2, "Organization." More specifically, Figure 6.2-1, "Offsite Organization" would be revised by:

(a) deleting from the Figure, those positions which do not directly or indirectly, report to the President;

(b) Moving those positions which are part of the Facility Organization from Figure 6.2-1 to Figure 6.2-2, "Facility Organization;"

(c) Indicating that the General Manager of Corporate Security will report to the Vice President, Nuclear;

(d) Deleting the Position of Vice President, Operating Services, and Manager, Control Systems; and

(e) Implementing various changes to titles and reporting structure for those positions outside the responsibility of the Vice President, Nuclear.

Figure 6.2-2, "Facility Organization" would be revised by:

(a) Adding the positions of Vice President, Nuclear, and General Manager, Technical Functions to the Figure to illustrate the interface of the Offsite Organization with the Facility Organization;

(b) Deleting staff level positions (with the exception of Operations) from the Figure so that only the supervisory positions are shown;

(c) Illustrating the newly created positions of Manager, Personnel Protection, System Engineering Branch Manager, Surveillance and Test Engineering Branch Manager, Procurement Supervisor, Quality Assurance Operations Branch Manager, and Quality Control Supervisor;

(d) Illustrating the creation of the Performance Monitoring/Events Assessment group;

(e) Indicating title changes to numerous existing positions (eg., Branch Manager instead of Supervisor);

(f) Changing the line of reporting for the Manager, Plant Modifications from the Plant General Manger to General Manager, Technical Functions;

(g) Changing the line of reporting for the Shift Technical Advisor from the Reactor Engineer to the Manager, Technical Services;

(h) Changing the lines of reporting for the Chemistry Supervisor and Radiation Supervisor from the Manager, Technical Services to the newly created Manager, Personnel Protection; and

(i) Illustrating an existing position (Plant Safety Coordinatory) on the Figure, and indicating the line of reporting for that position.

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 previous evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involved a significant reduction in a margin of safety.

The proposed changes regarding the deletion of positions that do not report directly or indirectly to the President and the deletion of nonsupervisory positions under the responsibility of the Vice President, Nuclear eliminates extraneous information and clarifies the Figures.

The proposed changes to lines of reporting, and the creation of new positions and organizations are designed to enhance the efficiency and the effectiveness of the Nuclear Divsion to ensure safe plant operation.

The proposed changes to position titles are administrative changes which do not alter the basic duties, functions, and requirements of those positions.

No changes are being proposed to any of the approved programs, nor the physical configuration of the plant. All limiting conditions for operation and safety system settings will continue to be imposed.

Based on the above, the proposed organization changes do 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. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: George W. Knighton.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 13, 1987.

Description of amendment request: The license provided, in part, the following description:

This application seeks to amend Tables 3.6–1 and 4.4–1 of the Technical Specification to reflect modifications to certian containment isolation valves.

Table 3.6–1 has been revised to reflect the following:

1. addition of containment isolation valves CH–MOV–441 thru 444.
2. deletion of valves 1890 A thru H, J.
3. deletion of valves 241 A thru D.
4. deletion of valves 580 A, B.

Table 4.4–1 has been revised to reflect the following:

1. addition of containment isolation valves SP–SOV–506 thru 516.
2. addition of containment isolation valves CH–MOV–441 thru 444.
3. deletion of valves 1890 A thru H, J.
4. deletion of valves 241 A thru D.
5. deletion of valves 580 A, B.

Additionally, the appropriate valve identification prefix and suffix have been added to those valves listed in Tables 3.6–1 and 4.4–1.

Sections 3.3 and 4.4 have been revised to reflect an increase in the calculated peak containment LOCA pressure. This increased calculated pressure has necessitated a revision to the minimum pressure at which the leakage rate tests are performed. The increased calculated peak containment pressure resulted from increasing the assumed ambient containment temperature from 120°F to 130°F. The change from 120°F to 130°F was previously noticed on April 22, 1987 (52 FR 13346).

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 provided the following bases to meet the three standards:

The proposed amendment, in part, reflects the installation and removal of certain containment isolation valves. The completion of the modifications did not violate any design criteria for the containment isolation system.

The proposed amendment reflects the containment isolation system as described in the FSAR. The containment isolation criteria of at least two barriers for redundancy against leakage of readioactive fluids to the environment in the event of a Loss of Coolant Accident was not violated by the completion of the modifications. The addition of the appropriate prefix and suffix to the listed valves is a purely administrative change.

The proposed amendment, in part, revises the minimum lead-rate test pressures to reflect an increase in the calculated peak containment accident pressure. The increased calculated pressure of 41.2 psig is attributable to an increased containment ambient temperature of 130°F. The minimum test pressure, as provided in table 4.4–1, has been increased from 41 psig to 42 psig. Section 4.4 has been revised to require that the leak rate tests be performed at a minimum pressure of 41.2, the peak accident pressure. However, per procedure, the leak-rate tests have been performed at 50 psig. Therefore, the revision to table 4.4–1 will not change the manner in which the leak-rate tests are performed.

This proposed amendment, in part, revises the minimum pressurization of the weld channel and penetration pressurization system (WCPPS) to reflect an increase in the calculated peak containment accident pressure. Section 3.3 has been revised to require that the WCPPS be continuously pressurized above 42 psig before bringing the reactor above the cold shutdown condition. The WCPPS is supplied with a regulated supply of 100 psig compressed air from the instrument air system. Therefore, the revisions to Section 3.4 will not change the operations of the WCPPS.

The licensee concluded that the change does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident previously evaluated and (3) involve a significant reduction in a margin of safety.

Based on the above, we propose to determine that this proposed change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 5, 1988.

Description of amendment request: The licensee has provided the following description of the changes to the Technical Specifications:

A. Proposed Changes to Figure 6.2–1:

As a result of a recent Authority reorganization, staff engineering and construction management functions will be merged into existing operations departments, and the number of management levels will be reduced. The proposed changes to Figure 6.2–1 of the Indian Point 3 Technical Specifications illustrate the following changes in responsibility and management reorganization.

1. The Engineering and Design Department has been eliminated and its personnel reassigned to the Nuclear Generation and System Operations Departments.

Accordingly, the position of Executive Vice President and Chief Engineer–Engineering and Design has been eliminated.

2. The position of First Executive Vice President Operations has been eliminated.

B. Proposed Changes to Figure 6.2–2:

The proposed change to Figure 6.2–2 reflects the title change of Security Supervisor to Security Manager. This is not related to the recent reorganization.

C. Proposed Changes to Section 6.5.2.2:

As a result of the elimination of the Engineering and Design Department, the position of Vice President–Design and Analysis has been eliminated. Consequently, the Vice President–Design and Analysis will no longer be a member of the Safety Review Committee (SRC).

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 a 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 made the following analysis, in part, of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequence of an accident previously evaluated? The proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated. The chain of command has been streamlined, enhancing the organization's effectiveness and efficiency without compromising functions required for the continued operation of the plant. The reorganization of the Authority and the title change discussed above are purely administrative changes which do not involve hardware or procedural changes to the facility. The changes will not adversely impact previously evaluated accidents.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated? These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated since the reorganization and title change are designed to enhance the management and efficiency of the Authority. The changes do not involve hardware or procedural changes to the facility and cannot create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety? The responsibilities formerly associated with the positions eliminated have been assumed by others within the management hierarchy. The individuals in the existing management hierarchy who have assumed these responsibilities, satisfy the educational and experience levels described in the FSAR for the positions previously having these responsibilities. Hence, the proposed changes do not involve a reduction in a margin of safety.

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: Robert A. Capra, Director.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 2, 1986 and September 4, 1987.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted an amendment to the Physical Security Plan for the Salem Nuclear Generating Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating Licenses Nos. DPR–70 and DPR–75 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations. "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and September 4, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believed that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Rochester Gas and Electric Corporation, Docket No. 50–244 R.F. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment requests: September 23, 1987 and September 24, 1987.

Description of amendment requests: (a) To Change Reporting Requirements and (b) Revise Accident Monitoring Instrument Tables. Rochester Gas and Electric Corporation proposes to (a) change the reporting requirements of iodine spiking and eliminate the 800 hour shutdown requirement and (b) incorporate the requirements of the reactor vessel level indicator system.

With respect to item (a) the proposed changes to reporting requirements would conform to the NRC Generic Letter 85–19 which permits the reporting of primary coolant iodine spikes in an annual report rather than on a more frequent basis. Also the NRC Generic

Letter eliminated the requirement to shutdown if the coolant iodine activity limits are exceeded for 800 hours in a 12-month period.

For item (b) the proposed technical specification changes are related to the reactor vessel level indication system. The revision satisfies the requirement of NUREG-0737 and is identical to model specifications that are approved except for some changes to fit the Ginna technical specification format on the Accident Monitoring Instrumentation Table.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard 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.

For item (a) the reporting requirement is an administrative change to conform with an NRC Generic Letter. No physical plant changes are involved. The quality of the nuclear fuel has greatly improved with the result that normal iodine levels in the primary coolant are well below the limits and spiking need not be reported soon after an occurrence. Furthermore, the 800 hour shutdown requirement is unnecessary since appropriate actions would have been initiated long before accumulating 800 hours above the iodine activity limit. For item (b) the proposed revision is to modify the monitor instumentation tables in the technical specifications to show the total number of instrument channels and minimum channels operable for the reactor vessel level indicator system. This instrument system involves only small connections and no automatic actuation of control functions. This system increases the safety margins by providing additional information to plant operators for responding to transient incidents. The proposed changes for items (a) & (b) do not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously involved. As a consequence of the above, the staff has made a proposed determination that the applications for amendments involve no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman.

Rochester Gas and Electric Corporation, Docket No. 50-244 R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: December 12, 1987.

Description of Amendment: To remove Organization Charts From Technical Specifications. The proposed changes involve the deletion of the organization charts from the technical specifications. The specific organization charts will be incorporated in Chapter 13 of the Final Safety Analysis Report and in the Ginna Quality Assurance Manual. The NRC will be informed of changes through the annual updates as required by 10 CFR 50.71.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application standards for determining if a no significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (51ER7751). One of these examples (1) is a purely administrative change to technical specifications. The proposed changes consist of deleting the organization charts from the technical specifications and incorporating them in a more appropriate set of documents. These changes are administrative in nature because they do not change the physical aspect of the plant or equipment. These changes do not alter the licensee's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant.

The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from an accident previously evaluated. As a consequence of the above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library , 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman.

Southern California Edison Company, et al., Docket Nos., 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California.

Date of amendment request: November 4, 1987 (Reference PCN-239).

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.2., "Engineered Safety Feature Actuation System Instrumentation" (ESFAS). TS 3/4.3.2 specifies the number of channels and type of instrumentation required to be operable, response times and periodic surveillance tests to verify operability, and actions to be taken when the minimum requirements are not met. The ESFAS instrumentation operability requirements include a response time for the Main Steam Line Isolation Valves (MSIV) which is specified in Table 3.3-5 "Engineered Safety Features Response Times". The MSIV response time is specified in two locations in Table 3.3-5, one associated with the Main Steam Isolation Signal (MSIS), the other associated with the Containment Isolation Actuation Signal (CIAS). When the San Onofre 2 & 3 Technical Specifications were originally issued, the MSIV response time was 5.0 seconds and was identified only with the MSIS entry on Table 3.3-5. Proposed Charge No. PCN-96 was submitted on November 30, 1984. PCN-96 increased the MSIV response time from 5.0 to 6.0 seconds and also added a response time of 6.0 seconds for the MSIV's under CIAS in Table 3.3-5. Prior to approval of PCN-96, SCE submitted PCN-207 which increased the MSIV response times to 8.0 seconds. Because PCN-96 had not yet been approved, PCN-207 did not request that the CIAS entry response time in Table 3.3-5 be increased to 8.0 seconds. PCN-96, which instituted a CIAS MSIV response time of 6.0 seconds, was approved by the Commission in Amendments 46 and 35 to Facility Operating Licenses NPF-10 and NPF-15 for San Onofre Units 2 & 3, respectively, on May 16, 1986. Subsequently when PCN-207 was approved by Amendments 60 and 49 on August 14, 1987, an editorial discrepancy between the MSIV response times listed in Table 3.3-5 under MSIS and CIAS was created. The proposed change would correct this editorial discrepancy by increasing the CIAS MSIV response

time to 8.0 seconds. Note that Table 3.3-5 includes a 0.9 second allowance for instrumentation propagation delay; thus, the actual table entry is increased from 6.9 to 8.9 seconds.

Basis for proposed no signifcant hazards consideration determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) is a purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

This proposed change would correct an editorial error to make the technical specifications internally consistent. Therefore, we propose to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys of licensee: Charles R. Kocher, Esq., Southern, California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: December 14, 1987 (Reference PCN-224).

Description of amendment request: Proposed Change No NPF-10/15-224 would replace in its entirety, Technical Specification (TS) 3/4.7.1.5, "Main Steam Line Isolation Valves (MSIV's)," with a new Technical Specification 3/4.7.1.5, "Main Steam and Feedwater Isolation Valves." The proposed change would also revise Technical Specification 3/4.7.1.2, "Auxiliary Feedwater System," to explicitly define operability requirements for the auxiliary feedwater isolation and control valves. Technical Specification 3/4.7.1.5 currently defines operability requirements for MSIV's and actions to be taken when one or both MSIV's are inoperable. The operability requirements for the MSIV's ensure that no more than one steam generator will blow down in the event of a main steam line rupture assuming a single failure. Ensuring that only one steam generator blows down prevents the containment design pressure from being exceeded and limits positive reactivity addition due to cooldown of the reactor coolant system. Equally important in mitigating the consequences of these events are the main feedwater isolation valves and other secondary system valves, such as those associated with the auxiliary feedwater system, which are actuated by a main steam isolation signal (MSIS) and/or a containment isolation actuation signal (CIAS).

Technical Specification 3/4.7.1.2 defines operability requirements for the auxiliary feedwater system to ensure that emergency feedwater would be delivered to the steam generators for events requiring the initiation of emergency feedwater for continued secondary heat removal. TS 3/4.7.1.2 currently does not address the function of certain auxiliary feedwater isolation and control valves to close on an MSIS to prevent feeding the affected steam generator during a postulated steam generator rupture, and thereby limiting containment peak pressure and RCS cooldown.

Response times for the above mentioned valves are included as part of overall engineered features actuation system response times in Table 3.3-5, "Engineered Safety Features (ESF) Response times," of Technical Specification 3/4.3.2, "Engineered Safety Feature Actuation System." However, the TS 3/4.3.2 actions address only instrumentation inoperability and provide no specific actions when actuated components are inoperable. In most cases other technical specifications limiting conditions for operation (LCO's) address actuated components and provide appropriate action statements. This is currently not the case for the above mentioned valves associated with the secondary system, with the exception of the MSIV's.

The proposed change would add LCO's, surveillance requirements to verify operability, and appropriate actions to be taken which are currently not included in technical specifications for these additional valves. Specifically, the proposed change would revise Technical Specification 3/4.7.1.5 to include operability requirements for the main feedwater isolation valves (MFIV), main feedwater backup isolation valves (MFBIV) (consisting of one main feedwater regulating valve block valve and one associated regulator valve bypass valve for each steam generator), steam generator sample isolation valve (SGSIV) and blowdown isolation valve (BIV) along with the main steam isolation valves, which are currently addressed by Technical Specification 3/4.7.1.5.

The TS 3/4.7.1.5 action statement would be revised to define specific actions to be taken to address various aspects of inoperability of these valves and recognize inherent redundancy incorporated in the design of the MSIV's and MFIV's.

Surveillance Requirement 4.7.1.5 currently requires that the MSIV's be verified operable in accordance with the In Service Inspection (ISI) program with closure times as specified. The proposed change would expand the applicability of the surveillance to all of the newly added valves. Response times for the valves are included in Table 3.3-5, "ESFAS Response Times," and will no longer be repeated in TS 3/4.7.1.5. Additionally, the proposed change would require that the closure of the MFIV's and MSIV's will be verified using one of the two independent dump circuits alternately. The proposed surveillance would also require that each valve is actuated to close on its appropriate actuation signal at least once per eighteen months.

Technical Specification 3/4.7.1.2, "Auxiliary Feedwater System," requires that two motor drive and one steam driven auxiliary feedwater pump be operable along with associated flow paths. The proposed change would more explicitly define the flow path requirements and recognize the dual function of some auxiliary feedwater system valves in either isolating or providing a flow path to a steam generator depending on the situation.

The proposed change would ensure the capability to isolate the auxiliary feedwater system on a MSIS test signal to prevent feeding of the affected steam generator during postulate secondary system rupture events and will continue to ensure the capability to provide emergency feedwater to the appropriate steam generator(s) for secondary heat removal during postulated events where a loss of main feedwater is assumed.

The proposed change would revise the TS 3/4.7.1.2 action statements to clarify that the action statement explicitly applies to flow paths as well as auxiliary feedwater pumps.

The proposed change would modify Surveillance Requirement 4.7.1.2.1.b.2 to clarify that only the motor driven AFW pumps start automatically upon receipt of an EFAS test signal. The steam driven turbine pump is routinely tested in accordance with Surveillance Requirement 4.7.1.2.1.a.1 and the inlet valve to this pump is verified to open upon receipt of an EFAS test signal per

Surveillance Requirement 4.7.1.2.1.b.1. A new Surveillance Requirement 4.7.1.2.1.b(3) would be added to demonstrate operability by verifying that each automatic valve in the flow path must be in its isolation postion on a MSIS test signal except HV-8200 and HV-8201. In addition, operability of all of these valves will be required to be demonstrated at least once per 18 months.

The proposed change would also revise the Bases to Technical Specification 3/4.7.1.5 to cover both the MSIV's and the MFIV's instead of just MSIV's. Specifically, the Bases 3/4.7.1.5. would clarify the functions of the MSIV's and the MFIV's in the event of a main steam or feedwater line rupture. The term "actuation signals" would also be added along with main steam and feedwater isolation system value closure times specified by the Surveillance Requirements to achieve consistency with the assumptions used in the accident analysis.

Basis for proposed non significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed change would define the required LCO's and action statements for the main steam and feedwater isolation valves which currently exist only for the MSIV's. The proposed change would also incorporate the required action statements for the auxiliary feedwater isolation and control valves in Technical Specification 3/4.7.1.2. Thus, these changes would more clearly define plant operation to be consistent with the assumptions of the accident analyses, thereby avoiding any potentially unacceptable consequences for design basis steam or feedwater line breaks. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not alter the configuration of the plant or its operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not reduce the effectiveness of the main steam and feedwater isolation valves or the auxiliary feedwater system. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys for licensee: Charles P. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attr: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: December 22, 1987 (Reference PCN-238).

Description of amendment request: the proposed change would revise the applicability of Limiting Conditions for Operation (LCO) and Surveillance Requirements, Technical Specification 3.0.4 and Surveillance Requirements 4.0.3 and 4.0.4, on the basis of Generic Letter 87-09 entitled "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The proposed change would incorporate a provision in Technical Specification 3.0.4 allowing entry into an operational mode or specified condition in accordance with Action requirements when conformance to them would permit continued operation for an unlimited period of time. It would add a provision in Surveillance Requirement 4.0.3 allowing a delay for up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of some applicable Action requirements are less than 24 hours. It would also revise Surveillance Requirement 4.0.4 to include a provison that would not prevent passage through or to Operational Modes as required to comply with Action requirements. The proposed revision to the Bases for all specifications in Sections 3.0 and 4.0 would provide a better justification supporting their applicability. The licensee expects to avoid inconsistent application of exceptions to Specification 3.0.4 affecting twenty-five (25) existing Technical Specifications with the proposed provision of Specification 3.0.4.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (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 changes proposed by this amendment have been reviewed by the staff and documented in Generic Letter 87-09. The change to Technical Specification 3.0.4 would clarify the requirements regarding mode changes when the plant has entered an action statement; it would not change those requirements. The change to Technical Specification 4.0.3 would allow time to complete a missed surveillance test prior to commencing a power reduction. Since the majority of surveillances are completed successfully, This would avoid a potentially unnecessary transient and would therefore reduce the potential for plant upset and challenges to safety systems. The change to Technical Specification 4.0.4 would resolve potential conflicts between Specifications 4.0.3 and 4.0.4 relating to mode changes; it would not change the intent of the specifications in any way. For these reasons, the staff proposes to determine that the requested amendments would not involve a significant hazards consideration.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 84111.

NRC Project Director: George W. Knighton.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: October 2, 1987.

Description of amendment request: The proposed amendment would modify the Corbicula Monitoring Program required by Appendix B of the Perry Nuclear Power Plant license as defined in the licensees' October 2, 1987 letter.

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, (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 Perry Nuclear Power Plant Final Safety Analysis Report (FSAR) Section 9.2.1.4 states that monitoring for possible flow blockage in the Emergency Service Water System resulting from sources such as Asiatic Clams, will be accomplished through a program of lake water sampling, surveillance testing, and maintenance inspections. The licensees have revised the Corbicula Monitoring Program to incorporate new technology in this area. On this basis, the licensees assert that the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The licensees also state that the monitoring program would not create the possibility of a new or different kind of accident from any accident previously evaluated because the purpose of the monitoring program is to detect the presence of Corbicula which, by virtue of the monitoring procedures, does not have the potential to introduce new or different kinds of accidents.

Further, the licensees have stated that the proposed monitoring program represents an improvement over that which exists and therefore, could not result in a reduction in a margin of safety. The staff has reviewed the licensee's determination and concurs that the proposed amendment 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 accident previously evaluated, or involve a significant reduction in a margin of safety.

Therefore, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorneys for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, D.C. 20037.

NRC Project Director: Kenneth E. Perkins.

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: April 1, 1987.

Description of amendment request: The proposed change would modify the North Anna Units 1 and 2 (NA–1&2) Technical Specification (TS) Section ¾.9.10 to be consistent with the Standard TS for Westinghouse Pressurized Water Reactors, NUREG–0452, Revision 3. The change would enhance operating flexibility while in Mode 6 (Refueling) and thereby reduce the time required for refueling operations.

The present NA–1&2 TS 3.9.10 requires that "At least 23 feet of water shall be maintained over the top of the reactor pressure vessel flange." The APPLICABILITY statement for the present NA–1&2 TS 3.9.10 states, "During core alterations while in Mode 6." The proposed change would modify the APPLICABILITY statement to specify "During movement of fuel assemblies or control rods within the reactor pressure vessel while in Mode 6," which is consistent with NUREG–0452, Revision 3.

This change would allow the removal of vessel internal assemblies with less than the specified water level, but would still require 23 feet of water above the vessel flange whenever fuel assemblies or control rods are to be moved. This is consistent with the Standard TS (NUREG–0452, Rev. 3) and the NA–1&2 Accident Analysis.

The bases for the North Anna TS and the Standard Technical Specification state, "The restrictions on minimum water level ensure that sufficient water depth is available to remove 99% of the assumed 10% iodine gap activity released from the rupture of an irradiated fuel assembly. The minimum water depth is consistent with the assumptions of the accident analysis."

The NA–1&2 Updated Final Safety Analysis Report (UFSAR) Accident Analysis lists the "Fuel-Handling Accident Inside Containment" as ". . . a fuel assembly is assumed to drop, underwater, and rupture the cladding of all rods in that bundle." The analysis shows that the postulated release of radioactivity to the environment to be well below 10 CFR Part 100 limits.

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 considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in the plant TS in accordance with the standards of 10 CFR 50.92(c) and has determined that operation of NA–1&2 in accordance with these changes would not:

1. involve a significant increase in the probability of consequences of an accident previously evaluated. This change does not alter the conditions or assumptions of the accident analysis or the basis of the current TS. Fuel handling operations during refueling are unchanged and the refueling water level requirement remains consistent with the accident analysis assumptions in the UFSAR concerning the minimum required water level. Therefore, the probability or consequence of the fuel handling accident are not increased.

2. create the possibility or a new or different kind of accident from any accident previously identified. This change does not alter the conditions or assumptions of the accident analysis or the basis of the current TS. Fuel handling operations during refueling are unchanged and therefore the fuel handling accident evaluated in the UFSAR remains bounding in terms of the type of accidents that may occur and a new and different kind of accident is not created.

3. involve a significant reduction in a margin of safety. This change does not alter the conditions or assumptions of the accident analysis or the bases of the

current TS. Fuel handling operations during refueling are unchanged and the refueling water level requirement remains consistent with the assumptions of the accident analysis. Consequently, the margin to 10 CFR Part 100 dose limits is not reduced.

The NRC staff agrees that the proposed changes to the Technical Specifications meet the criteria specified in 10 CFR Part 50.92(c) and, hence, proposes to determine that they involve no significant hazards considerations.

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: Herbert N. Berkow.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: October 13, 1987.

Description of Amendments request: Technical specifications (TS) Table 15.4.1–1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels," Item 25, "Steam Generator Pressure," identifies the surveillance requirements for the checking, calibrating and testing of steam generator pressure channels. Currently, TS Table 15.4.1–1, Item 25, requires in part;

(1) that all three steam generator pressure channels be checked on a shift basis, except during periods of refueling shutdown if the steam generator vessel temperature is greater than 70°F; and

(2) that a steam generator pressure channel test be performed on a monthly basis, except during periods of refueling shutdown if the steam generator vessel temperature is greater than 70°F.

In its October 13, 1987 letter, the licensee proposed revising these requirements, respectively, to require:

(1) that all three steam generator pressure channels be checked on a shift basis, except during cold shutdown or refueling shutdown, when a check of one pressure channel per steam generator is required when the steam generator could be pressurized, and

(2) that a steam generator pressure charrel test be performed on a monthly basis, except during periods of refueling shutdown; however, the test must be performed prior to startup if it has not been performed during the previous surveillance period.

The proposed TS change only affects channel checks and tests during refueling or cold shutdowns. The proposed TS does not change the current required "at-power" steam generator pressure channel checks or tests.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The net effect of the proposed changes is to modify the surveillance requirements of the steam generator pressure channels when the plant is in cold shutdown or refueling shutdown. The surveillance requirements are unchanged for power operations; therefore, the probability or consequences of an accident previously evaluated are unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The steam generator pressure channels cannot initiate accidents, but are installed to send a safety injection actuation signal in response to low steam generator pressure, which may be a result of abnormal primary-side conditions. The steam generator pressure channels themselves do not cause accidents; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not change the at-power steam generator pressure channel surveillance; therefore, the margin of safety is unchanged.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: January 5, 1988.

Description of amendment request: The proposed amendment would put into effect the following three administrative changes:

1. The Plant Operations Manager would not be required to maintain a Senior Reactor Operator's license.

2. The Security Organization would report to a Security Manager who in turn would report to the Administrative Services Manager.

3. The Reactor Engineering Manager would report to the Assistant Technical Director.

All of these changes would be reflected in the Facility Organization Chart, Figure 6.2.2 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the January 5, 1988, letter states the following:

This proposed change is administrative in nature. It has been evaluated and determined to involve no significant hazards consideration. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

Based on the considerations contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. This

proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agreed with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make no significant hazards consideration determination.

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: R. Wessman, Director.

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 either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or 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.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: February 10, 1988.

Brief description of amendment: The proposed amendment would reduce the required Reactor Coolant System total flow from 396,100 gpm to 387,600 gpm.

Date of publication of individual notice in **Federal Register:** February 17, 1988 (53FR4793).

Expiration date of individual notice: March 18, 1988.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County California

Date of amendment request: December 30, 1987.

Brief description of amendments: The proposed amendments would authorize each facility to possess byproduct and special nuclear materials produced by operation of San Onofre Nuclear Generating Station, Unit 1.

Date of publication of individual notice in **Federal Register:** February 12, 1988 (53 FR 4247).

Expiration date of individual notice: March 14, 1988.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: February 5, 1988.

Description of amendment request: The amendment would add a license condition to allow a plant modification to the steam generator upper lateral support snubbers by reducing the number of snubbers from four to one based or application of "leak-before-break" technology as permitted by revised General Design Criterion 4.

Date of publication of individual notice in **Federal Register:** February 16, 1988 (53 FR 4479).

Expiration date of individual notice: March 17, 1988.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly 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 requested 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 environmetnal 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 Reactor Projects.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529 and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: November 20, 1987.

Brief description of amendments: The amendments revise Table 3.3–6 in Technical Specification 3.3.3.1, "Radiation Monitoring Instrumentation," by changing the detectable range of the main steam line effluent monitors from 10^{-3}-10^{4} per hour to 10^{0}-10^{5} mR per hour.

Date of Issuance: February 26, 1988.

Effective date: February 26, 1988.

Amendment Nos.: 26, 15 and 3.

Facility Operating License Nos. NPF–41, NPF–51 and NPF–74: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1987 (52 FR 49220).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated Friday 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 5, 1987.

Description of amendments: The amendments change the Technical Specification Surveillance Requirement 4.61.2 to allow use of the mass-point method for calculating containment leakage rate.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendments Nos.: 116 and 144.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47776)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: November 23, 1987.

Brief description of amendment: The amendment deletes Surveillance Requirement 4.4.11.1, which requires quarterly testing of the reactor coolant system (RCS) vent path block valves and modifies Surveillance Requirement 4.4.11.2.b to include the testing of the above cited block valves at least once every 18 month interval.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988.

Amendment No.: 4.

Facility Operating License No. NPF–63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47780).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Attorney for the Licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Common Wealth Edison Company, Docket Nos. 50–237, 50–249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of application for amendments: August 26, 1986.

Brief description of amendments: The proposed amendment deletes certain diesel generator testing requirements to eliminate unnecessary and excessive testing. In addition, a one and one-half hour maintenance period is allowed without requiring low pressure core cooling surveillance.

Date of issuance: February 19, 1988.

Effective date: February 19, 1988.

Amendment Nos: 98 and 93.

Provisional Operating License No. DPR–19 and Facility Operating License. No. DPR–25. The amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: March 25, 1987 (52 FR 9562).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

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: October 16, 1987.

Description of amendment requests: The range of Drywell Pressure specified in Technical Specifications Table 3.2–4, for Units 1 and 2, were expanded from "0 to 75 psig" to "-10 inches Hg to 70 psig". Additionally, a typographical error on Table 3.2–4, for Unit 2, was corrected where reference was made to Unit 1 instrumentation rather than Unit 2.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment Nos: 105 and 101.

Facility Operating License Nos. DPR–29 and DPR–30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 4, 1987 (52 FR 42359). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennephin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al.; Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of application for amendment: September 24, 1987 and November 2, 1987 (Millstone Unit 2 only).

Brief description of amendment: The change modifies the Technical Specifications as follows: (1) TS 6.5.3.9.b (TS 6.5.2.9.b for Haddam Neck). "Records" is modified to identify the Nuclear Review Board (NRB) minutes as an acceptable means to forward certain reports to the Senior Vice President, Nuclear Engineering and Operations, (2) a maximum of 12 hours of continuous, planned inoperability for liquid and gaseous effluent monitoring instrumentation is permitted (Millstone Unit 2 only), (3) inoperability of liquid and gaseous effluent monitoring instruments for the purpose of obtaining samples, is permitted (Millstone Unit 2 only), (4) a period of 12 hours within which auxiliary sampling of radioactive gaseous effluent must be initiated if the established minimum number of effluent monitoring channels become inoperable, is established (Millstone Unit 2 only).

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment Nos.: 100, 14, 125, 15.

Facility Operating License Nos. DPR–61, DPR–21, DPR–65 and NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1987 (52 FR 39298) for the September 24, 1987 application and December 16, 1987 (52 FR 47789) for the November 2, 1987 application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06103 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 13, 1987, as supplemented December 11, 1987 and January 15 and 20, 1988.

Brief description of amendments: The amendments modified the Technical Specifications to ensure that plant operation is consistent with the design and safety evaluation conclusions of the Unit 2 cyle 2 reload safety evaluation, and to reflect the addition to the Boron Dilution Mitigation System for Unit 2.

Date of issuance: January 19, 1988.

Effective date: January 19, 1988.

Amendment Nos.: 38 and 30.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49225).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black.

Duke Power Company, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendment: December 4, 1987.

Brief description of amendment: The amendment revised license condition 2.C.(8)(b) to allow an extension of time for resolution of the Safety Parameter Display System issue.

Date of issuance: February 16, 1988.

Effective date: February 16, 1988.

Amendment No.: 32.

Facility Operating License No. NPF-52. Amendment revised the Operating License.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49224).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1988.

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, 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: July 22, 1987, as supplemented May 26, August 31, October 1, October 30, November 19, and December 14, 1987.

Brief description of amendments: The amendments modified the Technical Specifications to accommodate removal of the resistance temperature detector (RTD) bypass manifold systems and the installation of in-line RTDs.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment Nos.: 40 and 33.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45885).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

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 26, 1987, as supplemented October 29, November 16, November 20 and November 25, 1987, December 16, 1987, January 7 and February 1, 1988.

Brief description of amendment: This amendment changes the surveillance requirement for the emergency diesel generator loading to reflect the diesel generator ratings and the present total load they would be expected to carry. The requirement for verifying the auto-connected loads has also been updated to reflect the present loads.

Date of issuance: February 19, 1988.

Effective date: February 19, 1988.

Amendment No.: 104.

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 27, 1987 (52 FR 45413).

The initial notice was published under exigent circumstances allowing the public 15 days to comment and until December 14, 1987 to file a petition for leave to intervene. A correction to the initial notice was published in the **Federal Register** on December 14, 1987 (52 FR 47466) allowing the public until December 28, 1987 to file a petition for leave to intervene.

In response to the staff's request, the licensee's November 25 and December 16, 1987, and January 7 and February 1, 1988 letters provided additional information which did not change the initial determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated December 15, 1987 (52 FR 48357), an Exemption dated December 23, 1987 (52 FR 49537) and in a Safety Evaluation dated February 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: July 13, 1987.

Brief description of amendments: The amendment modified the definition of surveillance frequency in Section 1.II of the Technical Specifications to provide for an 18-month operating cycle instead of the 15 months specified previously.

Date of issuance: February 16, 1988.

Effective date: February 16, 1988.

Amendment No.: 152.

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 13, 1988 (53 FR 827).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: September 22, 1987.

Brief description of amendment: The amendment revised the Technical Specifications related to the sodium

pentaborate solution in the Standby Liquid Control System.

Date of issuance: February 3, 1988.

Effective date: February 3, 1988.

Amendment No.: 90.

Facility Operating License No. NPF-5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1987 (52 FR 44244).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1987 as supplemented November 23, 1987.

Brief description of amendment: The amendment revised the total predicted structural settlement for Settlement Marker Nos. 28 and 34.

Date of issuance: February 11, 1988.

Effective date: February 11, 1988.

Amendment No.: 18.

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1987 (52 FR 34009).

The licensee's November 23, 1987 submittal provided clarifying information on the differential settlement calculations and did not alter the NRC staff's determination of no significant hazards as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: August 31, 1987.

Brief description of amendment: This amendment revises the Duane Arnold Energy Center Technical Specifications to revise the requirement from one year to once per operating cycle for emergency diesel generator inspections. Other changes requested by the August 31, 1987, application are being handled separately.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment No.: 149.

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1987 (52 FR 49228).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE, Cedar Rapids, Iowa 52401.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 27, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by changing the inspection interval for low pressure turbine heavy disc rotors from 40 to 60 months.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment No.: 30.

Facility Operating License No. NPF-38. Amendment revised the Technical Specification.

Date of intitial notice in **Federal Register**: December 16, 1987 (52 FR 47788).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 1, 1987.

Brief description of amendment: The amendment changed the Technical Specifications to (1) revise the Source Range Monitor and Intermediate Range Monitor operability requirements to clarify that negative power supply voltage is required for operability, (2) delete operability and surveillance requirements for certain post-accident monitoring instrumentation during shutdown and refueling conditions, and (3) revise an incorrect statement regarding the main steam line high flow isolation instrumentation setpoint.

Date of issuance: February 11, 1988.

Effective date: The changes related to SRM/IRM power supply become effective 12 months from this date. The remaining changes are effective immediately.

Amendment No.: 115.

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1987 (52 FR 49228).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 20, 1987.

Brief description of amendment: The amendment changes the Technical Specifications to revise the interval for performing the diesel generator periodic inspection from annually to 18 months.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment No.: 116.

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**November 18, 1987 (52 FR 44246).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 22, 1987.

Brief description of amendment: The amendment changed the Technical Specifications to modify the operability requirements for the Rod Sequence Control system and Rod Worth

Minimizer to allow the Banked Position Withdrawal System to be used for rod pattern control between 100% and 50% rod density.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment No.: 117.

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:**ecember 30, 1987 (52 FR 49229).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards considered comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: February 17, 1987 (corrected editorially by letter dated July 27, 1987) and July 31, 1987 (corrected editorially by letter dated September 11, 1987).

Brief description of amendment: Changes to the Radiological Effluent Technical Specifications that correct typographical errors, clarify some statements, delete inapplicable sections, and make these Technical Specifications consistent with those of Nine Mile Point Unit 2.

Date of issuance: February 8, 1988.

Effective date: February 8, 1988.

Amendment No.: 94.

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35799) and September 9, 1987 (52 FR 34015).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, Town of Waterford Connecticut

Date of application for amendment: September 9, 1987 and supplemented September 9, 1987, September 30, 1987, November 10, 1987, November 25, 1987, December 23, 1987, and January 7, 1988.

Brief description of amendment: The amendment revised several Technical Specification Sections as required by the Cycle 2 reload. These changes will allow a positive moderator temperature coefficient (PMTC) at reactor power levels less than 100%. In addition, some changes are required as a result of the replacement of the resistance temperature detector (RTD) bypass system with thermowell-mounted RTDs in the reactor coolant system. The changes are:

A. Technical Specification Changes due to Cycle 2 Reload:

1. *Section 3.1.1.3*—The change would allow a +5 pcm/°F MTC below 70 percent of rated power, ramping down to 0 pcm/°F at 100 percent power.

2. *Section 3.1.2.5, 3.1.2.6 and 3.5.4*—The change will increase the range of acceptable boron concentration in the Refueling Water Storage Tank (RWST) to 2300-2600 ppm from the previous range of 2000-2200 ppm.

3. *Section 3.5.1*—The change will increase the range of acceptable boron concentration in the Accumulators to 2200-2600 ppm from the previous range of 1900-2200 ppm.

4. *Section 3.6.2.3*—The change will increase the range of acceptable sodium hydroxide concentrations in the chemical addition tank (CAT) to 2.41-3.10% from the previous range of 1.35-2.00%. The volume (level) in the CAT is reduced to a range of 18000-19000 from the previous range of 19100-20100 gallons.

5. *Section 3.9.1*—The change will increase the boron concentration in the filled portion of the reactor coolant system (RCS) and refueling canal during Mode 6 to correspond with the new minimum RWST boron concentration.

B. Techical Specification Changes due to the Elimination of the RTD Bypass System.

1. *Table 2.2-1*—The change will revise the values of 'Z' and Sensor Error(s) for the overtemperature delta-T and overpower delta-T trips. In addition, the change will revise the value of 'Z,' the sensor error(s) and the allowable value for the reactor coolant flow-low trip. In the Table notations for Table 2.2-1 changes are proposed to note #1 to specify how delta-T is to be measured, and to change the lead-lag compensator time constant tau-1. Notes #2 and #4 are to be revised to change the amount by which a channel maximum trip setpoint may exceed its computed trip setpoint.

2. *Sections 3.2.3.1 and 3.2.3.2*—The change will revise the minimum RCS flow rates for both four and three-loop operations. The uncertainty values for flow measurement specified in Sections 3.2.3.1 and 3.2.3.2 are also to be changed.

3. *Table 3.2-1*—The change will revise the values specified for RCS Tave and Pressurizer Pressure which are the limits assumed in the safety analysis.

4. *Table 3.2-2*—The change will revise the response time for the overtemperature delta-T and overpower delta-T trip functions.

5. *Table 4.3-1*—The change will delete the reference to footnote #12 in Table 4.3-1, since it is no longer relevant once the RDT bypass system is removed.

6. *Table 3.3-4*—The change will revise the allowable values for functional Unit 5.d.1 and 5.d.2, "Tave low coincident with reactor trip (P-4)" and Functional Unit 9.b, "ESFAS Interlocks—Low Low Tave (P-12)."

7. *Table 3.3-5*—The change will revise the response time for feedwater isolation on Tave low coincident with reactor trip (P-4).

C. Other Technical Specification Changes:

1. Section 3.4.1.6—The existing specification would require that the boron centration of an isolated loop be greater than 2300 ppm prior to bringing it back into service if necessary to match the boron concentrations of the operating loops. The change will require a boron concentration of at most 2300 ppm.

Date of issuance: January 20, 1988.

Effective date: January 20, 1988.

Amendment No.: 12.

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 4, 1987 (52 FR 42367).

The November 10 and 25, 1987, and December 23, 1987 and January 7, 1988 submittals provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: December 4, 1987.

Brief description of amendment: The amendment revised the Technical Specification Section 3/4.3.2 to delete the chlorine detection system.

Date of issuance: February 16, 1988.

Effective date: February 16, 1988.

Amendment No.: 14.

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 13, 1988 (53 FR 830).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1988.

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, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 6, 1981 as supplemented on April 2, 1984, December 2, 1985, October 29, 1986 and July 7, 1987.

Brief description of amendment: The amendments changed the methods of verifying containment drywell-suppression chamber vacuum breaker closure and made several administrative changes to correct errors, to establish consistency and for editorial clarity.

Date of issuance: February 18, 1988.

Effective date: With 60 days of its date of issuance to accommodate the writing and approval of implementing procedures.

Amendment Nos.: 127 and 130.

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 (49 FR 25369) and January 29, 1986 (51 FR 3716).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 24, 1986, as supplemented on January 22, 1988.

Brief description of amendments: These amendments changed the range specified for the drywell temperature indicator and recorder, provided clarifications for Technical Specification Table 3.2.F and corrected an error in Table 3.2.F.

Date of issuance: February 22, 1988.

Effective date: On completion of modifications to each device and prior to initiation of fuel cycle nine for Unit 2 and fuel cycle eight for Unit 3.

Amendment Nos.: 128 and 131.

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4416).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Power Authority of the State of New York, Docket No. 50-333, James A. Fitzpatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 15, 1986.

Brief description of amendment: The amendment would add to the Technical Specifications a requirement that a capacity test for the main control room emergency ventilation air supply system be performed every 18 months.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment No.: 114.

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** June 18, 1986 (52 FR 2224).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College Of Oswego, Oswego, New York.

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 27, 1987, as supplemented by letter dated January 11, 1988.

Brief Description of amendment: This amendment changes the requirements of the Technical Specifications related to steam generator tube plugging at 15 percent level.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment No.: 25.

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45889).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NRC Project Director: Richard H. Wessman, Director.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: May 14, 1987, as supplemented September 25 and October 29, 1987.

Brief description of amendment: The amendment revised the Technical Specifications to reflect hardware modifications associated with reactor building combustible gas control. The hydrogen purge system was replaced with an inconsistent hydrogen recombiner system.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988.

Amendment No.: 95.

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32210).

The September 25 and October 29, 1987 submittals do not change the substance of the amendment as previously noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: September 16, 1987, as supplemented November 2, and 25, 1987.

Brief description of amendment: The amendment revised Section 6 (and related pages of the Table of Contents) of the Technical Specifications to reflect

changes in the plant management and organization.

Date of issuance: February 19, 1988.

Effective date: February 19, 1988.

Amendment No.: 96.

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47792).

The November 25, 1987 submittal consists of changes to the nuclear security reporting requirements. The submittal does not change the substance of the amendment as previously noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 4, 1987 (TS 233).

Brief description of amendments: The amendments impose a limit on reactor operation when nitrogen is not being used to supply the pneumatic control system inside containment. The amendment request is in response to Generic Letter 84-09, Hydrogen Recombiner Capability. The amendments also delete an obsolete reference to the fire-related startup retesting program.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988, and shall be implemented within 60 days.

Amendments Nos.: 142, 138, 113.

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1987 (52 FR 49232).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: February 11, 1987 (TS 227).

Brief description of amendments: The proposed amendment would revise the limiting conditions for operation for the Standby Gas Treatment System, the Control Room Ventilation System and the Primary Containment Purge System. In each case, the modification was to replace ANSI N510-1975, which was referred to for radioactive methyl iodine removal effectiveness test of the charcoal filter sample with ASTM D3803. ASTM D3803-79 is referred to in ANSI N510-1908 as the proper test to use for measuring methyl iodine removal effectiveness.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988, and shall be implemented within 60 days.

Amendments Nos.: 143, 139, 114.

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1987 (52 FR 11372).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: August 28, 1985, as supplemented April 7, 1986 (TS 212).

Brief description of amendments: The amendments revise functional test frequencies listed in Table 4.2.B. The changes replace functional test frequencies for core spray logic, RCIC (Initiating and Isolation) logic, HPCI (Initiating and Isolation) logic, ADS logic, LPCI (Initiating and Isolation) logic, containment spray logic, core spray auto initiation inhibit, and HPCI auto initiation inhibit from once per 6 months to once per 18 months.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988, and shall be implemented within 60 days.

Amendment Nos.: 144, 140, 115.

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 6, 1985 (50 FR 46218); July 2, 1986 (51 FR 24263).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 16, 1987 (TS 87-37).

Brief description of amendments: The amendments add requirements for the long-term containment cooling system lower compartment containment coolers to the Sequoyah Units 1 and 2 Technical Specifications.

Date of issuance: February 11, 1988.

Effective date: February 11, 1988.

Amendment Nos.: 67, 59.

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1987 (52 FR 47795).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 11, 1988 (87-47).

Brief description of amendments: The amendments modify the Technical Specification surveillance requirement for the maximum allowable percentage of fresh air intake upon actuation of the control room emergency ventilation system. The proposed amendments were noticed in the Federal Register on Friday, January 15, 1988 (53 F.R. 1082). In this notice, the staff stated that the licensee requested that the amendment be acted on an emergency basis because it could potentially impact the heatup of Unit 2. The staff stated in the notice that there was sufficient justification for consideration of these amendments on an exigent basis in accordance with 10

CFR Part 50.91. Since the notice was published in the Federal Register, it has been determined that the proposed amendments would not impact the heatup of Unit 2 and, therefore, issuance of the amendments on the exigent basis was not justified. These amendments were not issued on an exigent or an emergency basis.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment Nos.: 68, 60.

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1988 (53 F.R. 1082).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 11, 1987.

Brief description of amendment: The amendment increased the maximum isolation time for the containment mini-purge isolation valves, given in Technical Specification Table 3.6-1, from 3 seconds to 5 seconds.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988.

Amendment No.: 33.

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47795).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 10, 1987.

Brief description of amendment: the amendment revised Technical Specification Table 4.3-1 surveillance requirements and included the addition of functional testing requirements for the reactor trip bypass breakers prior to placing them in service during monthly reactor trip breaker testing and during refueling outages.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment No.: 34.

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45890).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of applications for amendments: October 31, 1985, as superseded September 25, 1986 and May 22, 1987; the application dated April 12, 1985, as revised September 9, 1985 and October 7, 1985, and superseded by September 25, 1986, and May 22, 1987 and as supplemented October 23, 1987.

Brief description of amendments: The amendments changed Section 3.7, "Instrumentation System," and Section 4.1, "Operational Safety Review," of the Technical Specifications (TS) for Surry Units 1 and 2, to bring the TS into closer agreement with the Westinghouse Standard Technical Specifications, as well as to conform with the guidance provided by the staff.

Date of issuance: February 17, 1988.

Effective date: February 17, 1988.

Amendment Nos. 117 and 117.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35810).

The October 23, 1987 submittal contained clarified action statements and did not change the substance of the amendment request.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1988.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 2, 1987, as supplemented April 17 and October 30, 1987 and January 8, 1988.

Brief description of amendment: The amendment revised the License and Technical Specifications in order to remove certain fire protection requirements from the Technical Specifications and place them in plant procedures under the control of the plant's on-site review committee, and place them in the Final Safety Analysis Report.

Date of issuance: February 24, 1988.

Effective date: Upon issuance and shall be implemented upon the licensee's completion of the necessary procedural changes.

Amendment No.: 15.

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9583).

The April 17 and October 30, 1987 and January 8, 1988 submittals provided additional clarify information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka Kansas.

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 biweekly 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 a 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 operating 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 opporutnity 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 standard's of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, 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 Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 8, 1988, 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-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: January 6, 1988.

Brief description of amendment: This amendment modifies the Maine Yankee Technical Specifications to update figures 5.2-1 and 5.2-2 in Technical Specifications 5.2-1 "Organization" depicting the Maine Yankee Atomic Power Company offsite and facility organization.

Date of issuance: February 17, 1988.

Effective date: Immediately.

Amendment No.: 103.

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Public comments received regarding to proposed no significant hazards consideration: Yes. A Legal Notice requesting public comments by February 16, 1988 was published in the Portland Press Herald, Portland, Maine on February 13, 1988.

Comments received: No.

The Commission's related evaluation of the amendment and final no significant hazards consideration are contained in a Safety Evaluation, dated February 17, 1988.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

Local Public Document Room Location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

NRC Project Director: Richard H. Wessman, Acting Director.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, New London County, Connecticut

Date of application for amendment: February 9, 1988.

Brief description of amendment: The amendment revised the Technical Specification 4.7.6.13.e.3, which requires periodic verification of control room air inleakage and deletes the requirement that such leakage be measured at a pressure differential of 1/16" water guage.

Date of issuance: February 12, 1988.

Effective date: February 12, 1988.

Amendment No.: 125.

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 12, 1988.

Local Public Document Room Location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Washington Public Power Supply System, Docket No. 50-297, Washington Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 18, 1988, as revised February 19, 22, and 23, 1988.

Brief description of amendment: The amendment revised Technical Specification 3.9.7, "Crane Travel-Spent Fuel Storage Pool," by waiving the weight limits in order to repair damage to the reactor building roof which occurred on February 14, 1988.

Date of issuance: February 23, 1988.

Effective date: February 23, 1988.

Amendment No.: 50.

Facilities Operating License No. NPF-21.: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 23, 1988.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventh Street NW., Washington, DC 20036.

Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington, 99352.

NRC Project Director: George W. Knighton.

Dated at Rockville, Maryland, this 3rd day of March, 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-4984 Filed 3-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440 and 50-441]

Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that, by a Petition pursuant to 10 CFR 2.206 dated January 22, 1988, Ohio Citizens for Responsible Energy, Inc. (Petitioner) requested a variety of relief including that the construction permit and operating license for the Perry Nuclear Power Plant, Units 1 and 2 of the Cleveland Electric Illuminating Company, et al. (licensees) be immediately suspended for alleged deficiencies in seismic design. The Petition's allegations are based largely upon an analysis of data and evaluations which had been performed in response to the January 31, 1986 earthquake which occurred near the Perry facility.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations, and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the local Public Document Room for the Perry facility located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 2nd day of March 1988.

[FR Doc. 88-5130 Filed 3-8-88; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Public Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting at the San Francisco Department of Public Health located at 101 Grove Street, Room 300, San Francisco, CA, from 9:00 a.m. to 5:30 p.m. on Thursday, March 24, and from 9:00 a.m. to 1:00 p.m. on Friday, March 25.

During this two-day hearing, the Commission will hear testimony from individuals representing States, cities, corporations and community-based organizations that have responded to the AIDS epidemic.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655-15th street NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director.

[FR Doc. 88-5120 Filed 3-8-88; 8:45 am]

BILLING CODE 4160-15-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 3, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

New America High Income
Common Stock, $.01 Par Value (File No. 7-3005)

Owens & Minor Inc.
Common Stock, $2.00 Par Value (File No. 7-3006)

Symbol Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7-3007)

Crystal Oil Company
Common Stock, $.01 Par Value (File No. 7-3009)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1988, 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. 88-5183 Filed 3-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25415; File No. SR-OCC-87-20]

Self-Regulatory Organization; Proposed Rule Change By The Options Clearing Corp. Relating to Investment in a Wholly-Owned Subsidiary

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1987, The Options Clearing Corporation 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 Options Clearing Corporation ("OCC") proposes to invest its funds in a wholly-owned subsidiary to provide data-processing and other support services to clearing houses or banking entities organized to process, clear and settle transactions in foreign and United States currencies.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of this proposed change is to permit The Options Clearing Corporation ("OCC") to invest excess funds in a wholly-owned subsidiary, currently named International Clearing Systems, Inc. ("ICSI"). Initially, ICSI will contract with consultants and system designers to develop data processing and communications systems adequate to process trade data, settlement data and related clearing information respecting foreign currency forward and spot exchange contracts among financial institutions. Once the systems are developed, ICSI intends to establish long-term contracts with foreign exchange clearing houses to process data and provide related support services respecting foreign currency exchange transactions and resulting collateral and settlement obligations.[1]

ICSI will provide ministerial support services—services in the nature of facilities management—only. It will play no discretionary role in policy formulation or governance decisions with or for any foreign exchange clearing house. In addition, to preserve its legal independence, ICSI will maintain all its books, records and funds separate from the records and funds of

[1] A number of industry initiatives are under development both in the United States and abroad to create trade-match, trade netting and currency exchange settlement services. In connection with OCC's investment in ICSI, OCC is exploring alternative approaches to developing a series of foreign exchange clearing houses in which OCC may have ownership interests. OCC's preferred approach involves working with banks and bank regulatory authorities to establish foreign exchange clearing houses organized both in the United States and abroad, each of which would provide trade-matching, multilateral obligations netting, and settlement services to entities engaged in foreign currency exchange trading.

any contracting clearing house and OCC.

ICSI anticipates that its data processing and other required support services will provide benefits to foreign currency exchange markets and market participants by extending OCC's demonstrated expertise in clearance and settlement systems to the development of needed support services in markets not currently served by OCC. In particular, ICSI's development of new data processing and communication techniques will reduce unnecessary costs entailed in foreign currency exchange trade processing, and will extend efficient, effective and safe clearance methods to inter-bank foreign currency exchange operations. Moreover, given the multi-national elements of inter-bank foreign currency exchange activities, OCC anticipates that centralized servicing by ICSI will promote safety and efficiency in foreign currency exchange markets and banking markets generally, in harmony with the standards developed by the Securities and Exchange Commission and registered securities clearing agencies under section 17A of the Securities Exchange Act of 1934 ("the Act"). Accordingly, OCC believes that its investment in ICSI pursuant to this proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competion

OCC does not believe that the proposed rule change would impose any burden on competion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members Participants or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change and none was 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 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 above-mentioned self-regulatory organization. All submissions should refer to SR-OCC-87-20 and should be submitted by March 30, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 2, 1988.

Jonathan G. Katz

Secretary.

[FR Doc. 88-5133 Filed 3-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25416; File No. SR-Phlx-88-3]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Amendments to the Exchange's Margin Rule, Rule 722

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 January 28, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx, pursuant to Rule 19b-4, hereby proposes a rule change to revise its margin rule, Rule 722, to conform to Regulation T of the Board of Governors of the Federal Reserve System and to coordinate with the recently approved New York Stock Exchange ("NYSE") margin rule, NYSE Rule 431. A summary of the major changes to the rule is included in part IIA below.

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 purpose of the proposed rule change is to make a comprehensive revision to the Exchange's margin rule, Rule 722 so that it better reflects the credit/risk concerns of the marketplace. Also the revisions are designed to conform the rule to Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T"). In light of the recent revision by the New York Stock Exchange of its margin requirements, the PHLX determined to update its own margin rules in a coordinated fashion. Specifically, the changes to the PHLX rule generally track those recently approved by the Commission with regard to NYSE Rule 431 (Release No. 34-22875).

The major changes to the rule are the following:

(a.) *U.S. Government Securities* [Section (b)2a]—Currently the maintenance margin required is 5% of the principal amount of the obligation. The proposed amendment would replace that requirement with a sliding scale of 1% to 6% of the current market value of the obligation based on maturity date. This new rule will set margin on the basis of length of time to maturity. The proposed change would lower margin requirements for shorter term U.S. Government securities while increasing

the requirements for longer term U.S. Government Securities. This new scale recognizes that risk diminishes as securities near maturity and that securities with longer terms have greater risk.

Additionally, zero coupon bonds with 5 years or more to maturity would have a minimum requirement of 3% of the principal amount.

(b.) *Municipal Securities* [Section (b)2b]—The minimum margin required is currently the lower of 25% of the market value or 15% of the principal amount. The amendment would change the requirement to the greater of 15% of the current market value or 7% of the principal amount. Margin requirements generally would be unchanged for municipal securities purchased at par, but lower for those purchased below par and higher for those purchased above par. This change will recognize the greater risks associated with higher priced municipal securities which are most reactive to current market conditions.

(c.) *Non-Convertible Corporate Debt Securities* [Section (b)2c]—The amendment would reduce the requirements for non-convertible corporate debt securities eligible for "good faith" margin under Regulation T from 25% of market value to the greater of 7% of the principal amount or 20% of the current market value. This new minimum margin requirement will ensure margin sufficiency and also prevent over-speculation in lower priced non-convertible corporate debt securities.

(d.) **Guaranteed accounts** [Section (c)4]—A capital charge will now be imposed when one or more accounts is guaranteed by another account and the margin deficiencies guaranteed are in excess of 10% of a member organization's excess net capital.

(e.) **Maintenance Margin Time Period** [Section (c)6]—The time period in which the amount of maintenance margin must be obtained has been changed from "within a reasonable time" to within 15 business days of the date of deficiency. This new finite time period should eliminate any uncertainty over what length of time is reasonable.

(f.) **Definitions** [Section (d)]—The language of the rule has generally been revised to read more concisely with specific terms defined at the end of the rule rather than within the text itself.

(g.) Finally, the rule has been reworded where appropriate to conform to the current Regulation T (*See e.g.*, Section (c)7).

Because most of the significant changes relate to margin on debt securities, the amendments do not strongly impact products traded on the PHLX. The change should, therefore, not impose any significant effect on members at this time. Nevertheless, the Exchange will allow lead time after approval by the Commission to allow the members to adapt their practices to the new rules. Voluntary compliance will be permitted 3 months after Commission approval of the rule change and compliance will be mandatory 6 months after such approval.

The proposed rule change is consistent with the requirements of section 6(b)(5) of the Act in that it is designed to protect investors and the public interest by ensuring that the Exchange's margin requirements adequately reflect current regulatory and credit/risk concerns. In addition, the change is consistent with Section 7(a) of the Act and the rules and regulations of the Board of Governors of the Federal Reserve System enacted pursuant to that provision, in that it is designed for the purpose of preventing the excessive use of credit for the purchase or carrying of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on this proposed rule change will be 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 PHLX 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

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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 30, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 3, 1988.

[FR Doc. 88-5134 Filed 3-8-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

SBA Form 1086; Secondary Participation Guaranty and Certification Agreement

AGENCY: Small Business Administration.

ACTION: Request for public comments.

SUMMARY: The Small Business Administration is publishing a proposed revision of SBA Form 1086, Secondary Participation Guaranty and Certification Agreement. The public is asked to provide comments and make suggestions on this proposed change.

DATE: Comments should be received by April 8, 1988. Send comments to: Associate Administrator for Finance and Investment, Small Business Administration, Room 800, 1441 L Street NW., Washington, DC 20416.

FOR ADDITIONAL INFORMATION CONTACT: James W. Hammersley (202-653-5954) or Allan S. Mandel (202-653-6696), Room 800, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The Small Business Administration has prepared a proposed revision of the document used to execute a sale of the guaranteed interest portion of a 7(a) loan into the secondary market. The revision reflects proposed changes based on the experience SBA has gathered in administering the secondary market since the President signed into law the Small Business Secondary

Market Improvements Act in 1984 (Pub. L. 98–352; 98 Stat. 329). It incorporates several changes that have been suggested by lenders, investors and broker/dealers.

The major changes are these:

1. A servicing fee of no less than 2.0 percent per annum will be required on any guaranteed interest sold at a price greater than par (paragraph 6(e)). Federal Reserve Board data show the average servicing cost of commercial loans to be about two percent of loan volume, depending upon the size of the bank (*Functional Cost Analysis: 1986 Average Banks*, page 40). In fiscal year 1987 the average servicing fee retained by lenders on Guaranteed Interests sold into the SBA secondary market was 1.2 percent. Twenty-eight percent of the loans carried a servicing fee of 0.5 percent or less. SBA and the bank regulatory agencies are concerned about the substitution of up-front premium income for on-going servicing fee income that continues over the life of a loan. SBA believes the secondary market should be structured so that lenders have both the income and the incentive to service loans properly and keep them on their books. Many lenders are already selling their guranteed interests with sufficient servicing fees and as such will be unaffected by this change.

2. The secondary market is a closely connected system that functions best if the interests of each of the major participants—the small business borrower, the lender, the broker/dealer and the investor—are properly balanced. In order to provide a better balance, a new authority for emergency repurchase by the lender is being proposed (paragraph 20). SBA is confronted with the need to establish a policy for the situation in which a borrower's business will probably fail unless a modification, such as a rate reduction, is granted. Every year a few such cases arise in which the lender is willing to grant a rate reduction or other modification but cannot do so because either the investor is not willing or the loan is in a pool, in which case it is infeasible to request investor approval because of multiple investors. SBA proposes to permit a lender to repurchase if the SBA field office, after careful analysis, concludes that an emergency exists in which the borrower's business will probably fail if the change is not approved and will probably survive if the change is approved. SBA intends that this authority be used only in carefully selected, applicable cases. This is not to be construed as general or wholesale authority for unilateral repurchase by lenders. Such an interpretation would be extremely damaging to the secondary market.

3. Timely action is essential to an efficient secondary market. SBA is providing a more precise definition of the time parameters of secondary market operations, particularly with regard to such time-sensitive activities as remittance by lender of borrower payment, the furnishing by lender of transcripts on loans that are in default and must be purchased, and the required advance notice from Lender to the fiscal and transfer agent (FTA) of Borrower's intent to prepay (paragraphs 6, 10, 11, 12, 13, 15, 16 and 19). Payment and remittance information (SBA Form 1502) shall be due at the FTA on the third of every month.. SBA shall levy a late payment penalty of 5% of the amount remitted or $100, whichever is greater, (subject to a maximum of $5,000) on any payment and remittance not received by the fiscal and transfer agent by the fifth of the month. Lender's or FTA's failure to comply with a request for transcript within ten business days shall result in a $100 penalty payable to the SBA. Lender's failure to provide to FTA the required ten days advance notice of Borrower's intent to prepay will result in a $100 penalty.

The vast majority of Lenders already act in a timely manner and will be unaffected by this proposal.

4. If the Borrower fails to make the first three payments due after the loan is sold into the secondary market, SBA proposes that the Lender be required to repurchase from the Registered Holder the Guaranteed Interest at a price equal to the sum of the outstanding balance, accrued interest and premium, if any, received by the Lender (paragraph 3). The Lender has always been required to certify that it has no knowledge of any likely default or prepayment by Borrower. However, some cases have occurred in which the loan defaults or prepays immediately upon sale. SBA is proposing this change in order to provide increased investor protection in such cases.

5. SBA is proposing to modify its procedures in order to encourage more timely action by SBA and Lender when a borrower encounters problems that threaten the repayment of the loan (paragraphs 10 and 11). The goal is to encourage proper servicing action as soon as possible. The FTA will provide to each SBA field office a monthly list of its loans that appear to be in default. The field office will contact the Lender to determine the status of the loan. The Lender will verify whether (1) the interest-paid-to date is more than sixty days in arrears or (2) default by borrower has continued uncured for more than 60 days in making payment, when due, of any installment of principal or interest due on the note. If the loan is in either category, SBA, after consultation with the Lender, will within ten days determine whether SBA or the Lender is to purchase the Guaranteed Interest or decide upon appropriate remedial servicing action. Such servicing action may include one three month deferment of payments without obtaining prior permission from the Registered Holder, as is currently authorized. The Lender would continue to be responsible for notifying the FTA and SBA of any deferment.

James Abdnor,

Administrator.

OMB No.

Expiration Date:

SBA LOAN NUMBER_____

Secondary Participation Guaranty and Certification Agreement

Important Information

This form is to be used for the initial transfer only. All subsequent transfers must use the reverse of the certificate or detached assignment form. Loans sold using SBA form 1084 must be certificated prior to resale: Use SBA Form 1085.

A. *Lender Certifications.* By signing this document, *LENDER CERTIFIES*, among other items, that (see paragraph 3 of the Terms and Conditions herein):

(1) Lender, including its officers, directors, and employees, has no knowledge of a default by the Borrower and has no knowledge or information that would indicate the likehood of default. (2) Lender has paid the SBA guaranty fee. (3) The loan is fully disbursed. (4) Lender acknowledges that it has no authority to unilaterally repurchase the Guaranteed Interest from Registered Holder without written permission from the SBA.

B. *Borrower Payments. Lender shall send to the FTA the FTA share of all Borrower payments received after settlement of the loan sale. DO NOT SEND ANY PAYMENTS DIRECTLY TO THE INVESTOR OR THE BROKER/DEALER.* Retain a copy of this form. The wire transfer receipt from settlement through the FTA will be Lender's notification that the sale is complete. Lender will not receive a return copy of this form.

C. *Lender Payment and Late Payment Penalty.* Lender payment and remittance information (SBA Form 1502) shall be due at the FTA on the third of every month or the next business day

thereafter if the third is not a business day. SBA shall levy a late payment penalty of 5% of the amount remitted or $100, whichever is greater, (subject to a maximum of $5,000) on any payment and lender remittance statement (Form 1502) not received in the offices of the FTA by the fifth of the month or next business day thereater if the fifth is not a business day. This penalty will be paid through the FTA along with the late penalty identified in paragraph 6(c) due to the FTA (see paragraph 6 for specific details.)

D. *Payment Modification.* Lender may approve one deferral of payment for up to three monthly payments without obtaining prior permission from the Registered Holder. Lender shall immediately notify the FTA and SBA. Any other payment modification must receive prior approval by the Registered Holder. Requests for payment modification must be forwarded to the FTA who will forward the proposed modification to the Registered Holder or provide the name of such Registered Holder (at Registered Holder's discretion) to the Lender for direct negotiation (see paragraph 2 of the Terms and Conditions).

E. *Borrower Prepayments.* For loans approved by or on behalf of SBA after February 15, 1985, Lender must give 10 days advance notice to the FTA in order to give the FTA time to request that the Registered Holder return the certificate. On the date of prepayment, Lender will wire funds consisting of principal and accrued interest to the date of the wire plus any penalty or fees to the FTA (see paragraph 15 of the Terms and Conditions).

SBA FORM 1086 ( ) Previous editions are obsolete.

The Small Business Administration, an Agency of the United States Government ("SBA") and the Lender named below ("Lender") entered into a guaranty agreement on SBA Form 750 ("750 Agreement") applicable to a loan ("Loan") made by Lender in participation with SBA to the Borrower ("Borrower") named below evidenced by Borrower's Note and any modifications thereto ("Note") a copy of which is attached hereto and incorporated by reference. Lender is the beneficiary under the 750 Agreement of SBA's guarantee of the specified percentage of the outstanding balance of the Loan ("Guaranteed Interest").

Lender _____
Address _____
Zip _____
Borrower _____
Address _____
Zip _____
Contact Person _____
Telephone Number _____

Lender certifies the following as of the date of lender's signature:

Date of 750 Agreement _____
Percent of SBA's Guarantee _____%
Date of Note _____
Original Face Amount of Note $ _____
SBA Loan Authorization Date _____
(date of SBA form 529B) _____
Outstanding principal amount of Loan $ _____
Outstanding principal amount of Guaranteed Interest $ _____
Guaranteed portion has a ☐ fixed rate or ☐ variable rate (check one)
Unguaranteed portion has a ☐ fixed rate or ☐ variable rate (check one)
Interest is paid to but not including: (Date) _____
Interest is calculated on:
(Check one): _____ 30/360 _____ Actual Days/365 (Other methods prohibited.)

This interest accrual method shall be maintained for the life of the loan.

Price paid for the Guaranteed Interest (Net of accrued interest. Otherwise include all money and other items of value exchanged.)

Part A. Use this part only for split wire settlement—when the FTA is directed to split the funds received from the purchaser between the selling institution and a broker/dealer.

Price paid by purchaser: $_____ of Par_____
Price received by seller: $_____ % of Par_____
Price received by broker: $_____ % of Par_____

Part B. Use this part for all other settlements

Price paid by purchaser: $_____ % of Par_____

Cash flow based upon constant prepayment rate. (Enter both mortgage and bond equivalent yield. For a variable rate loan, the yield should be based upon the current coupon rate and should be entered as a spread against prime. Example: Prime + 1.0% based upon 10% Prime)

Constant Annual Prepayment Rate assumption ____ % per year. (Printed each month in the Pool Factor Table produced by the FTA.)

Mortgage yield:
[Fixed rate loans] _____ %
[Var. rate loans] Prime (+/−:_____) _____ % based upon _____ % prime

Bond equivalent yield:
[Fixed rate loans] _____ %
[Var. rate loans] Prime (+/−:_____) _____ % based upon _____ % prime

Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall be:_____ % per annum, and shall remain at this rate for the life of the Loan. *See examples of principal, interest and service fee calculations attached to this document.*

Lender hereby assigns the guaranteed interest to purchaser/Registered Holder as follows:

Name _____
Address _____
Zip _____
Contact Person _____
Telephone Number _____

Registered Holder's Tax Identification Number_____

If a tax identification number is not provided, interest earned will be subject to withholding.

Registered Holder requests SBA to issue through the Fiscal and Transfer Agent (FTA) a Guaranteed Interest Certificate ("Certificate") evidencing ownership of the Guaranteed Interest in the name of Registered Holder (such person or entity, or any subsequent transferee, during its respective period of ownership of the Certificate, to be called "Registered Holder"). SBA, Lender and Registered Holder (for itself and each subsequent Registered Holder) agree to the appointment by SBA of FTA to serve as the agent to transfer Certificates and to receive from Lender loan repayments made by Borrower and to transmit such payments to Registered Holder.

A written notification to or demand upon SBA pursuant to this Agreement shall be made through the FTA to:

SBA Servicing Office _____
Address _____
Zip _____

Terms and Conditions

1. *Lender's Sale of Guaranteed Interest.* Lender has sold the Guaranteed Interest and acknowledges that it has received value for the Guaranteed Interest. Lender has given notice and acknowledgment of the transfer of the Guaranteed Interest by completing the following legend on the Note:

The guaranteed portion of this Note has been transferred to a Registered Holder for value.

Dated:_____
_____ (Lender)_____

Lender has delivered or hereby delivers to the FTA, a photocopy of the Note and any modifications thereto with the legend, and such photocopy shall be incorporated into this Ageement. This legend shall also serve as notification for any future transfer of the Guaranteed Interest.

2. *Loan Servicing.* Lender shall remain obligated under the terms and conditions of the 750 Agreement, and shall continue to service the Loan in the manner set forth in the 750 Agreement.

Modifications in the 750 Agreement or to the Note not affecting repayment terms of the Note may be effected by Lender or SBA without the consent of Registered Holder (for itself and each subsequent Registered Holder). To aid the orderly repayment of Borrower's indebtedness, Lender, at the request of the Borrower, may grant one deferment of Borrower's scheduled payments for a continuous period not to exceed three (3) months of past or future installments. Lender shall immediately notify FTA and the relevant SBA field office in writing of any deferment approval, the GP number, the borrower's name, the term of such deferment, the date Borrower is to resume repayment of its obligation, and reconfirmation of the basis of the interest calculation (e.g. 30/360, etc.). Interest is not waived, but deferred. The first interest installment made by the borrower shall pay accrued interest from the date interest stopped accruing (paid-to date) before deferment was granted. Registered Holder may not demand repurchase of the Guaranteed Interest during the deferment period, or before borrower's failure to pay the first scheduled installment following the deferment period. Lender shall not authorize any additional deferment or an extension of Loan maturity without the prior written consent of the Registered Holder. No change in the terms and conditions of repayment of the Note other than the deferment authorized in this paragraph shall be made by Lender or SBA without the prior written consent of Registered Holder.

3. *Representations and Acknowledgment of Lender.* Lender hereby certifies that the Loan has been made and fully disbursed and that the full amount of the guaranty fee has been paid to SBA. The outstanding principal amount of the Guarenteed Interest and date to which interest is paid as certified by Lender are accepted by SBA and have been warranted by SBA to the Registered Holder as of the SBA Warranty Date (date this Agreement is executed and settled by the FTA); provided, however, that Lender shall be liable to SBA for any damage to SBA resulting from any error in the certified principal amount, percentage of the Guaranteed Interest, or date to which interest is paid. Lender represents that as of the Warranty Date neither it nor any of its directors, officers, employees, or agents has or should have, through the exercise of reasonable diligence, any acutal or constructive knowledge of any default by Borrower or has any information indicating the likelihood of a default by Borrower or the likelihood of prepayment of the Loan (by refinancing or otherwise). If the borrower fails to make the first three payments in full due after the Warranty Date, the Registered Holder may make written demand of Lender through the FTA that Lender purchase the Guaranteed Interest from the Registered Holder at a price equal to the outstanding balance plus accrued interest plus the premium, if any, received by the Lender. Lender agrees to honor this demand. In the event Lender does not purchase pursuant to such request, SBA shall purchase the Guaranteed Interest, without being liable, however, for any premium. Lender's failure to so purchase may, as determined by SBA, constitute a significant violation of the Rules and Regulations of the Secondary Market. If Borrower subsequently makes installment payments in full for a period of six consecutive months, Lender may re-sell the Guaranteed Interest it has so re-purchased. Lender hereby acknowledges that it has no authority pursuant to this Agreement to unilaterally repurchase the Guaranteed Interest from Registered Holder without written permission from the SBA.

4. *Obligations and Representations of Registered Holder.* Pursuant to this Agreement, SBA shall purchase the Guaranteed Interest from Registered Holder regardless of whether SBA has any knowledge of possible negligence, fraud or misrepresentation by the Lender or Borrower, provided neither Registered Holder nor any person or entity having the beneficial interest in the Guaranteed Interest participated in, or at the time it purchased the Guaranteed Interest had knowledge of, such negligence, fraud or misrepresentation. Subject to the provisions of 18 U.S.C. § 1001 (relating, among other things, to false claims), Registered Holder and any person or entity having the beneficial interest therein hereby warrants that it was not the Borrower, Lender, or an "Associate" of the Lender (as defined in Title 13, Code of Federal Regulations, Part 120), and anyone standing in the same relationship to the Borrower, and had neither participated in nor been aware of any negligence, fraud or misrepresentation by Lender or Borrower with respect to the underlying Note or related Loan documentation. Neither execution hereof by SBA, or purchase by SBA from Registered Holder shall constitute any waiver by SBA of any right of recovery against Lender, Registered Holder or any other person or entity. Registered Holder (for itself and each subsequent Registered Holder) hereby acknowledges that the Loan may be terminated on a date other than its maturity date, in which case the Certificate will be called for redemption at par and will cease to accrue interest as of the date of such termination.

5. *Issuance of Guaranteed Interest Certificates.* SBA, Lender, and Registered Holder (for itself and each subsequent Registered Holder) agree that ownership of the Guaranteed Interest shall be evidenced by a Certificate to be issued by SBA. SBA shall issue such Certificate, either through its own facilities or by designating and authorizing such issuance by FTA.

FTA shall be the custodian of the executed original of this Agreement. The Agreement shall be delivered to FTA immediately after execution by the Lender and the Registered Holder. Each Registered Holder shall receive the Certificate described herein. Upon request therefor and payment of a reproduction fee, a Registered Holder may obtain from FTA a copy of the executed SBA Form 1086 pertaining to the Guaranteed Interest represented by the Certificate.

Upon completion of execution of this Agreement, SBA, through FTA, shall issue to Registered Holder (or, if FTA is timely so notified in writing by Registered Holder, to Registered Holder's assignee) a Certificate evidencing the ownership of the Guaranteed Interest of the Loan. If Registered Holder is not the person or entity having the beneficial interest in the Certificate, Registered Holder hereby represents that it has obtained from the person or entity having the benefiical interst in the Certificate, authorization appointing Registered Holder as the agent of such person or entity with respect to all transactions arising out of the performance of their respective obligations under SBA Form 1086. The Certificate shall identify the Loan and shall state, among other things: (i) the name of the Registered Holder, (ii) the Principal Amount of Guaranteed Interest as of the SBA Warranty Date, (iii) the Certificate Interest Rate, and (iv) the Borrower's Payment Date. Transfer of the Guaranteed Interest by Registered Holder may be effected by the transferee (i) obtaining from the transferor the execution of the assignment form and the sale information requested on the reverse of the Certificate or, alternatively, in a form of detached assignment approved by SBA, (ii) presenting the Certificate and assignment to FTA for registration of transfer and issuance of a new

Certificate to the transferee, (iii) paying to FTA a Certificate issuance fee to be set from time to time by SBA, and (iv) presenting the following information: Certificate number; original principal amount of the Certificate; exact spelling of the name in which the new Certificate is to be issued; complete address and tax identification number of the new Registered Holder; name and telephone number of the person handling the transfer; and complete instruction for the delivery of the new Certificate.

6. *Obligation of Lender.*

(a) FTA must receive from Lender by the third day of every month or the next business day thereafter if the third is not a business day, the FTA's share of all sums which Lender received from Borrower as regularly scheduled payments during the preceding month. By the same date, Lender shall provide the following information on SBA form 1502 (or an exact facsimile format) with respect to each Loan with the Lender has sold and which is registered with the FTA regardless of whether the borrower made a payment in the preceding month:

See Payment Calculation Example Attached to this Document

1. The SBA loan number.
2. The alpha abbreviation for the originating SBA field office.
3. The Note interest rate or rates if the interest rate on a variable rate loan changed during the payment period.
4. The interest amount due the FTA.
5. The principal amount due the FTA.
6. The total amount due the FTA for the particular loan.
7. The time period covered by the interest rate(s) listed in item 3.
8. The number of days in the interest period.
9. The calendar basis (30/60 or actual days/365 only).
10. The closing principal balance for the loan.
11. A grand total figure for items 4, 5, and 6.
12. A late payment penalty (if applicable).

(b) With the exception of borrower prepayments or payoffs (see paragraph 15), payments received other than as regularly scheduled in the previous month, must be remitted to the FTA within two business days of receipt of collected funds and shall include the information described in items 1–12 above.

(c) Lender remittance is due at the office of the FTA by the third of the month following a regularly scheduled payment. If Lender remittance, including complete payment information, is not received by the fifth of the month or the next business day thereafter if the fifth is not a business day, Lender shall pay to SBA a late penalty of the greater of $100.00 or 5% of the payment amount remitted (subject to a $5,000 maximum) plus a penalty to the FTA equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee), plus a late penalty charge calculated at a rate of 12% per annum on the unremitted amount. See example of late payment calculation attached to this document. The total amount, including any penalties, will be paid to the FTA when the late payment is remitted. If these penalties are not included in the remittance, FTA and SBA reserve the right to withhold these penalties from the settlement of any future guaranteed interest sale or payment on any defaulted guarantee loan in the Lender's portfolio. The FTA will forward any penalties due SBA at the end of each month.

(d) Lender agrees to work with the SBA and/or the FTA to reconcile immediately any loan in which the paid to date on the Lender's books differs from the books of the FTA. Lender agrees to provide a transcript within 10 business days of receipt of a request from the SBA or the FTA. Failure to provide a transcript after a request from the FTA shall cause the Lender to be fined $100 by the SBA.

(e) Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall be no less than 2.0 per cent per annum on any Guaranteed Interest sold at a price greater than par.

7. *Obligations of FTA.*

(a) FTA shall have the obligation, with respect to payments received from Lender pursuant to Paragraph 6 above, to remit to Registered Holder any such payment (less applicable fees, and any late payment charges due FTA or SBA if such charge has been collected from Lender) as follows:

(i) Any payment (other than a prepayment of principal) received by FTA before the thirteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder on the fifteenth day of such following month. Any additional interest and late payment charge paid by Lender pursuant to paragraph 6 hereof shall be retained by and shall become the property of FTA.

(ii) Any payment (other than a prepayment of principal) received by FTA on or after the thirteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder within two (2) business days of receipt of immediately available funds by FTA. In such case, any interest received by FTA pursuant to paragraph 6 hereof and allocated to the period after the fifteenth day of such following month shall be remitted to Registered Holder along with any late payment charge received by FTA. The balance of any such additional interest received by FTA shall be retained by and shall become the property of FTA.

(iii) Other amounts received by FTA from Lender which are not prepayments subject to Paragraph 15, may be held by FTA and applied as required herein.

(b) Upon presentation by Registered Holder of the Certificate, amounts received by FTA from Lender or SBA which would constitute a full redemption of the Certificate, or a prepayment subject to Paragraph 15, shall be remitted by FTA to Registered Holder by wire transfer within two (2) business days of receipt of immediately available funds by the FTA in accordance with Registered Holder's instructions. FTA shall retain a final transfer fee equal to a regular transfer fee.

(c) Each remittance by FTA to Registered Holder shall be accompanied by a statement of the amount allocable to interest, the amount allocable to principal, and the remaining principal balance as of the date on which such allocations were calculated.

(d) If FTA fails to make timely remittance to Registered Holder in accordance with the above provisions, FTA shall pay to Registered Holder (i) interest on the unremitted amount at the rate provided in the Note less the rate of Lender's servicing fee and any other applicable fees, plus (ii) a late payment penalty calculated at a rate of 12 percent per annum on the amount of such payment.

(e) FTA agrees to identify monthly to lenders any loan in which the paid to date on its books differs by three days or more from the paid to date on the books of the Lender, provided that this data is submitted to the FTA via SBA form 1502. Such identified differences will be reconciled on a timely basis.

(f) FTA agrees to issue certificates within two business days of settlement or acceptable written notification of transfer.

(g) FTA agrees to acknowledge any investor request for late payment claims within ten days of receipt.

(h) FTA agrees to forward to investor within five business days of receipt any servicing request requiring concurrence of the investor. Furthermore, FTA agrees to forward to Lender within five

business days of receipt any investor response.

8. *Transferability of Guaranteed Interest.* Each Registered Holder maintains under this Agreement the right to assign the Guaranteed Interest. Each Registered Holder of the Guaranteed Interest shall be deemed to have represented that, to the best of its knowledge, it has, and so long as it is a Registered Holder it will have no interest in the Borrower, in the Note, or in the collateral hypothecated to the Loan, other than the Guranteed Interest held under this Agreement, and that it will not service or attempt to service the Loan or secure or attempt to secure additional collateral from Borrower. Registered Holder, without the prior consent of SBA, Lender or FTA, may transfer the ownership of the Guaranteed Interest to a subsequent transferee, (other than Borrower, or Lender, or an "Associate" of the Lender as defined in Title 13, Code of Federal Regulations, Part 120 or anyone standing in the same relationship to the Borrower). The effective date of any such transfer of the Guaranteed Interest shall be the date on which such transfer is registered on the books of FTA. If Lender, FTA or SBA shall have made any payment to, or taken any action with respect to, the transferor Registered Holder prior to the effective date of the transfer of the Guaranteed Interest, such payment or action shall be final and fully effective. Neither SBA, FTA nor Lender shall have any further obligation to the transferee Registered Holder with respect to such payment or action; and any adjustment between the transferor and the transferee resulting from any such payment or action by Lender, SBA or FTA shall be the responsibility and obligation solely of the transferor and the transferee. On payment date, FTA will remit payments to the person or entity which, on the books of FTA, is the Registered Holder as of the close of business on the record date, which is the last day of the prior month. Any other adjustment by and between the transferor and transferee shall be solely their responsibility and obligation. At any given time there shall be only one Registered Holder entitled to the benefits of ownership of the Guaranteed Interest, and each transferor, upon the transfer of the Guaranteed Interest, shall cease to have any right in the Guaranteed Interest or any obligation or commitment under this Agreement, except as to any appropriate adjustment of funds between the transferor and the transferee. FTA shall serve as the central registry of Certificate ownership.

9. *Certificates Lost, Destroyed, Stolen, Mutilated or Defaced.* Procedures for claim on account of loss, theft, destruction, mutilation or defacement of a Certificate are found in Title 13, Code of Federal Regulations, Part 120. The FTA, upon written request, shall provide procedures.

10. *Repurchase by Lender.*

(a) As directed by the SBA, the FTA will provide to each SBA field office a monthly list of its loans that are in default or that are 60 days in arrears according to the records of the FTA. The field office will contact the Lender to determine the status of the loan. If the Lender's records indicate that the interest-paid-to date is more than sixty days in arrears or default by borrower has continued uncured for more than 60 days in making payment, when due, of any installment of principal or interest due on the note, SBA, after consultation with the Lender, will within ten business days determine which entity—SBA or the Lender—is to purchase the Guaranteed Interest or decide upon appropriate remedial servicing action. SBA field offices will transmit the decision in writting to the FTA within five days of the decision. Lender agrees to provide a transcript of account to the SBA or the FTA within 10 business days of the request for the transcript. Lender's failure to comply with a request for transcript shall result in a $100 penalty payable to the SBA. If Lender is to purchase, the FTA and the Lender will reconcile the transcripts. If Lender and FTA cannot agree on the balance and paid-to-date within twenty-five business days from SBA's notification to FTA, the FTA will send the Lender's and the FTA's transcripts to the appropriate SBA field office for reconciliation by SBA. Lender shall immediately (within 5 business days from the date the transcripts are reconciled) provide 10 days advance written notice of the date of purchase to the FTA. Upon such notification, FTA shall within two business days notify the Registered Holder of the pending repurchase and request that the Registered Holder forward the certificate to the FTA. On the purchase date, Lender will (without additional notification from FTA) forward by wire transfer a payment to the FTA which includes the principal balance outstanding plus interest through and including the date of the wire transfer of funds.

(b) Written demand by FTA upon SBA for the purchase of the Guaranteed Interest shall be made not later than one hundred fifty (150) calendar days after the first date of an uncured default by Borrower on any Guaranteed Interest which for any reason was not purchased under Sections 10(a) or 11. If FTA does not make such demand by such 150th day, FTA shall be responsible for the interest beginning on the 151st day and ending 30 days after the appropriate SBA field office receives the purchase documentation. For the purposes of this subparagraph, the written demand shall include a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA.

(c) Upon receipt of the purchase amount from Lender or SBA, FTA shall remit in accordance with paragraph 7 to Registered Holder such amount less applicable fees owed by the Registered Holder to the FTA or SBA on this Guaranteed Interest, and any additional interest or late payment charges due FTA pursuant to Paragraphs 6 or 7 hereof. FTA may also deduct from such amount a final transfer charge for the final transfer and redemption of the Certificate, the amount of such final transfer charge not to exceed the normal transfer charge. Upon repurchase of the Guaranteed Interest by Lender, the rights and obligations of Lender, FTA and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement (as applicable).

11. *Purchase by SBA.* If SBA is to purchase the Guaranteed Interest under the procedure described in paragraph 10(a) hereof, the Lender and the FTA will transmit to SBA a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA within five business days of the request, and SBA will reconcile the transcripts. Lender's or FTA's failure to comply with a request for transcript within ten business days shall result in a $100 penalty payable by the party failing to comply to the SBA. SBA shall within five business days of reconciliation provide at least ten days written notice of the date of purchase to the FTA. Upon such notification, FTA shall within two business days notify the investor of the pending repurchase and request that the Registered Holder foward the certifcate to the FTA. The SBA field office will arrange to have funds wired to the FTA. The FTA shall forward such funds to the Registered Holder within two business days of receipt. The payment of accrued interest to the date of purchase on a fixed rate note shall be at the rate provided in the Note less the Lender's servicing fee. On those loans with a fluctuating interest rate, SBA's payment of accured interest shall be at that rate in effect on the date of the earliest uncured borrower default if the loan is in default or at that rate in effect at the

time of purchase if the loan is not in default, less the Lender's servicing fee. If Lender fails to furnish a current transcript statement as required by paragraph 13(i)-(iii) within ten business days after SBA's request therefor, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible. Under no circumstances shall SBA be liable for any amount attributable to any late payment charges which may be due FTA or Registered Holder. Upon written demand by SBA, Lender shall immediately repay to SBA the amount, if any, by which the amount paid by SBA exceeds the amount of SBA's obligation to Lender under the 750 Agreement, and the amount paid by SBA for any payments by Borrower which were not remitted by Lender to FTA (including accrued interest thereon), plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest from the date of said purchase by SBA to the date of repayment by Lender. Upon purchase of the Guaranteed Interest by SBA, the rights and obligations of Lender and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement, and SBA shall be deemed a transferee of the Guaranteed Interest and the final Registered Holder thereof with all the rights and privileges of such Registered Holder under this Agreement.

12. *Default by Lender.* In the event Lender shall fail for any reason to remit to FTA the pro rata share with respect to the Guaranteed Interest of any payment made by Borrower, pursuant to Paragraph 6 hereof, for a period of seventy-five (75) calendar days or more from the date such payment was due at the FTA, SBA, within thirty (30) business days or as soon thereafter as possible after receipt by SBA of written notice from FTA of Lender's failure to forward payments as provided in Paragraph 6, may purchase (through FTA) the Guaranteed Interest from Registered Holder pursuant to Paragraph 11 hereof, provided however, that under no circumstances shall SBA be liable for any amount attributable to any late payment charge. If SBA purchases from Registered Holder pursuant to this Paragraph, and if Borrower has not been in uncured default on any payment due under the Note for more than sixty (60) calendar days, SBA shall have the option (i) to require Lender to purchase the Guaranteed Interest from SBA for an amount equal to the amount paid by SBA to Registered Holder plus accrued interest (at the interest rate provided in the Note) from the date of the SBA purchase to the date of Lender's repurchase plus a penalty equal to 20% of the amount paid by SBA; or (ii) to require Lender to pay to SBA a penalty equal to 20% of the amount paid by SBA to Registered Holder. If, on the date SBA purchases the Guaranteed Interest from Registered Holder pursuant to this Paragraph, Borrower shall be in uncured default on any payment due on the Note for more than sixty (60)calendar days, then the provisions of Paragraph 11 hereof shall become applicable, including the obligation of Lender to repay to SBA (i) the amounts paid by SBA to Registered Holder in excess of the amount of SBA's obligation to Lender under the 750 Agreement, and (ii) any payments by Borrower which were not remitted by Lender to FTA, plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest plus the 20% penalty described above. If Lender fails to furnish a current transcript statement as required by Paragraph 13(i)–(iii) within ten business days after SBA's request therefor, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment and settlement will be made as expeditiously as possible.

13. *Other Obligations of Lender.* Lender hereby consents to the purchase of the Guaranteed Interest by SBA in accordance with Paragraphs 11 and 12 hereof, and shall, within ten business days of a request therefor and without charge, furnish to SBA and to FTA (i) a transcript of account, (ii) a current certified statement of the unpaid principal and interest then owed by Borrower on the Note, and (iii) a statement covering any payments by Borrower not remitted by Lender to FTA. Upon request by FTA at any time, Lender shall issue at no charge a certified statement of the outstanding principal amount of the Guaranteed Interest and the effective interest rate on the Note as of the date of such certified statement. Failure to provide such information shall result in a $100 penalty payable to SBA. Lender agrees that purchase of the Guaranteed Interest by SBA does not release or otherwise modify any of Lender's obligations to SBA arising from the Loan or the 750 Agreement, and that such purchase does not waive any of SBA's rights against Lender. Lender also agrees that SBA, as the final owner of the Guaranteed Interest under this Agreement, in addition to all its rights under the 750 Agreement with Lender, shall also have the right to set-off against Lender all rights inuring to SBA under this Agreement against SBA's obligation to Lender under the 750 Agreement. After any purchase of the Guaranteed Interest by SBA, Lender shall assign, transfer and deliver the Note and related loan documents to SBA upon the written request of SBA.

14. *Default by Fiscal and Transfer Agent.* In the event FTA receives any payment from Lender or SBA which FTA fails to remit to Registered Holder pursuant to this Agreement, Registered Holder shall have the right to make written demand upon FTA for any payment unremitted by FTA. If FTA fails to remit any such payment within ten (10) business days of such demand, Registered Holder shall have the right to make written demand upon SBA therefor. SBA shall make such payment to Registered Holder within thirty (30) business days or as soon thereafter as possible of receipt of such written demand, provided SBA can verify the non-payment by FTA. SBA shall make such payment directly to Registered Holder in the amount of the unremitted payment plus interest at the Certificate rate to the date of payment by SBA. FTA shall repay SBA for such payment by SBA to Registered Holder within ten (10) business days after receipt of written demand by SBA in an amount equal to the payment by SBA to Registered Holder plus interest (at the interest rate provided in the Certificate) computed on the unpaid balance of the Guaranteed Interest, from the date of SBA's payment to Registered Holder to the date of FTA's repayment to SBA. Such payment will not affect FTA's liability for a late payment charge under paragraph 7(d).

15. *Prepayment or Refinancing by Borrower.* For loans approved by or on behalf of SBA on or after February 15, 1985, Lender shall transmit written notice to FTA of Borrower's intent to make (by refinancing or otherwise and pursuant to the terms of the Note) a partial prepayment of principal subject to this paragraph, or a total prepayment of principal. Such written notice shall be received by FTA at least ten (10) business days prior to prepayment date. The "prepayment date" is the date prior to maturity that Lender has established with the FTA on which immediately available funds shall be delivered to the

FTA. Lender's notice to FTA shall contain the following: (a) the prepayment date, (b) the principal amount being prepaid, (c) the accrued interest due the FTA as of prepayment date, (interest shall accrue through and including the calendar day immediately prior to the date funds are wired to the FTA), and (d) a certification by Lender that to the best of its knowledge and belief the prepayment funds are either Borrower's own funds, or funds borrowed by Borrower (whether or not guaranteed by SBA) pursuant to a separate transaction, and the prepayment is in accordance with the terms of this paragraph and the Note, and applicable law. This certification is intended to guard against Lender's unilateral repurchase of the Guaranteed Interest from the Registered Holder without prior written permission from SBA. Lender's failure to provide such timely certification shall result in a $100 penalty against lender payable to the SBA through the FTA. Lender is obligated to wire payment on the 10th day without notification from the FTA. If the FTA is not paid by the 10th day, interest continues to accrue to the date payment is received by the FTA.

A partial prepayment of principal subject to this Paragraph is any payment which is greater than 20% of the principal balance outstanding at the time of prepayment. FTA is not required to accept any prepayment except as described herein. FTA shall upon receipt of notice pursuant to this Paragraph advise Lender of the outstanding principal amount and the accrued interest due FTA as of prepayment date, plus any additional interest and late payment charges pursuant to paragraph 6 or 7 hereof. On prepayment date, Lender shall remit to FTA the total amount to be paid to FTA by wire transfer. For loans approved prior to February 15, 1985, Lendre shall forward any prepayment to the FTA by wire transfer within three business days of receipt of the prepayment from the Borrower.

16. *Option to Purchase by SBA.* Pursuant to the 750 Agreement, SBA shall at any time have the option to purchase the outstanding balance of the Guaranteed Interest plus interest at the Note rate less the Lender's servicing fee. Failure by Registered Holder to submit the Certificate to FTA for redemption by the date specified by SBA or FTA will not entitle Registered Holder to accrued interest beyond such date.

17. *Separate or Side Agreements.* Separate or side agreements between Lender and Registered Holder, between a Registered Holder and a subsequent transferee, betweeen FTA and Lender, or between FTA and any Registered Holder, shall not in any way obligate SBA to make any payment except as provided herein, nor shall it modify the nature or extent of SBA's rights or obligations under the terms of this Agreement or of the 750 Agreement. Furthermore, any such side agreement which has the effect of distorting the information supplied to SBA is prohibited.

18. *Indemnity and Force Majeure.* Each party to this Agreement (including FTA), for itself and its successors and assigns, agrees to indemnify and hold harmless any other party (including FTA) against any liability or expense arising under this Agreement which is due to its negligence and/or breach of contractual obligation, except that no party hereto (including FTA) shall be liable to any other party or to Registered Holder for any action it takes, suffers or omits that is (i) authorized by this Agreement or (ii) pursuant to a communication received by such party (including FTA) from any other party or from Registered Holder which is not contrary to this Agreement and which a prudent person in like circumstances would reasonably believe to be genuine, lawful and duly authorized by the sender. If any party hereto (including FTA) is in doubt as to the applicability of this Agreement to a communication it has received, it may refer the matter to SBA for an opinion as to whether it may take, suffer or omit any action pursuant to such communication. Under no circumstances, however, shall any party hereto (including FTA) be held liable to any person or entity for special or consequential damages or for attorneys' fees or expenses in connection with its performance under this Agreement. If any party hereto (including FTA) shall be delayed in its performance hereunder or prevented entirely or in part from completing such performance due to causes or events beyond its control (including and without limitation, Act of God; postal malfunction or delay; interruption of power or other utility, transportation or communication services; act of civil or military authority; sabotage; national emergency; war; explosion, flood, accident, earthquake or other catastrophe; fire; strike or other labor problem; legal action; present or future law, governmental order, rule or regulation; or shortage of suitable parts, materials, labor or transportation) such delay or non-performance shall be excused and the reasonable time for performance in connection with this Agreement shall be extended to include the period of such delay or non-performance.

19. *Fees and Penalties.* Lender and Registered Holder shall be responsible for payment of fees and penalties required of them by this agreement which are in effect on the date of this transaction and as published from time to time in the Federal Register. The FTA will forward any penalties due SBA at the end of each month.

20. *Emergency Repurchase Authority by Lender.* In a critical situation in which the Borrower's ability to remain in business is directly dependent upon a change in the provisions relating to Borrower's installment payments, SBA may permit Lender to repurchase the Guaranteed Interest from the Registered Holder if all the following conditions exist: (i) Lender has submitted a written request to the relevant SBA field office servicing the loan, which includes current financial statements from the Borrower, and either a written decline to a specific request for a change in the terms and conditions from the Registered Holder either directly or through the FTA, or a written statement from the FTA that the Registered Holder did not respond to a servicing request or that the loan is part of a pool; (ii) the proposed change in the terms and conditions is solely to the benefit of the Borrower; (iii) the Lender has certified that it will make the requested change in the terms and conditions if repurchase is approved by SBA; and (iv) the SBA field office has reviewed the financial statements of the Borrower and whatever additional information is necessary, and has concluded that an emergency exists in which the Borrower's business will probably fail if the change is not approved and that the business will probably survive if the change is approved.

If all conditions are met, the field office may approve the purchase by the Lender of the Guaranteed Interest. Guaranteed Interests purchased using this procedure may not be resold until the Borrower has made all payments as scheduled on the Note for a period of twelve consecutive months.

21. *Inconsistent Provisions and Caption Headings.* Any inconsistency between this Agreement and the 750 Agreement shall be resolved in favor of this Agreement. Any inconsistency between this Agreement and Title 13, Code of Federal Regulations, shall be resolved in favor of Title 13. The provisions of the Secondary Market Regulations (Title 13, Code of Federal Regulations, Part 120) in effect on the date of this transaction and as may be amended from time to time in the

Federal Register, apply to this agreement unless explicitly stated to be inapplicable. The caption headings for the various paragraphs herein are for ease of reference only and are not to be deemed part of these Terms and Conditions.

In consideration of the mutual promises herein contained, the parties agree to all the provisions of this Agreement. In witness whereof, the parties have executed this multi-page Agreement this ——— day of ———, 19——, (SBA Warranty Date, supplied by SBA) in New York State.

(Registered Holder)
By: ———
Title: ———
Date: ———

(Lender)
By: ———
Title: ———
Date: ———

SMALL BUSINESS ADMINISTRATION
By: Administrator, Small Business Administration

Examined and accepted by Fiscal and Transfer Agent by:———
COLSON SERVICE CORP., P.O. Box 54, Bowling Green Station, New York, New York 10274.

Note: The guarantee of SBA relates to the unpaid principal balance of the guaranteed portion and the interest due thereon. Any premium paid by the registered holder for the guaranteed interest is not covered by SBA's guarantee and is subject to loss in the event of prepayment or default.

This form is required to obtain a benefit.

[FR Doc. 88-5193 Filed 3-8-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1053]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: No citizen of the United States shall depart from or enter into any part of the U.S. unless he/she possesses a valid passport. Exceptions are made in individual cases specifically authorized by the Secretary of State. The following summarizes the information collection proposal submitted to OMB.

Type of request—Existing collection.
Originating office—Bureau of Consular Affairs.
Title of information collection—Request by United States National for and Report of Exception to § 53.1, Title 22 of the Code of Federal Regulations.
Form number—DS-1423.
Frequency—On occasion.
Respondents—U.S. citizens.
Estimated number of responses—2,500.
Estimated total number of hours needed to respond—625.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Dated: February 5, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88-5075 Filed 3-8-88; 8:45 am]

BILLING CODE 4710-24-M

[CM-8/1173]

Shipping Coordinating Committee, Subcommittee on Safety of Navigation; Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 a.m. on Tuesday, March 29, 1988, in room 6103 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to report on the outcome of the 34th session of the Subcommittee on Safety of Navigation of the International Maritime Organization held in London, February 8-12, 1988 and to begin to prepare U.S. positions for the 35th session, tentatively scheduled for January 23-27, 1989. Items of principal interest on the agenda are:

Decisions of other IMO bodies
Routing of Ships
Problems related to deep-draft vessels
Removal of disused offshore platforms
Infringement of safety zones around offshore structures
Amendment of (SOLAS) regulations V/12(f)
World-wide navigation system
Electronic chart display systems
Navigational aids and related equipment
Ship reporting systems and reporting requirements
Work programme
Any other business.

Members of the general public may attend up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G-NSS), Washington, DC 20593-0001, telephone: (202) 267-0416.

Date: February 25, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-5076 Filed 3-8-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Town of Garner, Wake County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Town of Garner, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, District Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 856-4330.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposed Timber Drive in the Town of Garner, Wake County. The proposed action would be the construction of a two lane roadway on multilane right of way part on new location from Grovemont Road to NC-50. The proposed action is a part of a circumferential route to serve developed areas in southwest Garner and is a major part of the Town's thoroughfare plan for a bypass.

Alternatives under consideration include (1) the "no-build," (2) improving the existing facilities, and (3) a multilane highway part on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting and a meeting with local officials and neighborhood groups will be held in the study area. A public hearing will also be held. Information on the time and place on the public hearing will be provided in the local news media. The draft EIS will be available for public and agency

review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 29, 1988.

Roy C. Shelton,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 88-5077 Filed 3-8-88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA General Docket No. H-87-2]

Petition for Exemption or Waiver for Test Program; National Railroad Passenger Corp.

In accordance with 49 CFR 211.9 and 211.41 notice is hereby given that the National Railroad Passenger Corporation (AMTRAK) has submitted a request, dated February 23, 1988, for a temporary waiver of 49 CFR 213.57(b) in order to conduct a test program, the primary purpose of which will be the evaluation of curving performance of trainset equipment described below.

The petitioner recognizes a need to improve trip times for rail passenger service between Boston, Massachusetts and New York City. One way to reduce trip time between this city pair would be the negotiation of curved track by certain types of trains at speeds exceeding the values specified in § 213.57(b) of the Track Safety Standards. The restrictions contained in this section are based on a limiting unbalance of track superelevation, often called "cant deficiency", of three inches. It is the petitioner's objective to explore the ramifications of operating selected types of trainsets at up to nine inches of cant deficiency. FRA has the responsibility, should this petition be approved, to assure that the test program is carried out safely.

Note: The concept of cant deficiency was discussed in an earlier FRA Notice appearing on pages 38035 and following of the **Federal Register** Volume 52, Number 197, October 13, 1987.

Amtrak desires to investigate the response to elevated curving speeds of at least five trainset types within the period for which the waiver of § 213.54(b) was requested. These trainsets are identified as:

RTG Tuboliner train;
RTL Turboliner train;
Talgo passive tilt-coach train;
LRC active tilt-coach train;
Amfleet/F-40/AEM-7 conventional passenger train.

This list item is included to establish baseline performance data against which the performance of the other units can be compared. The first four each exhibit lower centers of gravity than does the conventional Amfleet equipment. All of this equipment has been operated in previous tests at nine or more inches of cant deficiency without incident. During the proposed test series, the equipment specified will be operated through a test zone which, in effect, comprises the tracks over which a future revenue service, based on one or more types, could be run.

If the petition is approved, Amtrak expects to schedule the Amfleet equipment test and that of the Talgo cars in late spring, 1988. No definite date has been set yet for the evaluation of the balance of the units. It should be noted that an RTG Tuboliner was approved by FRA for test operation between Boston and New Haven at curving speeds resulting in up to six inches of cant deficiency and that this test was, in fact, conducted successfully on October 9, 1987.

Amtrak's original petition to waive compliance with 49 CFR 213.57(b) for test purposes was conditionally approved by FRA on October 5, 1987, and this waiver expired on October 31, 1987. Now, the most recent Amtrak petition requests extension of the period of test from October 31, 1987 to October 31, 1988.

In the current petition, the test zone is defined as Boston, Massachusetts to New Haven, Connecticut and, in New York, from New Rochelle (milepost 18.7) to Market (milepost 10). The track segment, New Haven (milepost 22.8) to New Rochelle is owned by Metro North Commuter Railroad Company. This railroad may petition FRA for a waiver of 49 CFR 213.57(b) in order to permit Amtrak to carryout continuous testing, Boston to Market. If such a request is submitted, FRA will review it in accordance with the same criteria applied to the study of the Amtrak petition. If a Metro North petition of this sort is approved, Amtrak will be authorized by FRA to conduct tests subject to all of the appropriate conditions assigned to testing on Amtrak's own tracks and such other constraints as may be necessary because of features, if any, that are unique to the Metro North track. Should Metro North not elect to petition FRA in this matter, the test zone will be as described in the Amtrak petition.

FRA's role in these proceedings is to prescribe the conditions under which the test series will be carried out so that the risk of accident to the specimen equipment and hazard to the abutting community is minimal. In general, the approach to accomplishing this is to require that sufficient instrumentation be installed on each trainset to be able to relate test behavior to previously tested equipment known to be safe. FRA would require that attainment of maximum target curving speeds be in increments permitting a step-by-step analysis of applied forces and dynamic responses during and at the conclusion of each test run. The decision to proceed to the next level of cant deficiency would be based on this analysis process. In the cases of the Amfleet/F-40/AEM-7 and LRC trainsets, extensive instrumentation is not needed because this equipment was exhaustively examined in 1980 and its behavioral characteristics are known even to cant deficiencies well beyond eight inches. All that has to be generated now is sufficient data to establish correlation between the current and earlier versions. This is also true for the LRC trainset. The Talgo trainset resides in a different category; its design is unique and there is no other domestic rolling stock to which its performance can be compared.

If the Amtrak petition is approved, the solution to the Talgo train singularity problem will take the following form. Not considering vehicle structural failure, a relatively rare occurrence, there are three ways in which rolling stock can derail during curve negotiation. Excessive wheel loads can cause track failure, a wheel can climb over the rail or the equipment can overturn. Fortunately, there are measurement techniques and mathematical processes that allow calculation of wheel-rail forces while a vehicle is moving and the amount of force required to cause track failure can be predicted. Similarly, the buildup of forces leading to vehicle overturning can be observed during a test for comparison with a predetermined safe test cutoff criterion. One of the novel characteristics of the Talgo equipment is automatically steerable wheel sets, a factor that greatly diminishes the possibility of wheel climb. As a test

condition, should FRA grant this waiver, Amtrak wil be required to instrument the Talgo trainset to the extent necessary to allow continuous monitoring of vehicle behavior in the derailment modes. Further, another test requirement would be cessation of testing at elevated cant deficiency speeds while traffic passes on adjacent tracks. Doubtless, the practical way to comply with this condition would be to operate test equipment during the early morning hours.

FRA is seeking information and comments on this proposed test program from interested parties. FRA will take these comments into account in arriving at a final specification of conditions governing test conduct. Such comments may also have value in supporting FRA's response to future requests for approval to operate trains through curves at speeds producing more than the current standard of three inches of underbalance. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if, by April 8, 1988, the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H-87-2" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by April 8, 1988, will be considered in this proceeding and in evaluating any future proposals by Amtrak or other railroad entity for similar test programs. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC on March 3, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-5167 Filed 3-8-88; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New.

Title: Physician Statement of Clearance for an Exercise Program.

Description: This consent form is necessary so that all IRS employees can be considered medically safe and cleared by their personal physician for the Health Improvement Program. The form will remain in each employees private fitness file, in locked file cabinets. Only physicians can fill it out and thereby be affected by this form.

Respondents: Small businesses or organizations.

Estimated Burden: 2,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 5121 Filed 3-8-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The Report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act; and Treasury Directive 21-03 section 8 (1-29-87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1987, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for copies, at $2.70 each, should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20044 Telephone (202) 566-3770 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

For further information contact: Karen Carolan, CC:AP:V:4, 1111 Constitution Avenue NW., Room, 2575, Washington, DC 20224 Telephone (202) 566-9259 (Not a toll free telephone number).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-5128 Filed 3-8-88; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Notice

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on February 29, 1988 (53 FR 6057) of the regular meeting of the Farm Credit Administration Board (Board) scheduled to be held on Tuesday, March 1, 1988. This notice is to revise the agenda for that meeting: (A) To include items of discussion, and (B) to postpone Board action on other items to no later than the May 3 regular meeting.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary of the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, March 1, is revised—

(A) To include the following items:

Open Session

1. Conditional approval for a lending limit exception in regard to a term loan for the Basin Electric Power Cooperative;
2. Amendments to the Farm Credit Banks of Texas pension and thrift plans; and
3. Cash patronage distribution for the St. Louis Bank for Cooperatives; Louisville Bank for Cooperatives; and the Jackson Bank for Cooperatives.

(B) To reflect postponement of the following items:

1. Summary Prior Approval;
6. FCA Policy on Prior Approvals Concerning Farm Credit System Human Resources Management;
7. Proposed Changes to Retirement and Severance Plans for the First District, Tenth District and the Farm Credit Corporation of America;
8. CEO Salary Proposals for the Central Bank for Cooperatives and the Federal Farm Credit Banks Funding Corporation; and
9. Salary Changes for the Springfield Districts.

Dated: March 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-5194 Filed 3-4-88; 5:05 pm]

BILLING CODE 6705-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, March 15, 1988.

PLACE: Board Room (812A), Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: Skywest Airlines Swearingen Metro II and Mooney M20, Midair Collision, Kearns, Utah, January 15, 1987.
2. Railroad Summary Reports: Southeastern Pennsylvania Transportation Authority (SEPTA) Accidents in Philadelphia (12/10/86) and Ardmore (1/26/87), Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

March 5, 1988.

[FR Doc. 88-5201 Filed 3-7-88; 9:26 am]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 53, No. 46
Wednesday, March 9, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129]

Invitation for Applications for New Awards Under the Rehabilitation Long-Term Training Program for Fiscal Year 1988

Correction

In notice document 88-3070 beginning on page 4201 in the issue of Friday, February 12, 1988, make the following correction:

On page 4202, in the first column, in the table, the entry opposite "Client assistance program training" should read "80,000 to 120,000".

BILLING CODE 1505-01-D

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

Correction

In notice document 88-4456 appearing on page 6718 in the issue of Wednesday, March 2, 1988, make the following correction:

In the first column, between **DATE** and **SUPPLEMENTARY INFORMATION**, insert "**ADDRESS:** The meeting will be held at the Archivists' Reception Room, National Archives Building, 8th St. and Pennsylvania Ave., NW., Washington, DC.".

BILLING CODE 1505-01-D

federal register

Wednesday
March 9, 1988

Part II

Environmental Protection Agency

40 CFR Parts 122, 123, 124, and 501

National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements; Notice of Reproposal and Proposal

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 501

[OW-FRL-3279-2]

National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations; State Sludge Management Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of reproposal and proposal.

SUMMARY: On February 4, 1986, the Environmental Protection Agency proposed rules at 51 FR 4458 that would have required States to develop sludge management programs to assure that the use and disposal of sludge complies with the Federal sludge use and disposal standards. The February 4, 1986 proposed rule provided requirements for approvable State sludge management programs, for their submission, and for their review and approval by EPA. The regulatory program was designed to ensure the environmentally sound use and disposal of sewage sludge and assure that the Federal standards for sludge use and disposal promulgated under section 405(d) would be met.

On February 4, 1987, Congress passed the Water Quality Act of 1987 amending the Clean Water Act, which included significant changes to the sludge management provisions of section 405. In today's action the Agency is reproposing State sludge program requirements to include the additional requirements and directions established in the amendments. Today's notice also contains proposed revisions to the National Pollutant Discharge Elimination System (NPDES) permit requirements and procedures (Parts 122, 123, and 124) to incorporate sludge permitting and State program requirements.

DATE: Comments must be received on or before May 9, 1988.

ADDRESSES: Comments should be addressed to Debora Clovis, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Martha Kirkpatrick, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9529.

SUPPLEMENTARY INFORMATION:

I. Background
II. February 4, 1986 Proposed Rule
III. Water Quality Act of 1987
A. Implementation of Sludge Standards Through Permits
B. Sludge Technical Standards (40 CFR Part 503)
IV. Discussion of Today's Proposed Rule
A. General
1. Minimum State Program Requirements
2. Program Submission
B. Part 501: State Sludge Management Program Regulations: Non-NPDES
1. General
2. Purpose, Scope, and General Program Requirements
3. Development and Submission of State Programs
4. Program Approval, Revision, and Withdrawal
5. Indian Tribes
C. Part 123: State Sludge Management Program Regulations: NPDES
D. Revisions to Part 122
1. General
2. Specific Revisions to Part 122
E. Revisions to Part 124
V. Request for Comments
VI. Executive Order 12291
VII. Paperwork Reduction Act
VIII. Regulatory Flexibility Act

I. Background

Implementation of the Clean Water Act (CWA) has resulted in increased treatment of wastewater before discharge to surface waters and the generation of large quantities of residual sewage sludge as a by-product of wastewater treatment. Thus, the proper management of sewage sludge is becoming increasingly important as efforts to remove pollutants from wastewater have become more effective. In the United States, the quantity of municipal sewage sludge has almost doubled since the enactment of the Clean Water Act in 1972. Municipalities currently generate over 7.6 million dry metric tons of wastewater sludge per year, or approximately 32 kilograms per person per year. In addition, greater focus on surface water toxics control, as well as Resource Conservation and Recovery Act (RCRA) provisions such as the ban on land disposal of certain hazardous wastes (section 3004(d)) and the exclusion of discharges into municipal sewers from RCRA requirements (section 1004(27)), may result in increased volumes of toxic and hazardous pollutants that reach publicly owned treatment works (POTWs) and may adversely affect sludge quality.

Improper sludge management could lead to significant environmental degradation of land and air, and failure to dispose of sludge properly could have serious impacts on groundwater and wetlands, as well as human health impacts. Sludge management and the many different sludge disposal practices are linked to air, solid waste, ocean dumping, wetlands protection and pretreatment programs. Poor landfill and land application practices, as well as failure to ensure appropriate sludge quality, could result in sludge contaminants reaching groundwater and vulnerable wetlands areas. Concern for air quality and oceans necessitates proper controls over sludge incineration and ocean disposal practices. The interrelationship among these media requires a tightly constructed, comprehensive approach that closes environmental loopholes and assures that solving problems in one media will not create problems for another. In addition, the beneficial use of sludge as a soil conditioner and fertilizer cannot continue to increase if sludge quality is poor.

Prior to the enactment of the Water Quality Act of 1987, the federal authorities and regulations related to the use and disposal of sewage sludge were fragmented and did not provide States and municipalities with comprehensive guidelines on which to base sludge management decisions. Section 405 of the Clean Water Act required the development of sludge standards by December 1978, but did not specify how the standards were to be implemented. Standards developed pursuant to section 405 have been promulgated for cadmium, PCBs, and pathogens only (40 CFR Part 257). In addition, sludge is regulated under a number of other programs, such as new source performance standards and national emissions standards for hazardous air pollutants under the Clean Air Act, requirements for solid waste landfills under Subtitle D of the Resource Conservation and Recovery Act, (and Subtitle C if the sludge is hazardous) ocean dumping requirements under the Marine Protection, Research and Sanctuaries Act (MPRSA), and PCB controls under the Toxic Substances Control Act. These regulations often use different methodologies and approaches to sludge management.

Concerns about the potential environmental problems created by improper sewage sludge use and disposal and the lack of a comprehensive legislative framework governing sludge management led to the establishment of an intra-Agency Sludge Task Force (STF) by EPA in early 1982 to study and make recommendations for

Agency actions in the sludge management area. The STF, with representatives from EPA's Offices of Water, Air and Solid Waste, approached sludge management from a multi-media perspective. The STF developed the Agency "Policy on Municipal Sludge Management" (49 FR 24358, June 12, 1984). The purpose of the policy was to establish a consistent role in sludge management across all environmental media and all management practices and to establish the federal regulatory role in sludge management in the context of the role expected of both State and local governments.

The STF Policy established several important principles which continue to guide the Agency's approach to sludge management. It states, in part:

> The U.S. Environmental Protection Agency (EPA) will actively promote those municipal sludge management practices that provide for the beneficial use of sludge while maintaining or improving environmental quality and protecting public health. To implement this policy, EPA will continue to issue regulations that protect public health and other environmental values. The Agency will use all available authorities to ensure that States establish and maintain programs to ensure that local governments utilize sludge management techniques that are consistent with Federal and State regulations and guidelines. Local communities will remain responsible for choosing among alternative programs, for planning, constructing and operating facilities to meet their needs, and for ensuring the continuing availability of adequate and acceptable disposal or use capacity.

49 FR 24358.

II. February 4, 1986 Proposed Rule

On February 4, 1986, EPA proposed State Sewage Sludge Management Program Regulations (51 FR 4458). These proposed rules would have required States to develop sludge management programs to assure that the use and disposal of sewage sludge complies with the federal sludge use and disposal standards (the Part 503 technical standards) promulgated under section 405 of the Clean Water Act. These regulations were proposed pursuant to recommendations of the Agency's Sludge Task Force, which concluded that the best approach for sludge management would be to require each State to prepare a program to implement the sludge standards, which would then be reviewed for sufficiency by EPA. The regulations were proposed under the legal authorities of the Clean Water Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

The principal requirements of the proposed regulations were that the States would submit to EPA for review and approval a description of their existing sludge management programs with plans and schedules for improving them as necessary to meet the added requirements of the proposal. The proposal set forth minimum requirements for approvable sludge management programs and provided the procedural requirements for submitting, approving, revising and withdrawing approval of such programs.

These regulations were proposed prior to the February 1987 amendments to the CWA. Prior to those amendments, the CWA required that sludge standards be promulgated but did not specify a mechanism, such as a permit program, for implementing the standards. As such, the proposed regulations did not require that the sludge standards be implemented through permits. As discussed in further detail below, the Water Quality Act of 1987, which amended section 405, specifies that the Part 503 technical standards are to be implemented either through an NPDES permit, or through a permit issued under one of the federal permit programs listed under amended section 405(f)(1), or through permits issued pursuant to an approved State sludge program. Thus today we are reproposing regulations for approval of State sludge programs in accordance with the direction established by the 1987 amendments.

III. Water Quality Act of 1987

A. Implementation of Sludge Standards Through Permits

Section 406 of the Water Quality Act (WQA) of 1987, which amends section 405 of the Clean Water Act, sets forth for the first time a comprehensive program for reducing the environmental risks and maximizing the beneficial use of sludge. The basis of the program to protect public health and the environment from any adverse effects from sewage sludge is the development of technical requirements for sludge use and disposal, and the implementation of these requirements through permits. The WQA requires promulgation of sludge standards establishing acceptable levels of toxic pollutants in sewage sludge and management practices in two stages.

Before the technical standards have been promulgated, the amendments provide that the "Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge" section 405(d)(4). (This and subsequent citations to the CWA are to the amended version which codifies the 1987 amendments.) In response to this directive to take immediate action, EPA and the States have begun to include sludge requirements in permits for POTWs as they are reissued.

After the technical standards have been promulgated, the amendments direct that any permit under section 402 of the Act (NPDES permits) issued to a POTW or any other treatment works treating domestic sewage shall include the sludge technical standards, unless such requirements have been included in a permit issued under Subtitle C of RCRA, Part C of the Safe Drinking Water Act, MPRSA, or the Clean Air Act, or

> under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section [405].

Section 405(f)(1). The amendments further provide that the Administrator may issue separate permits that implement the sludge requirements to treatment works which are not subject to section 402 of the Act (NPDES) or to any of the other listed permit programs or approved State programs. Section 405(f)(2). Such permits are referred to as "sludge-only" permits.

The 1987 amendments give new direction for the regulation of sludge management activities on several fronts. First, section 405 now clearly mandates that NPDES permits, whether issued by EPA or by an approved NPDES State, must contain conditions implementing the sludge technical standards to be promulgated by the Agency, unless those standards have been included in a permit issued under one of the listed federal programs or under a State program approved for administering a section 405(f) sludge permitting program. Therefore, a State which seeks EPA approval to administer a sludge permitting program can choose to do so through its NPDES program or through another sludge permitting program (e.g., solid waste programs), so long as the permit implements the sludge technical standards promulgated under section 405. Second, the amendments establish that the sludge standards will apply to any treatment works that treats domestic sewage, not just publicly owned treatment works or treatment works that treat primarily domestic

waste. These treatment works may be subject to sludge standards even if they are not otherwise required to obtain NPDES permits.

The 1987 amendments also strengthen the provisions for enforcing against violations of section 405 or permits implementing regulations promulgated under section 405. Section 405(e) provides that:

> it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

Congress also amended section 309(c) of the CWA to provide, for the first time, criminal penalties for negligent or knowing violations of section 405 or permits implementing the requirements of section 405. The Administrator's new authority to assess administrative penalties for violations of the CWA also covers violations of section 405 and implementing regulations and permits. Section 309(g).

In addition, section 308 of the CWA, which establishes the Administrator's authority to require monitoring, reporting and recordkeeping and to inspect and sample to determine compliance with the CWA has been amended to specifically reference section 405. *See* section 308(a)(4), as amended by section 406(d) of the WQA. Other provisions amended by section 406(d) of the WQA include section 505(f) (citizen suits for violations of regulations under section 405(d)) and section 509(b)(1)(E) (judicial review of regulations promulgated under section 405).

B. Sludge Technical Standards (40 CFR Part 503)

The major purpose of today's rulemaking is to develop a program to protect public health and the environment from improper sludge use and disposal and to implement the sludge technical standards established pursuant to section 405(d) of the CWA. The sludge technical standards for the use and disposal of non-hazardous sewage sludge will be proposed in a separate rulemaking and will be codified at 40 CFR Part 503. The Part 503 standards will address the land application, distribution and marketing, landfilling, incineration, and ocean disposal of sewage sludge. Generally, the standards will specify limits on pollutants of concern in sewage sludge that may interfere with its safe disposal and identify management practices that mitigate the migration of pollutants from a particular end use into and through the environment. In sum, today's proposed rule establishes the programmatic and procedural framework for implementing the sludge technical standards. Today's proposed rule does not change the status of existing federal technical requirements applicable to sludge use and disposal, such as 40 CFR Part 257. Those requirements will remain in effect until revised through separate rulemakings.

IV. Discussion of Today's Proposed Rule

A. General

The purpose of today's proposed rule is to establish a national program for sludge use and disposal by establishing State program requirements, conditions and procedures for sludge permitting. Today's proposed rule contains four principal sections. First, 40 CFR Part 122 is proposed to be revised to add permitting requirements to accommodate the regulation of sewage sludge use and disposal through NPDES permits. Second, 40 CFR Part 123 is proposed to be revised to include requirements for State sludge management programs for States that wish to implement the sludge requirements through their NPDES program. Third, today's proposal would add Part 501, which contains the requirements and submission procedures for State sludge management programs that are not part of a State NPDES program. Fourth, 40 CFR Part 124 is proposed to be revised to add procedural requirements for sludge permitting.

1. Minimum State Program Requirements

Today's proposal sets forth minimum requirements for approvable State sludge management programs, whether the State uses NPDES or another authority. Section 405(f) of the CWA gives EPA broad discretion to promulgate regulations which establish requirements for approvable State programs that assure compliance with any applicable requirements of section 405.

As proposed today, State section 405 sludge programs are not mandatory. All NPDES permits must contain the sludge standards mandated by CWA section 405(d) unless they are addressed under another federal permit or a permit issued pursuant to an approved State sludge program. However, a State is not required to submit a section 405 sludge program for approval. If the State does not have an approved program, EPA would issue the sludge permit. This is a significant departure from the February 4, 1986 proposal in which States would have been required to develop and submit sludge programs for approval. In the 1987 amendments to the Clean Water Act Congress authorized, but did not expressly mandate, that States develop section 405 sludge programs. (By contrast, when Congress amended the Clean Water Act in 1977 and added requirements to develop pretreatment programs, Congress expressly mandated that States with existing NPDES programs modify those programs to add pretreatment authority.) EPA interprets this failure to expressly mandate the development of State sludge programs to mean that Congress intended that they be optional. However, as stated in EPA's 1984 "Policy on Municipal Sludge Management," it is EPA's policy that sludge management is a local concern and thus should be handled at the State and local level, within the context of broadly-established national objectives. Therefore, EPA will encourage the States to develop approvable sludge programs, through such mechanisms as the continuing planning process and section 106 work program development. The Agency invites comment on whether State sludge programs implementing Section 405 should be required.

The most important requirement for an approvable State sludge program under section 405 is the authority to issue permits implementing the Part 503 technical standards, because the CWA requires State sludge programs to implement sludge standards through permits issued to POTWs and other treatment works treating domestic sewage.

A State program would include provisions for compliance monitoring, including the authority to: Conduct inspections of sludge management facilities; require the operator to maintain records; have access by the State agency to records and monitoring equipment; and require periodic monitoring and reports from the permittee to the State agency. In addition, the State would need the authority to take enforcement actions and impose civil and criminal penalties against violators of the Part 503 technical standards and permits implementing sludge requirements.

Today's proposal also sets forth requirements for citizen participation. A State would have to provide public access to operator information unless such information is protected as confidential (*see* 40 CFR Part 2). Public notice of and opportunity to comment on proposed permits must be provided. Today's proposal would also require that the State provide for public participation in enforcement.

2. Program Submission

Today's proposal sets forth the basic components of a program submission. The first of these is the program description of the scope, structure, coverage, and processes of the State program. This would include: An identification of the lead agency responsible for implementing the sludge program, including staffing and organization; a description of the resources and costs of the program; a description of applicable State procedures; copies of permit, application and report forms; a description of the State's compliance tracking and enforcement program, and an inventory of all facilities required to obtain a sludge permit (POTWs and other treatment works treating domestic sewage).

The State also would submit a statement from the State Attorney General setting forth the State's legal authority to carry out the required program. This would include citations to specific statutes, regulations, and where applicable, judicial decisions.

Finally, the program submission would contain a Memorandum of Agreement (MOA) between the State Director and the EPA Regional Administrator. This document would set forth the State's plans to administer the sludge program and EPA's program oversight, and would include provisions for the transfer of information, proposed permits, reports, etc., between the Regional Administrator and the State. State sludge programs would be submitted to the appropriate EPA Regional office for review and approval, subject to concurrence by EPA Headquarters.

B. Part 501: State Sludge Management Program Regulations: Non-NPDES

1. General

As discussed earlier in this preamble, EPA proposed Part 501 regulations on February 4, 1986, that would have required States to develop programs regulating sludge use and disposal. Today's notice reproposes State sludge management program requirements based on the authority and program direction provided in the Clean Water Act amendments of 1987. Thus, while much of the substance of the earlier proposal is retained, there are a number of significant changes due to both the changes mandated by the Act and in response to comments on the February 4, 1986 proposed rule. This portion of the preamble is a section-by-section analysis of proposed Part 501. Part 501 applies only to those States that will not be regulating sludge through their NPDES programs (i.e., States without NPDES programs and States with approved NPDES programs which choose to implement a sludge program separate from their NPDES program). NPDES States that wish to incorporate sludge permitting into their NPDES program would submit such program for approval as a program modification under 40 CFR 123.62. Similarly, States seeking initial approval of an NPDES program which includes sludge would be subject to Part 123, rather than Part 501.

In developing proposed Part 501, the NPDES program was used as a basis, while attempting to make program requirements as flexible as possible so that States with existing, effective permit programs with different procedures would be approvable. Some States may be using a program that has been approved by EPA under another authority as a mechanism to regulate sludge, such as a State Solid Waste Management Plan under Subtitle D of RCRA. Such programs would be reviewed under Part 501 for their ability to implement section 405 of the CWA. There may be minor procedural differences between Part 501 and the approved program; the Memorandum of Agreement between the Regional Administrator and the State Director may be one means of resolving these differences.

2. Purpose, Scope and General Program Requirements

Subpart A of part 501 sets forth the intent and general requirements for EPA to approve State sludge programs as adequate to implement section 405. In accord with Congressional intent in enacting the section 405 amendments, States that seek to administer a State sludge program in lieu of the federal program generally must have authority as broad as EPA's to regulate sludge use and disposal. This would include the legal authority and programmatic capability to implement a permit program for the use and disposal of sewage sludge, to implement and enforce the Part 503 technical standards and any other Federal sludge standards (e.g., 40 CFR Part 257), and generally to take action to protect the public health and environment from adverse effects of toxic pollutants in sewage sludge.

Today's rule proposes that the State must issue sludge permits to all POTWs and other treatment works that treat domestic sewage. The requirement potentially includes numerous small facilities (for example, non-discharging, privately-owned domestic sewage treatment works) not previously regulated under any existing State or federal program and thus raises concerns about the additional resources that would be needed to fulfill the permitting requirement. EPA solicits comments on alternative ways of regulating these types of facilities other than through individual permits. Some possibilities include rules of general applicability and general permits. EPA also encourages States to submit any data they have on the number of such facilities in their States and the amount and kind of sludge they produce.

It is important to note that, in addition to requiring permits for POTWs and other treatment works treating domestic sewage, the amendments to section 405 make it illegal for *any person* to use or dispose of sewage sludge except in accordance with the technical regulations. Thus a State program must, at a minimum, require permits that cover all applicable requirements of the technical standards, including any that pertain to the activities which occur at disposal sites for POTWs and other treatment works treating domestic sewage. In addition, because the technical standards will apply to all users and disposers, the State program must include some provisions for enforcing the technical standards against these users and disposers as well. Thus, today's proposal includes a general requirement that States have provisions for regulating all users and disposers of sewage sludge, whether or not such users or disposers are required to obtain a permit. In today's proposal such other users and disposers are not required to have permits, although some of them may be required to have permits in the final rule. For example, the final rule may require some type of permit mechanism for regulating contractors who purchase sludge from a POTW for distribution and marketing to the public and for sludge incinerators that don't generate sludge themselves. (This possibility is also discussed below in the discussion about expanding the scope of the Part 122 permitting program to include sludge regulation.)

A number of States currently provide some type of regulation of "other users," ranging from permits to directly enforceable rules of general applicability. Other possibilities for regulating users include general permits, certifications of compliance, written releases acknowledging liability for compliance with the technical standards, and requiring the POTWs to regulate the users and disposers of its sludge through approved local programs similar to local pretreatment programs for regulating industrial users of POTWs. The agency is soliciting

comments on effective means of regulating other users and disposers of sewage sludge that are not "POTWs and other treatment works treating domestic sewage."

A State sludge program may be administered as part of an existing State program (e.g., the State solid waste management plan) or it may be a separate section 405 sludge program, so long as it meets the requirements of the Part 501 regulations. States are, of course, free to adopt more stringent or more extensive requirements under section 510 of the CWA. State programs will be reviewed for their ability to meet the requirements of the Act and to ensure that there are no State provisions which may undercut or hinder implementation of the program, such as unauthorized variances from technical standards.

Assignment of Program Responsibilities (§ 501.1(d))

In some States, local agencies such as local health departments and soil conservation or agricultural extension offices play a significant role in carrying out various sludge management activities. In most cases, today's proposed rule would allow decentralized administration of State sludge programs to continue undisturbed. Where the local agencies are part of a State agency, they would be considered "field offices" of the State agency and questions about the propriety of assigning program responsibilities to them normally would not arise. The State would, however, be expected to identify the roles of field offices in describing how it will carry out program responsibilities, and, if more than one State agency is involved, designate a lead agency.

Today's proposal (§ 501.1(d)) would also generally allow States seeking approval of their sludge programs to maintain existing decentralized administration of sludge programs even where the local agencies are not part of a State agency. This is in keeping with the Agency's general policy of minimizing disruption to existing State programs. Also, because proper sludge disposal may often depend on local conditions and disposal site characteristics, the knowledge and proximity of local agencies to regulated activities can enhance efficient and effective administration of program responsibilities. Accordingly, today's proposal would generally allow the State sludge management agency to assign program responsibilities to local agencies.

However, today's proposal would not allow separate approval of local programs (by the State or EPA) nor relieve the State agency of overall responsibility for program administration. It also would not allow a State to assign program responsibilities to a local agency under control of a political subdivision that also owns or operates a POTW or other facility that treats or disposes of sewage sludge. This restriction is intended to avoid a conflict of interest situation with the local agency playing dual roles of regulator and regulated party. Beyond these broad parameters, the proposed rule does not specify the extent to which a State agency may use local agencies to carry out program responsibilities. EPA solicits comments on whether limitations should be established to guard against potential problems such as inconsistent application of program requirements within the State.

EPA is particularly concerned about potential conflict of interest situations where local agencies executing sludge responsibilities are part of the same political subdivision or other governmental entity with authority over POTWs or other sludge treatment or disposal facilities. Therefore, EPA also solicits comments regarding the roles of local agencies in existing State sludge programs, including the various functions they perform (e.g., permitting, compliance monitoring, enforcement), the extent to which they are the final decision-makers, and their relationships to State agencies, POTWs, and other sludge treatment and disposal facilities.

Under today's proposal, any assignment to local agencies must be well documented and supported in the State's submission for program approval. States would also be expected, through provisions in the MOA, to assume oversight responsibilities to ensure that the assignment is carried out properly. In addition, to assure that EPA could effectively carry out its oversight responsibilities in local delegation situations, the lead State agency would remain responsible for all program reporting and other activities related to EPA oversight of the State's approved program (e.g., submission of proposed permits for EPA review). Finally, State agencies would be required to retain all necessary authority to carry out program responsibilities so that they could step in where local agencies are not adequately performing assigned functions.

Partial Programs

Prior to the passage of the Water Quality Act in February 1987, partial NPDES program approvals were prohibited. A State wishing to obtain NPDES approval was required to seek approval of the entire program: NPDES, pretreatment, and regulation of federal facilities. Section 403 of the WQA (codified at section 402(n) of the Clean Water Act) authorizes two types of partial program approvals. The first type, the "major category partial permit program" is a partial program in which all discharges under the jurisdiction of a department or agency of the State are covered by the program. In the case of section 405 sludge programs, this would allow a State to seek a partial program approval if one agency has responsibility for regulating a particular sludge use or disposal method, and the State only sought to administer this program. For example, where all the sludge incinerators in the State are regulated by the State agency responsible for air programs, partial program approval could be sought for the State's sludge incinerator program. That program would be evaluated and approved based on its adequacy to meet all of the requirements of CWA section 405 (i.e., the State program requirements in Part 501) and to implement the Part 503 technical standards for those facilities under the Agency's jurisdiction. The approved State would then issue permits that implement the standards to all sludge incinerators, and EPA would be responsible for permitting all other sludge facilities in the State.

It is important to note that there may be circumstances where approval of a partial program would *not* be consistent with Congressional intent. For example, if a State has reorganized its administrative agencies simply to avoid a controversial or resource-intensive activity, EPA may decline to approve the State's program.

With the "major category" type of partial program, the State would not be required to obtain approval of a complete section 405 sludge program to maintain approval of its partial program. It would also be possible for a State to have two partial programs. EPA solicits comments on whether it should allow "major category" partial programs under Part 501 or whether it should instead require States with jurisdiction over sludge disposal split among various agencies to designate a lead agency and operate an entire program under an intra-State agreement.

The second type of partial approval authorized is the "major component partial permit program." This type of partial program provides for phased assumption by the State of major NPDES program components. Under this approach, the statute requires the State to submit a plan for assumption of full

program administration within five years of the date that the first phase is approved. CWA section 402(n)(4). Thus, the State could seek and obtain approval for its NPDES program first, and phase in approval of the pretreatment and federal facilities program components over five years.

Like pretreatment and federal facilities programs, a sludge program is a "major component," and cannot be broken down into smaller "major components." However, as proposed today, sludge programs, unlike federal facilities and pretreatment programs, are optional with the State. Therefore, a State that wants to phase in its NPDES program over five years must assume federal facilities and pretreatment, and may (but is not required to) include a complete sludge program as a component.

Today's notice does not contain any proposed regulatory language addressing partial programs. EPA will be proposing regulations governing the general requirements for partial program approvals as part of its general NPDES revision package. While comments are invited on today's preamble discussion of partial sludge programs, there will be another opportunity to comment when the general revisions to the NPDES program regulations are proposed.

Section 501.2 Definitions. Section 501.2 provides definitions for terms as they are used in Part 501. The terms "distributor," "septage," "sewage sludge," "use" or "utilization practice," and "users" are intended to be consistent with definitions used in the forthcoming technical regulations (40 CFR Part 503). The definition of "treatment works" is taken from section 212 of the CWA.

Part 501 defines a "Class 1 Sludge Management Facility" to be any sludge facility classified as such by the Regional Administrator in conjunction with the State Director. Class 1 Sludge Management Facilities are analogous to NPDES "major facilities" (see 40 CFR 122.2). They are a permitting priority and generally are subject to more stringent reporting and monitoring requirements. As with NPDES majors, under today's proposal the actual classification of facilities as Class 1 would not be done through rulemaking, but rather would be determined through a negotiated process between the Region and the State administering an approved program. This would allow flexibility for targeting efforts on areas of specific concern to the State (e.g., disposal on or near ecologically sensitive areas such as estuaries) and on particular facilities with known or suspected problems with their sludge. Where information available to EPA suggests that particular classes of facilities or practices are of concern on a national basis, EPA may issue national guidance on Class I determinations. For example, it may be appropriate to focus attention on sludge incinerators (because available information suggests that these facilities may have greater potential to threaten the environment) and on major POTWs required to have pretreatment programs under 40 CFR 403.8 (because facilities are so classified on the basis of their size and industrial contribution). These and/or other classes of facilities may become part of initial or subsequent Class I identification.

EPA invites comment on the process for identifying Class I facilities contained in the definition of "Class I management facility" proposed today.

Section 501.3 Coordination with other programs. A facility's sludge operation is closely linked to its wastewater treatment processes and other treatment activities. This section would allow States to coordinate their sludge programs and jointly issue permits with other State or Federal environmental programs where appropriate to promote efficiency in the process and consistency among the various requirements regulating the facility's waste treatment operations. For example, POTW permit issuance could be coordinated where a State has separate NPDES and sludge management programs.

3. Development and Submission of State Programs

Section 501.11 Elements of a sludge management program submission. This section summarizes the basic components of a program submission, each of which are described in greater detail in subsequent sections. The essential components of a program submission are: a letter from the Governor requesting program approval, a description of the State's sludge management program, a statement of the State's legal authority to implement the program from the Attorney General, and a Memorandum of Agreement (MOA) between the Regional Administrator and the State Director. This section provides that EPA will determine whether the State program submission is complete within 30 days of receipt of the program submission. EPA then has 90 days from the date of the completeness determination to review and decide whether to grant or deny the State's request for program approval. EPA will approve programs which meet the requirements of this Part and section 405 of the CWA.

Section 501.12 Program description. This section provides a detailed discussion of the nature and contents of the program description. The program description is the primary mechanism by which the State explains how it intends to administer its sludge program. While the legal authorities define the State's intended implementation, the program description describes the State's processes and policies, such as how the State plans to structure its enforcement program. The program description should explain how the program is adequate to meet the essential requirements of CWA section 405: to implement the technical standards through permits and to protect public health and the environment from adverse effects from pollutants in sewage sludge.

The description must include an explanation of the organization and structure of the agency or agencies that will be administering the program, including the number and general responsibilities of the employees. The description must also contain a discussion of the estimated costs and available resources for administering the program. These resource requirements are more extensive than what was proposed on February 4, 1986, because a resource discussion is essential in order to evaluate the State's capacity to implement the program as envisioned by Congress. EPA is soliciting comments on whether cost and resource factors are an appropriate measure of the State's capacity to implement the program.

The program description includes a description of applicable State permitting, administrative, and judicial review procedures. This includes a description of any administrative review or appeal procedures and criteria, as well as procedures and criteria for any variances available under State law. The program description must also contain copies of application and reporting forms.

Another important requirement is the facility inventory. Today's proposal would require that the State include in the program description a complete list of all POTWs or other treatment works treating domestic sewage, i.e., all facilities that are required to obtain sludge permits. (Note: As discussed elsewhere in this preamble, the categories of facilities required to obtain permits may be expanded to include other regulated parties. In this case, the inventory requirement would be correspondingly expanded to include all facilities or parties required to obtain a permit.) This is considerably pared

down from the February 4 proposal which would have required an inventory of all sewage sludge generators and sewage sludge disposal facilities in the State, including firms which pump and service septic tanks and portable toilets.

The States will be expected to complete an inventory of all generators and disposal facilities and sites. The program description should explain how and when the State's inventory will be completed and the State's plan for maintaining the inventory. However, under today's notice only those facilities required to obtain permits must be identified on the inventory as a *precondition* to program approval.

The States also are asked to identify whether they have a separate program to regulate septage disposal. The February 4 proposal would have required a more extensive description of the State's septage disposal program. Several commenters on this earlier proposal remarked that septage is different from sludge and that it was not necessary to include requirements for septage in a sewage sludge management program.

In today's proposal, how a State regulates septage is only significant for the purposes of its section 405(f) sludge program, in that its program must ensure that where septage is disposed of in the same manner as sludge (e.g., applied to land), it is subject to the same requirements as sewage sludge. Thus, today's rule will be consistent with the forthcoming proposed Part 503 regulations including "septage" within the definition of "sewage sludge," so that where septage is used or disposed of as sewage sludge it would be subject to the same standards as sewage sludge. Beyond this coverage, how the State does or does not regulate septage would not have to be addressed in its sludge program under today's proposal. For example, septage that is transported to a POTW for treatment need not be covered under the State's sludge management program, since the POTW's sludge would be regulated.

Section 501.13 Attorney General's Statement. The Attorney General's Statement is where the State demonstrates its legal authority to carry out the program implementation requirements set forth in this part. The Attorney General (AG) certifies that in his or her opinion, the laws of the State provide adequate authority to carry out the program. The Attorney General's Statement would include a discussion of the State's legal basis for conducting each aspect of the program and address any significant difference between State and federal law. It would cite to the specific statutory and regulatory provisions that give the legal authority for each program element, and explain how each citation provides the requisite authority. All referenced State statutes and regulations would have to be in full force and effect by the time the program is approved.

The Attorney General's Statement must be signed by the Attorney General or a representative of the AG who is authorized to sign and can bind the State by so doing. Alternatively, the Statement may be signed by an independent legal counsel. To qualify as an independent legal counsel, the signatory must have full authority to represent the State agency in court on all matters, including defending actions against the State and bringing actions to enforce against program violations. The February 4 proposal stated that the Statement would be signed by the AG "or appropriate legal counsel," which EPA now regards as not specific enough in requiring that the legal counsel must have full authority to represent the State agency.

Section 501.14 Memorandum of Agreement (MOA). The program description and the MOA, taken together, should explain program operation and clearly define the respective roles of EPA and the State, (and local agencies, if appropriate), so that by examining these two documents EPA or the public can fully understand how the program will be run. Some overlap between the content of the two documents is expected since both address areas such as compliance monitoring, enforcement, permit issuance, and transfer of information. However, the two documents have different long-term roles. The program description provides a narrative explanation of program administration. The MOA is designed to be a long-term outline of these programmatic duties in the form of a binding agreement between EPA and the State. It establishes the parameters for ongoing program administration.

The MOA establishes the basis for cooperation and coordination between the State and EPA and for ensuring that the program is administered in an effective manner consistent with the objectives of the Clean Water Act. The MOA defines the State/EPA relationship and denotes the responsibilities of each party. It charts the procedures EPA and the State will follow in carrying out these various responsibilities and generally defines the manner in which the sludge management program will be administered.

The MOA should begin with a statement of the basis and implications of the Agreement, and must affirm that the State program will be managed in accordance with State and Federal statutes. The main body of the MOA consists of a listing of the responsibilities and procedures which will be used to ensure coordination between the State and EPA.

In addition, the MOA is to include provisions for transferring from EPA to the State, permit applications and other program information. In the MOA, EPA and the State will specify the classes or categories of permits that will be sent to EPA for review and comment, and the classes of permits for which such review will be waived. EPA may waive review of any class of sludge permits except for Class 1 Sludge Management Facilities. This is significantly pared down from NPDES, which lists several classes of dischargers for which review cannot be waived. *See* 40 CFR 123.24(d). On the basis of EPA's experience with NPDES, the Agency today is proposing that the waiver of review be prohibited only for a narrow class of permits, those for Class 1 Sludge Management Facilities. The MOA must also provide for termination of the waiver, for individual permits or classes of permits, at the written direction of the Regional Administrator.

Today's rule proposes that the procedures and requirements in § 123.44 governing EPA review of State-issued NPDES permits, including EPA's authority to object to, and, where necessary, veto permits that are outside the guidelines and requirements of the CWA, generally apply as well to permits issued under State programs approved under Part 501. Although the CWA does not specifically address EPA veto of State-issued permits with inadequate sludge provisions, it does grant EPA broad authority to establish State program requirements as necessary to assure compliance with section 405 requirements. CWA, section 405(f)(1). Based on past experience in other programs, EPA believes that the ability to veto State-issued permits which do not adequately implement federal standards is an important tool for effectively assuring that State programs implement minimum federal requirements. This approach is also consistent with that in the NPDES program where EPA has authority to veto State-issued NPDES permits that are outside the guidelines and requirements of the Act (including those implementing sludge standards). EPA sees no reason why the availability of a veto authority should depend on whether a State sludge program is

approved under the NPDES program in Part 123 or separately under Part 501.

The MOA shall also set forth the frequency and content of reports the State will submit to EPA (§ 501.14(b)(5)). This provision is similar in breadth and scope to NPDES (40 CFR 123.24(b)(3)). It is not a separate requirement, but rather is to be read in conjunction with the specific requirements regarding information transmittal from the State to EPA. For example, the MOA would identify that the State will transmit to EPA a copy of permit applications for which review has not been waived within, for example, five days of receipt.

The MOA also will contain an agreement that the State will allow EPA to routinely review relevant State records, reports and files. Provisions on the State's compliance monitoring and enforcement program, such as coordination with EPA on inspections and on enforcement activities, must also be addressed in the MOA.

Section 501.15 Requirements for Permitting. This section sets forth the specific requirements for ensuring effective permitting programs. It is divided into four principal subsections. Subsection (a) specifies general requirements the State must be able to implement and standards for program implementation. Subsection (b) outlines boilerplate provisions which all permits must contain. Subsection (c) contains provisions for permit actions such as transfers, modification, revocation and reissuance, and termination. Subsection (d) contains the procedures for permit issuance, primarily public input into the issuance process.

Section 501.15(a)(1) deals with confidentiality of information, a very important provision balancing the public interest in access to information and the permittee's interest in confidentiality. The State may protect information claimed confidential, except that it must deny such claims for: (1) The name and address of the permittee, and (2) permits, permit applications and effluent data. This proposal is consistent with the confidentiality rules in the NPDES program (§ 122.7), which are mandated by sections 308 and 402(j) of the Clean Water Act.

Section 501.15(a)(2) proposes information the permit applicant would provide in applying for a sludge permit. General information requirements would include name, address, and location, and an identification of the activities which bring the facility under the jurisdiction of section 405. The applicant must also identify whether it is subject to any of the listed environmental permit programs. This is important in order to provide notice of the sludge permit to other affected programs and to determine whether some Part 503 requirements are already included in other permits.

More specific information requirements would include a topographic map of the treatment works property which depicts the location of any sludge management facilities, including on-site disposal sites. Applicants would also have to describe their sludge use and disposal practices as this will be the basis on which limits are established under Part 503. The description of sludge use and disposal practices would include a specific identification of the sites where the applicant proposes to transfer sludge for treatment and/or disposal as well as the names of applicators, distributors, or other contractors that will handle the disposal of the applicant's sludge. In the case of sludge or sludge products (e.g., compost) which are distributed and marketed to the general public, the permit applicant would identify the distributor, if different from the applicant. This information will be important for purposes of tracking the sludge to ensure that it is properly managed as provided for in applicable federal standards. Applicants must also state their annual sludge production volume.

The proposed rule also contains general requirements for applicants to submit available data on sludge quality and ground water monitoring. Additional information may also be necessary in order for the permit writer to ascertain compliance with the Part 503 standards. Accordingly, the proposed rule requires the applicant to submit any information required to determine the appropriate standards to be used for permitting under Part 503. States would also need the authority to require the applicant to submit any other information the Director may reasonably require to assess the sludge use and disposal practices, for example where permits are developed on a case-by-case basis.

The State must have the authority to require the applicant to keep records of relevant data and information submitted with the permit application for three years. This record retention time is consistent with that required in other Federal environmental programs, including NPDES. (**Note:** It also coincides with the Paperwork Reduction Act and implementing regulations (44 U.S.C. 3507; 5 CFR 1320.6(f)), which generally recommend a record retention time of three years.) The Agency solicits comments on whether record retention time should be increased, for example to five years to correlate with the typical permit term.

Paragraph (a)(4) proposes that permit applications be signed in accordance with the requirements set forth in 40 CFR 122.22. This is necessary to ensure that the person signing the forms has the authority to speak for and legally bind the permittee.

Paragraph (a)(5) proposes that sludge permits be for a term of up to five years. Because many of the requirements will be new, the Agency feels that a longer permit term would be inappropriate. The State may, of course, write permits for a shorter term.

Paragraph (a)(6) provides that schedules of compliance may be used (but are by no means mandatory) except that a State may not issue a permit with a compliance schedule which goes beyond the statutory deadline. CWA section 405 mandates that compliance with the Part 503 technical standards be achieved by one year from the date of their promulgation, except where the standards would require major construction, in which case the permittee has up to two years to achieve compliance. Because the statutory compliance deadlines are relatively tight, permit compliance schedules after promulgation of the Part 503 standards will most likely be used only for facilities requiring major construction (i.e., those which have a two-year statutory compliance deadline). Where a compliance schedule goes beyond one year, this section would require interim requirements and reporting, to ensure that the permittee is on schedule.

Paragraph (a)(7) discusses conflict of interest. It is taken directly from § 123.25(c) of the NPDES regulations and would require that no member of a board or body which approves a permit receives or has for the past two years received income from permit holders or applicants. Under the NPDES conflict-of-interest regulations (and the proposed rule in Part 501), State agencies or departments are not considered "permit holders or applicants for a permit." § 123.25(c)(iii). Without this exemption, many States could not administer an approved NPDES program because State agencies often hold NPDES permits. A similar exemption for Federal agencies or departments is being considered and may be addressed in the forthcoming proposed revisions to the NPDES regulations. Municipalities, on the other hand, are considered "permit holders or applicants for a permit." Therefore, employees of a municipality that owns or operates a facility required to obtain a permit could not sit on the board or body that approves all or portions of

sludge permits issued in an approved State.

Although the NPDES standard for conflict-of-interest is dictated by the CWA and is considered relatively stringent, EPA believes that requirements to guard against conflicts-of-interest are also important for State sludge programs. The Agency solicits comments on whether another standard would be more appropriate. One approach the Agency is considering is allowing a State that will use a program approved under another Federal statute as the basis for its sludge program under Part 501 to comply with the conflict-of-interest provision applicable under the other Federal statute (e.g., section 128 of the Clean Air Act, 42 U.S.C 7248).

Section 501.15(b) is the second principal subsection, and sets forth the permit conditions all State permits would need to contain in order for the program to be approvable. These provisions are important because they put the permittee on notice as to the applicability of Clean Water Act provisions, and identify the effect of the permit with regard to compliance and noncompliance with the Clean Water Act for enforcement purposes.

The first paragraph of § 501.15(b) requires that the permit include requirements necessary to comply with the Part 503 sludge standards and generally the requirement in CWA section 405 to protect public health and the environment. This includes requirements as to sludge quality, monitoring frequency, management practices, etc. Requirements for sludge use and disposal may include management practices or other limitations that apply at the disposal site. When the POTW or other treatment works subject to a permitting requirement disposes of its sludge offsite, the permit must include conditions to meet all applicable requirements, including those that apply at the offsite disposal site, unless those requirements are included in a permit issued under one of the programs listed in section 405(f) of the Act.

The permit by specific language in the permit document would have to require that the permittee comply with all conditions, and that noncompliance with any of the permit conditions constitutes a violation of the Clean Water Act. The permit must require compliance with the Part 503 technical standards, even if the permit has not been modified to incorporate them. This implements the language of CWA section 405 which makes these regulations directly enforceable one year from their promulgation, or two years from promulgation when construction is required. The permit must inform the permittee of the civil and criminal penalties in the Clean Water Act for permit violations and noncompliance with section 405 (which includes penalties for noncompliance with the promulgated technical standards even if the standards have not been incorporated in the permit).

This section also contains several boilerplate permit conditions. The permittee must take all reasonable steps to prevent sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting health or the environment, and must at all times properly operate and maintain facilities and systems. It is not a defense in cases of noncompliance to claim that it would have been necessary to halt or reduce the permitted activity in order to comply.

Paragraph (7) states that the permit may be modified, revoked and reissued, or terminated for cause.

Paragraph (8) is the duty to provide information. This puts the permittee on notice that the Director may request information on compliance, or to determine whether cause exists to modify or terminate the permit, and that the permittee has an obligation to furnish such information within a reasonable time.

Paragraph (9) discusses inspection and entry. It is very important that this be set forth in the permit. It sets the parameters for the Director or an authorized representative to enter onto the premises, inspect the facility, have access to records and conduct sampling.

Paragraph (10) outlines the requirements for monitoring, recordkeeping and record submission. Paragraph (10)(i) would require that the permittee report monitoring data no less frequently than once a year. The permit will require that monitoring be conducted at the frequency specified by the Part 503 standards; however, the permit writer may require additional or more frequent monitoring as needed. Today's proposed rule would not specify a minimum frequency for sludge monitoring (except compliance with Part 503 technical standards), but would leave that determination to the permit writer using best professional judgment and guidance. This approach avoids establishing a minimum monitoring frequency in regulations that may not be appropriate for the broad variety of situations and facilities that would be involved. Frequent monitoring, however, enhances the effectiveness of compliance monitoring and enforcement, particularly for early detection, assessment, and correction of violations. For this purpose, quarterly or even monthly monitoring has been suggested as a minimum requirement for all facilities. On the other hand, the potential threat to public health and the environment from some facilities (e.g. small lagoons that treat only domestic sewage and dispose of sludge infrequently) may be so remote that monitoring less frequently or on an "as needed" basis (e.g., change in influent or disposal practices) is sufficient. Of course, in establishing requirements the Agency will balance the value of such requirements against the burden they would impose on the public. EPA is sensitive to this and will take both factors into account in determining the need for specifying a minimum monitoring frequency and the appropriate level of monitoring. EPA solicits comments on whether the regulations should establish a minimum monitoring frequency and, if so, what that frequency should be (e.g. annual, quarterly, monthly).

Paragraph (10) also requires that monitoring be representative of the monitored activity, and that parameters for monitored information be set forth in the permit. Monitoring must be conducted in accordance with procedures established under 40 CFR Part 503 unless others have been specified in the permit. The permit must inform the permittee that anyone who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method or makes a false statement or representation is subject to Clean Water Act criminal penalties.

Paragraph (11) contains signatory requirements. It incorporates by reference 40 CFR 122.22. This ensures that applications and reports are signed by an authorized individual.

Paragraph (12) would require the permittee to give advance notice to the Director of any planned changes in the sludge disposal practices or facilities that may justify the application of different permit conditions, or which may result in noncompliance with the permit. The permit must also require that the permittee report all instances of noncompliance.

Under Paragraph (12)(ii) the permit would have to provide that it was not transferable except after notice to the Director. Section 501.15(c) discusses procedures for permit transfer.

Today's proposal would require that the permit contain a reopener clause, so that the permit would have to be modified or revoked and reissued where more stringent technical standards than are currently in the permit are promulgated. (See Paragraph 13.) Under the CWA, compliance with the technical

standards is required regardless of existing permit conditions. Thus, permit modification would facilitate compliance by the statutory deadline of one year from promulgation (or two years where construction is required) found in CWA Section 405. This reopener provision would also apply if limits are promulgated for a pollutant not regulated in the permit.

Subsection (c) discusses procedures for permit actions. This covers permit transfers, permit modification, permit termination, and permit issuance.

Paragraph (1) addresses permit transfers, and sets out procedures for automatic transfer, so that permit modification or revocation and reissuance can be avoided in some instances.

Paragraph (2) discusses permit modification and revocation and reissuance. When permits are modified only the provisions subject to the modification are reopened. Permits may be modified only for cause as defined in (2)(ii). For example, the promulgation of new technical sludge standards by EPA would be cause for modifying the permit.

Permit revocation and reissuance is more severe; the entire permit is reopened and subject to revision and the permit reissued for a new term. Revocation and reissuance can only be done in three circumstances: (1) Cause exists for termination but the Director decides to revoke and reissue; (2) cause exists for modification only but the permittee agrees to revocation and reissuance; or (3) the Director has received notice of a proposed permit transfer under § 501.15(b)(15). (A permit may also be modified to reflect a transfer.)

The most severe permit action, termination of the permit, is described in paragraph (3). Permits can be terminated (or permit renewal applications denied) for four reasons: (1) Noncompliance; (2) permittee's failure to disclose all relevant facts; (3) the permitted activity endangers health or the environment and can be adequately regulated only by modifying or terminating the permit; and (4) a change in condition that requires either reduction or elimination of the permitted activity.

Subsection 501.15(d) describes the permit issuance procedures that the State would need the authority to administer. The most important element of this subsection involves the requirement to ensure public participation in the permit issuance process. This section sets forth minimum provisions to ensure adequate public participation. The State may, of course, provide for more extensive public involvement, e.g., by providing lengthier public comment periods, requiring more public hearings, having more extensive public notice, etc.

The State Agency must not commence processing a permit until the applicant has fully satisfied the application requirements discussed in § 501.15(a)(2).

Paragraph 501.15(d)(3) sets forth procedures for permit modification, revocation and reissuance, and termination. Interested persons may petition the Director to take such action by written request, or he may do so on his own initiative, providing that one of the reasons specified in § 501.15(c) exists.

Paragraph (4) discusses draft permits. A draft permit would be prepared where the Director tentatively decides to issue the permit, and whenever the permit is modified, revoked and reissued, or terminated. A draft permit must include all of the conditions required to be in the permit under the provisions of Part 501 (which includes conditions required for compliance with Part 503).

Paragraph (5) discusses fact sheets. Under today's proposal, State programs would have to require that a fact sheet be prepared for permits issued to "Class 1 Sludge Management Facilities." The purpose of the fact sheet is to explain the basis for any permit condition and thus allow meaningful public comments on the draft permit. Accordingly, the fact sheet would set out the significant factual, legal, methodological, and policy questions considered in preparing the draft permit, including a brief description of the facility and the use and disposal practices, and an explanation of how the limits and conditions for sludge use and disposal were derived.

Public notice and comment procedures are the subject of paragraph (6). Under today's proposal, the State program must require that the Director give public notice of the draft permit and if a public hearing has been scheduled. The public notice must identify the name and address of the processing office, the name and address of the applicant, a brief description of the activity described in the permit application (e.g., sludge incineration), and a description of the procedures for submitting comments. The notice must provide for no less than a 30-day comment period during which any interested person may submit written comments and request a public hearing. Where the notice is for a public hearing, the notice must designate the date, time and place of the hearing and specify its nature and purpose.

The State regulations must specify that public comments will be considered before making a final decision; that significant comments will be responded to in writing and made available to the public; and that any provisions in the final permit which differ from the proposed permit will be noted and explained in the written response to comments.

Subsection (e) sets forth optional program provisions. These provisions, which the State is not required to adopt, are currently in the NPDES program and generally make the program less stringent or easier to administer. If the State decides to adopt general permits, permit continuation, or minor modification of permits for sludge, its provisions must be no less stringent than the corresponding Federal provisions identified in subsection (e). Under today's proposal, State-issued general permits would not be subject to review by EPA's Office of Water Enforcement and Permits, as § 123.44(a)(2) provides for NPDES general permits, but would be reviewed by the EPA Region to the same extent as other State-issued sludge permits (i.e., minimally, all permits for Class 1 facilities must be reviewed by the Region). States considering the use of general permits for sludge should so indicate in their program description and Attorney General's Statement, and make sure that State law would allow issuance of general permits.

Section 501.16 Requirements for compliance evaluation programs. This section would require that States have requirements and procedures for compliance monitoring and evaluation; 40 CFR 123.26 is used as the basis for these requirements. Section 405 of the Clean Water Act makes it unlawful for *any person* to use or dispose of sewage sludge except in accordance with the Part 503 standards. Thus it is important that the State's compliance monitoring program cover non-permittees (e.g., disposal sites) as well as permittees.

Section 501.17 Requirements for enforcement authority. Enforcement remedies must be specified in State statutes (and, as noted earlier, enforcement remedies should also be referenced in each permit.) State law must provide for adequate enforcement authority, including the ability to enjoin violations and bring *both* civil and criminal actions for any violations of permits, the permit program, or the sludge use and disposal standards set forth in 40 CFR Part 503. Other sanctions, such as the ability to bring actions for damages, are allowed, but under today's proposal they would be additions to, and not substitutes for, these enforcement remedies.

Under today's proposal, the State would have to be able to seek injunctive relief in two instances. First, the State must be able to immediately restrain any unauthorized activity endangering the public health or the environment. Second, it must have authority to sue to enjoin any threatened or continuing violations without first revoking the permit. State penalty authority must allow the State to seek civil penalties in the amount of at least $5,000 per day of violation, seek criminal fines (for willful or negligent violations) in the amount of at least $10,000 per day of violation, and seek criminal fines for knowingly making false representations or certifications, or knowingly rendering monitoring devices inaccurate, in at least the amount of $5,000 for each instance of violation.

The minimum penalty ceilings in today's proposal are consistent with the current parallel requirements in Part 123 for approved NPDES programs. The Water Quality Act of 1987 significantly increased both civil and criminal penalties required for violations of the CWA. In keeping with past policy that, to be effective substitutes for the federal program, State programs must have penalties generally proportionate to those available under Federal law, EPA is considering raising the minimum penalty ceilings required for State program approval. Therefore, the final promulgation of today's proposal may require higher minimum penalty ceilings for approved State sludge programs under Part 501. EPA would seek parity between Part 501 and Part 123 in this regard.

States cannot provide additional defenses or rights to dischargers where not authorized by Federal law. Thus, a State could not allow a permittee to challenge its permit limits in an enforcement proceeding, and State law that provided such an option would be inconsistent with the Federal requirements. Similarly, a State could not restrict its enforcement by limiting the use of information in an enforcement action.

State programs must allow for public participation in the enforcement process. Section 501.16(d) would allow States to choose between two options. The first option is for State law to provide for intervention as of right in any enforcement action. States choosing this option may not place restrictions on this right. Alternatively, where State laws allow permissive intervention in State civil or administrative actions, the State could agree not to oppose such intervention in any enforcement proceeding. Under this option, the State would also have to agree to investigate and respond to citizen complaints and publish all settlement agreements for a public comment period of at least 30 days.

Section 501.19 Sharing of information. Section 501.19 incorporates 40 CFR 123.41, which requires that the State make available to EPA upon request, any information obtained or used in the administration of a State program.

Section 501.20 Receipt and use of Federal information. Section 501.20 incorporates § 123.42, which addresses the transfer of relevant information collected by EPA to the State agency upon program approval. Under that section, the MOA between the State and the Regional Administrator must provide for: (1) Transfer of all copies of pending permit applications and other relevant information to the State, and (2) procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator has identified as incomplete until the Director receives information sufficient to correct the deficiency.

Section 501.21 Program reporting to EPA. This section contains the requirements for quarterly and annual reports to be submitted to EPA. These reports are important for tracking the State program and evaluating compliance and enforcement.

Section 501.21(a) describes the annual report, which would include an update of the inventory of sludge facilities, and information of substantial non-compliance of Class 1 management facilities. The information on substantial noncompliance would include instances of significant failure to comply with Part 503 standards and permit conditions, failure to complete construction of essential elements of a sludge facility (as provided in a compliance schedule or as otherwise necessary to meet permit and/or Part 503 standards), and failure to provide adequate monitoring or other reports. This paragraph identifies what information shall be provided with regard to such instances of noncompliance, for Class 1 and non-Class 1 sludge facilities.

Section 501.21(b) contains the requirements for quarterly reports. In that report the State would provide a summary of the incidents of substantial non-compliance occurring in the previous quarter by Class 1 facilities.

4. Program Approval, Revision, and Withdrawal

Section 501.31 Review and approval procedures. This section outlines the procedure for State submission and EPA review and approval of a State program. As with NPDES, today's proposal would require that EPA make a determination as to the completeness of the application within 30 days. Today's proposal would require that EPA notify the State of any deficiencies in its submittal.

Once the program is determined to be complete, EPA would publish notice of the submission in the **Federal Register** and in enough of the largest newspapers in the State to attract State-wide attention. In addition, the notice must be mailed to all interested persons and government agencies, as well as to all permit holders and applicants subject to sludge use and disposal requirements. The notice must provide at least a 45-day comment period and provide that a public hearing within the State will be held no less than 30 days after the notice is published. The notice would indicate where and when the State's submission would be accessible to the public and indicate the cost of obtaining a copy. The notice would also delineate the fundamental aspects of the State's proposed program. Finally, the notice would indicate whom an interested person may contact for additional information.

EPA specifically solicits comments on two requirements of this Section: (1) Whether (as proposed) the rule should require that individual notice of the State's application for program approval should be sent to all permit holders and applicants subject to sludge use and disposal requirements, or whether other forms of notice (**Federal Register**, State newspapers, and mailing lists) would be sufficient; and (2) whether (as proposed) a public hearing on EPA's approval of the State program should be mandatory or whether it should be required only when public interest is demonstrated.

The Administrator has 90 days from the date of receipt of the complete program to approve or disapprove of the program. This period may be extended by mutual agreement between the State and EPA. The Regional office will prepare a responsiveness summary identifying the public participation activities conducted, summarizing significant comments and responding to these comments. Notice of approval will be published in the **Federal Register**. If the program is disapproved, the Administrator will notify the State of the reasons for disapproval and what revisions would be necessary to make the program approvable.

Section 501.22 Procedures for revision of State programs. Revision of State programs may be necessary any time the State or federal laws or

programs change. The procedures for program modification are very similar to the original program approval process.

Paragraph (b) would require that where State program revision is necessitated by changes or additions to the regulations governing sewage sludge use and disposal, including changes to this Part, the State would revise its program within one year from promulgation of the applicable regulations, or within two years if an amendment to a State statute is required.

Section 501.23 Criteria for withdrawal of State programs and Section 501.24 Procedures for withdrawal of State programs. These sections incorporate 40 CFR 123.63 and 123.64, the NPDES provisions for program withdrawal. Under these sections, withdrawal can occur voluntarily (where the State decides to transfer all program responsibilities back to EPA) or involuntarily (EPA decides to withdraw approval where the State program no longer complies with the Clean Water Act or regulations). Program withdrawal is considered an extreme remedy but will be invoked where the State is unable or fails to take corrective action to solve State program deficiencies. Grounds for initiating State program withdrawal proceedings include: (1) The State's legal authorities no longer meet CWA requirements; (2) the operation of the State program fails to comply with EPA regulations; (3) the State's enforcement program fails to comply with EPA regulations; or (4) the State program fails to comply with the terms of the Memorandum of Agreement.

5. Indian Tribes

The February 4, 1986 proposed rule provided that EPA and a tribal government could develop, on a case-by-case basis, an appropriate role for the tribal government in carrying out a sludge management program on Indian lands where a State is unable to demonstrate adequate legal authority to administer and enforce its program on the Indian lands. See proposed § 501.19, 51 FR 4463. Subsequently, Congress created a more prominent role for Indian tribes in the management of environmental programs on Indian lands in section 506 of the WQA (codified as section 518 of the CWA). That section provides in part that:

> The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and Sections 104, 106, 303, 305, 308, 309, 314, 319, 401 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—
>
> (1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;
>
> (2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and
>
> (3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

CWA section 518(e). This section further directs the Administrator to promulgate regulations which specify how Indian tribes will be treated as States for purposes of the Act. Today, EPA proposes, consistent with the intent of section 518, to provide that Indian tribes may be treated as States for purposes of approved State sludge management programs.

Section 518 does not list section 405, EPA's primary authority for establishing approved State sludge management programs. The legislative history is also silent on this point. However, EPA believes that treating Indian tribes as States is nonetheless appropriate here. Indian tribes may be treated as States under Title II (construction grants) and section 303 (water quality standards and implementation plans). Both sections recognize that sludge management is an integral part of wastewater treatment. Section 303(e) in fact, requires States to have a continuing planning process which includes, inter alia, plans for "controls over the disposition of all residual waste from any water treatment processing." Section 303(e)(3)(H). Since Congress intended that Indian tribes be treated as States for purposes of sludge management activities under other provisions of the Act, it is reasonable to conclude that Congress similarly intended that Indian tribes be treated as States for purposes of approved sludge management programs authorized by Section 405.

Providing for the treatment of Indian tribes as States under section 402 of the Act further supports similar treatment under section 405. Section 402 authorizes approval of State NPDES programs. As discussed elsewhere, EPA proposes to allow NPDES States to use their NPDES programs to implement a section 405(f) sludge management program, consistent with Congressional designation of NPDES permits as a primary implementation mechanism for section 405(d) technical requirements. Thus, an Indian tribe that wishes to obtain separate approval of its NPDES program could also seek approval of its sludge management program as part of that NPDES program. It would be illogical and inconsistent not to allow Indian tribes to seek treatment as a State for purposes of an approved sludge management program that is separate from an NPDES program. EPA does not believe that Congress intended such a result. The Agency therefore proposes to provide for treatment of Indian tribes as States for purposes of sludge management programs approved under Part 501.

EPA intends that an Indian tribe which qualifies for treatment as a State would be subject to many of the same program requirements and approval procedures as are States under existing regulations. Accordingly, the definition of "State" in § 501.2 in today's proposed rule includes Indian tribes which are eligible for treatment as a State.

Today's proposal does not include provisions for determining an Indian tribe's eligibility for treatment as a State. EPA does not expect the requirements or procedures for this determination to vary significantly among the various programs under the Clean Water Act. Accordingly, EPA plans to propose a separate rule addressing Indian tribes' eligibility for treatment as States which would apply to various programs under the CWA, including sections 402, 404 and 405.

C. Part 123: State Sludge Management Program Regulations: NPDES

Part 123 establishes the program requirements and approval procedures for States which seek EPA approval to administer an NPDES permit program pursuant to Section 402 of the Act in lieu of the Federal NPDES permit program. All 39 States which currently have EPA-approved NPDES programs govern, at a minimum, the discharge of pollutants to waters of the United States, including the discharge of sewage sludge to waters of the United States (see sections 405 (a) and (c) of the CWA). None of these State programs, however, have been approved by EPA to administer a program which meets the requirements of sections 405 (d) and (f) of the CWA for the safe use and disposal of sewage sludge.

In the 1987 amendments to the Act, Congress authorized the Administrator of EPA to promulgate procedures for the approval of State programs that assure compliance with section 405(d) of the Act and also recognized permits issued pursuant to section 402 as appropriate vehicles for implementing section 405(d) requirements. Section 405(f). To

accommodate both goals, EPA today is proposing to amend Part 123 to allow States to incorporate a sludge management program as part of their approved NPDES programs.

Today's proposed revisions to Part 123 would apply only to those States which choose NPDES as the vehicle for administering an EPA-approved sludge management program in lieu of the federal program. States which choose to implement an approved sludge program through existing solid waste or other programs would follow the procedures in Part 501 (described above), rather than those in Part 123. A proposed revision to § 123.1(c) reflects this intent. For the same reason, EPA is also proposing to revise the introductory paragraph in § 123.25(a), which lists permitting requirements in Parts 122 and 124 applicable to the federal NPDES program which a State must also be able to implement as part of an approved NPDES program. Today's proposed revision clarifies that a State which chooses not to seek approval of a sludge management program as part of its NPDES program does not have to be able to implement the sludge-related revisions to those provisions of Parts 122 and 124 listed in § 123.25(a) which are promulgated after enactment of the 1987 amendments to the CWA. However, States that use their NPDES programs to implement a sludge program would have to be able to implement these revisions.

Although a State may choose to seek approval of its sludge management program under Part 123 or Part 501, the basic requirements under either Part will be the same. Maintaining consistency among State program requirements will help ensure that minimum standards apply nationwide, regardless of which program a State chooses for its sludge management program. The purpose of the program requirements under both parts is to produce programs which adequately ensure compliance with section 405(d) requirements and meet the Congressional goal of approving State programs which are no less stringent than the federal program. See Cong. Rec. H10576 (October 15, 1986). Today's proposed revisions to Part 123 are designed to "fill in the gaps" of existing NPDES requirements by adding requirements which are unique to sludge management programs.

Program Description

To obtain NPDES approval, States must submit a comprehensive description of the program they propose to administer in lieu of the federal program. § 123.22. For States which seek approval of their sludge management program as part of an NPDES program, EPA is proposing to revise § 123.22 to include three additional requirements. First, States would be required to submit an inventory of all POTWs and other treatment works treating domestic sewage, together with a plan for completing and maintaining an inventory of all sewage sludge generators and disposal facilities. Second, a State would be required to identify any program for regulating the disposal of septage and portable toilet pumpings that is handled under a program that is separate from that for sewage sludge. Finally, the program description would be required to describe any bans or prohibitions imposed by State or local authorities on specific sludge management practices. The above discussion of Part 501 explains these provisions in more detail.

The program description also must describe the State's compliance evaluation program. § 123.22(e). Section 123.26 establishes the minimum requirements for State compliance monitoring programs. EPA proposes two revisions to § 123.26(e) for sludge management programs. First, paragraph (e)(1) is proposed to be revised to specify that the inventory of all sources covered by NPDES must include permits which implement section 405(f) of the CWA. In most cases, sludge treatment works which must obtain permits that implement § 405(d) requirements will already be required to obtain NPDES permits because they discharge wastewater to surface waters of the State. However, some sludge treatment works which are subject to the permitting requirement under section 405 may apply their effluent on land or otherwise dispose of their effluent. The proposed revision to paragraph (e)(1) clarifies that these nondischarging treatment works must also be included in the required inventory. The second proposed revision would require annual inspections of all Class 1 sludge management facilities in addition to inspection of all major dischargers. Again, these two categories may overlap in many cases, but not necessarily in all cases.

Memorandum of Agreement

The Memorandum of Agreement (MOA) between the State Director and the Regional Administrator (RA) must describe which classes and categories of permits the RA will review before issuance by the State and those for which the RA will waive review. Section 123.24(d) lists the classes and categories of permits for which review cannot be waived. Today, EPA proposes to add to this list the category of Class I sludge management facilities. As explained above, Class I sludge management facilities are those which require priority attention as determined by the RA and the State Director. Under this proposal, permits issued to these facilities must be submitted to EPA for review and comment, and, where appropriate, objection.

The MOA also must contain provisions specifying reports and information the State is expected to submit to EPA. Section 123.24(b)(3). Program reporting requirements are listed, in part, in § 123.45, which specifies requirements for noncompliance reporting. Today, EPA is proposing to amend § 123.45 by adding a new paragraph (e), which would require a State to submit reports on noncompliance with sludge requirements as specified in § 501.21, i.e., quarterly reports summarizing instances of significant non-compliance and annual reports. Today's proposal also specifies that the sludge noncompliance reports may be combined with the reports currently required under § 123.45.

Incorporating Sludge Management Into Existing NPDES Programs

States which are approved for NPDES already have in place many of the program requirements that will be required of States which seek approval under Part 501. Consequently, NPDES States need only seek modification of their existing programs under § 123.62 if they wish to implement the sludge program through their existing NPDES programs rather than submit entirely new programs. Typically, EPA expects that a program modification to incorporate sludge would require a State to submit an updated program description (including the information about sludge management activities discussed above), addenda to the Attorney General's Statement and, where necessary, revisions to the Memorandum of Agreement. NPDES States would need to demonstrate that legal authority exists to issue NPDES permits for sludge use and disposal where there is no discharge of the sludge to surface waters, and that they have the additional authority to implement the Part 503 technical regulations. Existing State regulatory and statutory provisions regarding inspection, monitoring, reporting and enforcement must be broad enough to include section 405 implementation. In addition, States would be expected to make any revisions to their legal authority necessary to implement "sludge revisions" to Parts 122 and 124

proposed today which are applicable to State programs (as specified in those parts).

D. Revisions to Part 122

1. General

Part 122 establishes the essential requirements for NPDES permits issued pursuant to section 402 of the Act by EPA or an approved State. It establishes the scope of the NPDES permit program, general requirements governing the administration of the program, application requirements, required permit conditions, and permissible causes for modifying or terminating NPDES permits. These regulations specifically address sludge requirements for NPDES permittees only to the extent of providing that sludge may not be discharged to waters of the United States. While the regulations more generally require that NPDES permits contain any conditions required by section 405 of the Act regarding the disposal of sewage sludge from POTWs (§ 122.44(o)), they neither accurately reflect the broadened scope of sludge requirements nor have explicit requirements designed to address the sewage sludge use and disposal practices that are proposed to be regulated in Part 503, e.g., application requirements.

The WQA of 1987 requires that the Part 503 regulations be implemented through permits and designates NPDES permits as the primary implementation mechanism, where the Part 503 regulations are not already implemented through permits issued under other federal programs (Subtitle C of RCRA, Part C of the Safe Drinking Water Act, MPRSA, or the Clean Air Act) or State programs approved pursuant to section 405(f). *See* section 405(f)(1). Accordingly, EPA is proposing to amend Part 122 to establish requirements for including in NPDES permits any terms and conditions necessary to implement the sludge standards in Part 503 as well as any others which may be necessary to fulfill the general mandate in section 405 to protect human health and the environment. These proposed regulations would apply to all NPDES permits for treatment works treating domestic sewage which are issued by EPA and by States which choose to administer an approved sludge management program as part of their NPDES programs. (**Note**: The permit requirements that must be followed by States which choose to administer an approved sludge program independently from an NPDES program are listed separately in Part 501. These requirements are described above in the discussion about Part 501.)

The 1987 amendments also authorize the Administrator to establish procedures and issue permits for sludge use and disposal to any treatment works that treats domestic sewage where the treatment works is not otherwise subject to NPDES and is not subject to sludge requirements that implement section 405 contained in other federal permits or permits issued under an approved State program ("sludge-only" facilities). CWA, section 405(f)(2). A treatment works that land applies its effluent rather than discharging it to surface waters is an example of a treatment works that might fall into the category of "sludge-only" facilities. Here, although the treatment works would not need an NPDES permit for surface water discharges, it may generate sewage sludge subject to regulation under section 405 and thus would require an NPDES permit under today's proposal.

Today, EPA proposes to amend Part 122 to establish it as the mechanism through which EPA will issue "sludge-only" permits. The proposed revisions include expanding the scope of Part 122 to cover sludge-only permits (§ 122.1) and to indicate where the requirements for "sludge-only" permits differ from the requirements applicable to other NPDES permittees (e.g., proposed § 122.21(c)(3), specifying when a sludge-only facility would have to apply; proposed § 122.21(d)(3)(ii), specifying the information a "sludge-only" facility must submit with its application; proposed § 122.44(j), requirement for pretreatment programs when necessary to assure compliance with section 405 requirements). The general requirements applicable to NPDES permittees would also apply to "sludge-only" permittees except where the requirements, by their own terms, apply only to discharges to surface waters.

Permit conditions that implement technical requirements for the use and disposal of sewage sludge may include management practices and other limitations that apply at the disposal site. The technical sludge standards promulgated at 40 CFR Part 503 will contain both sludge pollutant concentration limits, and management practices and factors that apply at the disposal site. Under today's rule, these conditions must be included in the permit issued to the POTW or other treatment works treating domestic sewage (i.e., the generators), unless applicable requirements have been included in a permit issued under one of the federal programs listed in section 405(f) or in a permit or other approved control mechanism under an approved State program.

As noted above, parties who use and dispose of sewage sludge are also liable under the CWA for violations of any technical regulations promulgated pursuant to section 405(d) of the CWA even though they may not be required to obtain a permit because they have not been classified as a POTW or other treatment works treating domestic sewage. Examples of such parties might include regional sewage treatment facilities not connected to a POTW (e.g., regional incinerators and composting facilities), landfill operators, contractors who purchase sludge from the POTW and distribute it to the public, or farmers who land apply sewage sludge.

In some cases, the most effective way to assure compliance with the technical standards may be to issue separate permits to the users or disposers of sludge. Accordingly, EPA is considering adding a provision to the Part 122 permit regulations to specifically provide for issuing permits to users or disposers of sewage sludge to implement technical standards where the permitting authority (EPA or an approved State) determines (either on a case-by-case basis or for a particular class or category of users or disposers) that a permit is necessary to assure compliance with applicable standards. Such permits might be particularly appropriate for parties which contract with the POTW to dispose of the sludge (e.g., regional sludge incinerators, landfills, commercial applicators and composting facilities). In such cases, where the POTW is not the ultimate user/disposer, and where the requirements applying to the disposal site are implemented directly through a permit or other control mechanism issued to the user/disposer, the POTW permit would contain only the requirements applicable to sludge quality, e.g., pollutant concentration limits. EPA solicits comments on the appropriateness of such permitting authority for other users and disposers, and of limiting the POTW permit in such cases to requirements as to sludge quality.

2. Specific Revisions to Part 122

a. *Purpose and Scope.* EPA proposes several revisions to § 122.1 to reflect the expanded scope of the NPDES program to include requirements for sludge use and disposal pursuant to section 405 of the CWA. The new scope of the NPDES program is discussed above. An additional revision worth noting involves section 405(d)(4) of the CWA. That section provides that:

Prior to promulgation of regulations required by [§ 405(a)(2)], the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act, or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

EPA reads this provision of the Act to authorize the development, on a case-by-case basis, of permit conditions to regulate sludge use and disposal practices whenever necessary to fulfill the purpose of the Act to protect public health and the environment from the adverse effects of sewage sludge. This authority is in addition to the authority to impose conditions in NPDES permits that implement the requirements of Part 503 (the technical standards) and applies whenever a technical standard in Part 503 does not address a particular pollutant or practice which EPA determines is of concern.

Similarly, EPA reads section 405(d)(4) to authorize imposition of sludge requirements in permits issued to non-POTWs (e.g., privately-owned treatment works treating domestic sewage, sludge incinerators unconnected to a facility treating domestic sewage) if necessary to protect public health and the environment prior to the promulgation of applicable Part 503 requirements. In sum, section 405(d)(4) grants EPA broad authority to include sludge requirements in NPDES permits whenever necessary to protect human health and the environment, whether before or after the promulgation of the technical standards in Part 503.

It has been suggested that EPA use the authority granted by section 405(d)(4) to write permit limits on a case-by-case, best professional judgment basis when an applicable Part 503 standard is outdated and therefore is no longer adequate to protect public health and the environment. This would allow EPA to use new information to write limits that implement the statutory standard without waiting until the completion of a new technical rulemaking, which can take several years to develop and finalize. The Agency solicits comments on whether writing case-by-case permit limits in this situation would be appropriate.

b. *Permit as a Shield.* Section 122.5 currently states that, except for standards or prohibitions under section 307(a) of the Act, "compliance with a permit during its term constitutes compliance * * * with sections 301, 302, 306, 307, 318, 403, and 405 of the CWA." This "permit as a shield" provision mirrors section 402(k) of the Act except that CWA section 402(k) does not include section 405 among those sections covered by the permit shield. Section 405 was included in the regulatory permit-as-shield provision because that section (section 405) merely clarified EPA's authority to require NPDES permits and establish effluent limitations for discharges of sewage sludge to surface waters to the same extent as for other pollutant discharges regulated through NPDES permits. See CWA section 405(a)–(b).

When Congress required permits for the implementation of section 405(d) requirements in the 1987 amendments, it did not make corresponding changes to section 402(k) to extend the permit shield to section 405(d) (i.e., the forthcoming Part 503 technical sludge standards). Moreover, Congress amended section 405(e) to provide, "It shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, *except in accordance with such regulations*" (emphasis added). This language strongly suggests that the section 405(d) regulations are independently enforceable and supports the conclusion that Congress did not intend that compliance with sludge permit conditions would operate as a shield against liability for violations of the regulations.

EPA is proposing to revise § 122.5 to clearly indicate that compliance with a permit does not constitute compliance with section 405(d). Similar revisions are being proposed to § 122.41(a) and § 122.44. This means that persons subject to Part 503 requirements (both permittees and nonpermittees) may be liable for violations of those requirements even if the permit does not address the requirements.

EPA does not read the CWA to prohibit limited protection for permittees in all situations. In particular, EPA believes that it would be unfair to subject a permittee to an enforcement action for a violation of section 405 when the permittee was in compliance with permit terms specifically designed to implement the Part 503 standard allegedly violated. Providing protection to the permittee in this case reinforces the integrity of the permitting system and acknowledges the permittee's good faith efforts to comply with the section 405(d) regulations by complying with its permit. Accordingly, EPA is considering ways to protect permittees in this situation against possible enforcement actions for violating section 405(d) regulations.

One approach would be to adopt a limited affirmative defense which a permittee could assert in an enforcement action if it were in compliance with a permit condition developed to implement the Part 503 standard allegedly violated. Consistent with legislative intent, the defense would not be available if the permit did not address the requirement allegedly violated. Similarly, compliance with interim limits developed on a case-by-case basis pursuant to section 405(d)(4) would not qualify for the defense if the parameter or practice in question were subject to a subsequently promulgated requirement in Part 503 that addressed that parameter or practice.

Another approach would be to promulgate a regulation that deems permit conditions which implement particular Part 503 standards to be Part 503 standards. Therefore, compliance with those permit conditions would be compliance with Part 503 and hence, compliance with section 405(d) requirements.

EPA solicits comments on whether it should provide a protection to permittees against enforcement actions for violating section 405(d) where the permittee complies with permit conditions designed to implement applicable Part 503 requirements, and what the most appropriate way to do this would be.

c. *Application requirements.* Section 122.21 establishes application requirements for NPDES permittees. EPA is proposing revisions to this section both for "traditional" NPDES permittees and "sludge-only" permittees.

Currently, § 122.21(a) states that "any person who discharges or proposes to discharge pollutants" has a duty to apply for an NPDES permit. Today's proposal would revise this section to clearly state that "sludge-only permittees" also have a duty to apply for a permit. Today's proposal would also specify when sludge-only permittees would be required to apply: existing facilities within 120 days after promulgation of 40 CFR Part 503 (or earlier if necessary to protect public health and the environment); new facilities that commence operation after promulgation of 40 CFR Part 503, at least 180 days prior to the date proposed for commencing operation.

Today's proposal would also specify the application requirements for both sludge-only permittees and NPDES permittees that are POTWs or other treatment works treating domestic sewage by revising § 122.21(d)(3). This revision would require that these permit

applicants submit the information required under 40 CFR 501.15(a)(2) (also proposed today). These information requirements are described above in the discussion about Part 501. EPA also plans to evaluate whether additional application requirements would be appropriate (for example, to collect data to assess the need for additional Part 503 standards).

d. *General permits.* Under the existing rule (§ 122.28), general permits may be issued to cover a category of discharges within a specified geographic area when all sources: (1) Involve the same or substantially similar type of operations; (2) discharge the same types of wastes; (3) require the same effluent limitation or operating conditions; (4) require the same or similar monitoring; and (5) in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits. Clearly, under the circumstances described in § 122.28, general permits have the potential to significantly reduce the administrative burden of issuing individual permits without sacrificing environmental quality.

EPA today is proposing to amend § 122.28 so that general permits may be written to cover sludge use or disposal practices under the same type of circumstances as permits for effluent discharges. Under the proposal, for example, a general permit might be written to cover all facilities that use the same disposal method and are subject to the same sludge quality requirements and management practices. It would not be necessary that all facilities covered by the sludge general permit also qualify for a general permit covering their effluent discharges. Thus, it would be possible for a facility to be covered by an individual NPDES permit which regulates its discharges and by a general permit which regulates its sludge practices.

e. *Permit conditions.* Section 122.41 establishes "boilerplate" conditions which must be included in all NPDES permits while § 122.44 establishes requirements for developing individual limits for each permit. Today's proposal includes revisions to both of these sections to accommodate the need to include sludge-related conditions in permits.

Three of the revisions relate to the "permit as a shield" issue discussed above. First, § 122.41(a)(1) would be revised to state that the permittee has a duty to comply with standards promulgated pursuant to section 405(d) (i.e., Part 503) whether or not the permit has been modified to incorporate the standard. As explained earlier, this provision follows the clear intent of Congress. Requiring inclusion of this provision in all permits clearly notifies permittees of their potential liabilities under the Act for violations of section 405. In addition, a proposed revision to § 122.44(b) would require the permitting authority to modify the permit when Part 503 standards are promulgated after permit issuance if the standards are more stringent than existing permit limits. Similarly, a proposed revision to § 122.44(c) would require the permitting authority to include in permits a "reopener" clause, stating that the permit will be reopened to incorporate new section 405 standards under the circumstances described in § 122.44(b). All these revisions parallel existing requirements that apply to section 307(a) toxic effluent standards or prohibitions.

Another group of revisions to § 122.41 and § 122.44 relate to permittee monitoring requirements. Current regulations generally require that all monitoring be conducted in accordance with Part 136. Part 136 methods do not comprehensively address sludge monitoring and analysis. To supplement Part 136, Part 503 may specify required monitoring methodologies where Part 136 methods are inappropriate. Accordingly, EPA proposes to revise § 122.41(j)(4) and (l)(4)(ii) and § 122.44(i)(1)(iii) to state that sludge monitoring methodologies shall be as specified in Part 503, as well as Part 136.

In addition, current regulations require that permits contain requirements for permittee reports on monitoring results at a "frequency dependent on the nature and effect of the discharge, but in no case less than once a year." § 122.44 (i)(2). EPA proposes to revise this section to include reporting for sludge monitoring. Thus, the frequency for reporting of sludge monitoring results which must be specified in the permit would be based on the nature and effect of the permittee's sludge use or disposal activity. How frequently reporting is appropriate would be determined by the permit writer's best professional judgment, but must be required no less than once a year. (Note: Part 503 may also specify recommended or required monitoring frequencies for various parameters and practices. The Agency expects that Part 503 be followed whenever applicable).

As explained in the discussion about proposed Part 501 permit requirements, the Agency is soliciting comments on whether the regulations should establish a minimum monitoring frequency (where there is no applicable Part 503 technical requirement) and what that frequency should be (e.g., annual, quarterly, monthly).

Today's proposed revisions also address how monitoring must be reported. Section 122.41(1)(4) states that monitoring results must be reported on a "DMR." A DMR ("Discharge Monitoring Report") is the EPA uniform national form for the reporting of self-monitoring results by permittees, which must be used by approved NPDES States as well as EPA. At this time, EPA has not yet developed a uniform reporting form for the results of permittee monitoring of sludge activities regulated by permit. Accordingly, EPA proposes to revise § 122.41(l)(4)(i) and (ii) to state that monitoring of sludge use and disposal practices should be reported on forms specified by the Director (rather than on the DMR). EPA intends that the Director (EPA or an approved State) will develop forms to elicit the relevant data from the permittee based on the monitoring and other conditions in the permit. Alternatively, the Director could specify other appropriate forms for reporting monitoring information, such as the forms used by the laboratory to report results of its analyses.

Minor wording revisions are also being proposed today to establish that the activity or requirement addressed by Part 122 regulations includes sludge use and disposal activities as well as effluent discharge activities (e.g., § 122.41(d), "duty to mitigate"; § 122.64(a)(4), termination of permit when permittee ceases regulated activity; see also proposed revisions to § 123.44, EPA review of and objection to State permits). EPA also intends that other general provisions governing permit conditions which are not affected by today's proposed revisions apply to a permittee's sludge activities as well as to discharge activities covered by the permit where the existing language is broad enough to cover both discharge and sludge disposal activities (e.g., "need to halt or reduce activity not a defense" under § 122.41(c); "duty to provide information" under § 122.41(h); "inspection and entry" under § 122.41(i)).

Conversely, existing provisions which, by their own terms, are limited to effluent discharges and are not proposed to be revised today will continue to apply exclusively to the permittee's discharge activities (e.g., bypass and upset defenses (§ 122.41(m), (n)); new sources and new discharges (§ 122.29)). Minor revisions have also been made to some provisions that are clearly intended to apply only to discharge activities, but which, by their language, could be interpreted more broadly (e.g., § 122.44(e)(1), reissued permits; § 122.45(b)(1), production-based limits)

to clarify that these provisions apply to discharge activities only.

f. *Permit modifications.* Under NPDES, permits may be modified or revoked and reissued only for cause. Section 122.62 lists the causes for which permit modification or revocation and reissuance is deemed permissible. Today, EPA proposes two revisions to this section related to sludge. First, § 122.62 (a)(1) is proposed to be revised to clarify that a permit may be modified (or revoked and reissued if the permittee agrees) when there is change in the permittee's sludge use or disposal practice after permit issuance which would justify the application of different or additional limits. This proposed revision directly relates to a corresponding proposal to require a permittee to notify the Director of any significant change in sludge use or disposal practices under § 122.41(1)(1)(iii). Both proposed revisions are intended to cover situations where the permittee decides to switch to a different sludge use or disposal practice than the one(s) described in the permit application and covered by the permit. It would not cover situations where the permittee alternates sludge practices (e.g., depending on the season) and the permit addresses each alternative.

The second revision would allow permit modification whenever required by a reopener clause to incorporate limits based on new standards for sludge use and disposal promulgated in 40 CFR Part 503. (In related revisions proposed today, permits must be modified when the new standards are more stringent than existing permit limits (§ 122.44(b) and the permit must contain a "reopener" clause to this effect (§ 122.44(c)(4)). As noted in earlier discussions, a permittee would be expected to comply with any applicable Part 503 standard by the statutory deadline even if its permit had not been revised to incorporate the standard. However, the proposed revision would give the permittee a basis for requesting modification of the permit to eliminate uncertainty about how the standard applies to the permittee's particular situation, when this is not readily apparent on the face of the regulation. Obtaining specific limits implementing a Part 503 requirement would have added importance if EPA decides to adopt a provision protecting a permittee from enforcement actions for complying with such limits.

E. Revisions to Part 124

Part 124 establishes the procedural requirements for issuing, modifying, and terminating permits under several federal programs, including NPDES. In today's action, EPA proposes to have the procedural requirements in Part 124 that apply to NPDES permits apply as well to "sludge-only" permits which would be issued by EPA under the proposed revisions to Part 122. Thus, § 124.1 is proposed to be revised to state that Part 124 governs "sludge only" permits issued by EPA. Similarly, § 124.71 (applicability of Subpart E governing evidentiary hearings) and § 124.111 (applicability of Subpart F governing non-adversary panel proceedings) are proposed to be revised to indicate that those subparts govern permits issued pursuant to section 405(f)(2) ("sludge only" permits). EPA intends these proposed revisions, together with the proposed revisions to Part 122 described above, to fulfill its statutory responsibility to establish procedures for EPA issuance of permits with sludge use and disposal requirements to treatment works which are not regulated under one of the permit programs listed in section 405(f) of the CWA.

In addition, EPA is proposing to make minor revisions to Part 124 which reflect the expanded content of NPDES permits to include requirements for sludge use and disposal. These proposed changes include: (1) Revisions to the definitions of "applicable standards and limitations", "facility or activity" and "general permit", and a new definition for "Class I sludge management facility;" (2) revision to § 124.6(d)(4) to require that draft permits include conditions necessary to meet the requirements of standards for sludge use and disposal; (3) revisions to §§ 124.8 and 124.56 to require that fact sheets be prepared for "Class I sludge management facilities" (§ 124.8) and contain an explanation of how sludge limits were derived and where the regulated activities or facilities are located (§ 124.56); (4) revisions to the public notice requirements in § 124.10 to require the permit authority to mail the public notice of a permit action to any agency known to have or be required to issue a sludge management permit or ocean dumping permit (§ 124.10(c)(1)(ii)) and to describe in the public notice the location of each sludge management facility (including disposal sites) and disposal or use practice (§ 124.10(d)(1)(vii) and (5) a revision to § 124.5(d) which would allow EPA to terminate a permit in the course of transferring permit responsibility to an approved State under § 501.14(b)(1) without having to issue a notice of intent to terminate (and following the procedures applicable to draft permits).

V. Request for Comments

The proposed rule is intended to provide a comprehensive programmatic framework for implementing the national sludge program mandated by the 1987 amendments to the CWA. In addition to the issues specifically raised in the preamble discussion, EPA requests comments on all aspects of today's proposed rule.

In the State program portion of today's rule, EPA has attempted to develop requirements that could be applied nationwide to assure minimum consistency among State programs and effective implementation of sludge standards through permits as envisioned by Congress in the 1987 CWA amendments. EPA is aware that States have already developed a variety of ways to implement sludge management programs. Therefore, EPA is particularly interested in hearing from States about their experiences in administering sludge management programs and in what specific areas additional flexibility is needed in the final State program rule.

Over 60 persons submitted comments in response to the February 4, 1986, proposed rules for state sludge management programs. Where still relevant (e.g., not rendered moot by the 1987 amendments to section 405 of the CWA), EPA will consider and respond to these comments, together with those received in response to today's proposal, in promulgating the final rules. Therefore, persons who commented on the earlier proposal need not resubmit their comments unless, of course, they wish to change them.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in the costs or prices for consumer, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) 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.

Today's proposed rule establishes the mechanism (permits) for implementing standards for sludge use and disposal which are being promulgated under a separate rulemaking (to be codified at 40 CFR Part 503). The potential impacts of

these Part 503 standards on regulated parties and the need for a Regulatory Impact Statement will be considered in conjunction with that rulemaking.

The proposed rule also establishes requirements for the submission and approval of State sludge management programs. States are not required to seek program approval under these rules. In any event, the proposed rules would not impose large costs upon State regulatory agencies. Therefore, the proposed rule does not satisfy any of the criteria for a major rule as specified in section 1(b) of the Executive Order and as such does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review.

VII. Paperwork Reduction Act

The information collection requirements (ICRs) in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document (ICR #1237) has been prepared by EPA and a copy may be obtained from Eric Strassler, Information Management Branch, EPA, 401 M Street SW. (PM-223), Washington, DC 20460, or by calling (202) 382-2709. Submit comments on the information collection requirements to EPA and to Timothy Hunt, Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503. The ICR document discusses reporting requirements imposed by the proposed rule and estimates the annual burden to respondents (POTWs, other treatment works treating domestic sewage, and States seeking EPA approval of their sludge management programs) for complying with these requirements. The final rule will respond to any OMB or public comments on the information collection requirements.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of its rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed rule most directly affects State agencies. It also affects treatment works that generate and dispose of sewage sludge, by specifying that any applicable requirements promulgated under separate regulations be implemented through requirements in permits issued to the treatment works. In nearly all cases, these treatment works already are required to obtain the permits under existing federal or State programs. Accordingly, I hereby certify pursuant to 5 U.S.C. 605(b) that this amendment will not have a significant impact on a substantial number of small entities.

Lists of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 501

Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Publicly owned treatment works, Sewage disposal, Waste treatment and disposal.

Date: February 25, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 122, 123, 124, and Chapter I of Title 40 of the Code of Federal Regulations are proposed to be amended as follows.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.1 is proposed to be amended by revising paragraphs (a)(1), (d)(2), by adding new paragraphs (b)(3), (g)(5) and (g)(6) and redesignating existing paragraph (g)(5) as (g)(7) and revising it, and by redesignating the remaining paragraphs accordingly, to read as follows:

§ 122.1 Purpose and scope.

(a) * * *

(1) These regulations contain provisions for the *National Pollutant Discharge Elimination System* (NPDES) Program under section 318, 402, and 405 under The *Clean Water Act* (CWA) (Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4; 33 U.S.C. 1251 *et seq.*)

* * * * *

(b) * * *

* * * * *

(3) The permit program established under this part also applies to the use and disposal of sewage sludge by owners or operators of any treatment works that treats domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit in accordance with paragraph (a)(1) of this section, unless all requirements implementing section 405(d) of CWA applicable to the treatment works are included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.

* * * * *

(d) * * *

* * * * *

(2) *Technical regulations.* The NPDES permit program has separate additional regulations. These separate regulations are used by permit-issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located at 40 CFR Parts 125, 129, 133, 136, 40 CFR Subchapter N (Parts 400-460), and 40 CFR Part 503.

* * * * *

(g) * * *

* * * * *

(5) Section 405(d)(4) of the CWA requires the Administrator, prior to promulgation of standards for sewage sludge use and disposal, to "impose conditions in permits issued to publicly owned treatment works under section 402 of this Act, or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge."

(6) Section 405(f) provides that NPDES permits must include requirements implementing the standards for sludge use and disposal (40 CFR Part 503) "unless such requirements have been

included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator * * *." Section 405(f) also authorizes the Administrator to issue permits with requirements for sludge use or disposal that assure compliance with 40 CFR Part 503 to any treatment works not subject to NPDES (i.e., have no point source discharge) and not covered by the other listed permit programs.

(7) Sections 402 (b) and (c), and 405 (c) and (f) of CWA authorize EPA approval of State permit programs for discharge from point sources, discharges to aquaculture projects, and disposal and use of sewage sludge.

* * * * *

3. Section 122.2 is proposed to be amended by revising the definitions of "applicable standards and limitations", "sewage sludge," "toxic pollutant," by adding a sentence to the definition of "facility or activity" and by adding definitions for "class I sludge management facilities," "standards for sewage sludge use and disposal," "distributor," "generator," "sludge use or disposal practice," "treatment works," and "user," as follows:

§ 122.2 Definitions.

* * * * *

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

* * * * *

Class 1 sludge management facilities means any sludge facility classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

* * * * *

Distributor means the person responsible for distributing and marketing sewage sludge and sludge-derived products.

* * * * *

Facility or activity * * *. "Facility" also means all land and structures, other appurtenances and improvements on the land used for the treatment, storage, processing, utilization, or disposal of sewage sludge.

* * * * *

Generator means the owner or operator of a treatment works that treats domestic sewage (but not including individual household septic tanks or portable toilets) or any person whose act or process produces sewage sludge.

* * * * *

Sewage Sludge means any solids, semi-solid, or liquid residue which contains materials removed from municipal or domestic wastewater during treatment, including primary and secondary solids, septage, and portable toilet pumpings. "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic waste treatment system when the system is cleaned.

* * * * *

Sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

* * * * *

Sludge-only facility means any treatment works that treats domestic sewage and engages in "sludge use or disposal practices" subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under § 122.1(b)(3) of this part.

Standards for sewage sludge use and disposal means the regulations promulgated at 40 CFR Part 503 pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage use and disposal practices by treatment works treating domestic sewage and also by the users of sewage sludge.

* * * * *

Toxic Pollutant means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant listed as toxic in regulations implementing section 405(d) of the CWA.

Treatment works means any devices and systems used in the collection, storage, treatment, recycling, and reclamation of domestic sewage waste of a liquid nature, including land dedicated for the storage, treatment and disposal of sewage and resulting sludge.

User means the person responsible for proper end use of sewage sludge or sludge products.

* * * * *

4. Section 122.5 is proposed to be amended by revising paragraph (a) to read as follows:

§ 122.5 Effect of a permit.

(a) *Applicable to State programs § 123.25.* Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA and standards for sludge use and disposal under 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405(a)–(b) of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

* * * * *

5. Section 122.21 is proposed to be amended by revising paragraph (a), by redesignating (c) as (c)(1) and adding a new paragraph (c)(2), by redesignating paragraph (d)(3) as (d)(3)(i), and revising it and adding a new paragraph (d)(3)(ii) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants or who owns or operates a "sludge-only facility" and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.3, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(m), shall submit a complete application (which shall include a BMP program if necessary under 40 CFR 125.102) to the Director in accordance with this section and Part 124.

* * * * *

(c) * * *

(2) Any existing "sludge-only facility" shall submit an application to the Director within 120 days after promulgation of 40 CFR Part 503 or upon request of the Director prior to the promulgation of 40 CFR Part 503 if the Director determines that a permit is necessary to protect public health and the environment from any adverse effects that may occur from toxic pollutants in sewage sludge. Any "sludge-only facility" that commences operations after promulgation of 40 CFR Part 503 shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

* * * * *

(d) * * *

(3)(i) All applicants for EPA-issued permits, other than POTWs, new sources, and "sludge-only facilities," must complete Forms 1 and either 2b or 2c of the consolidated permit application forms to apply under § 122.21 and paragraphs (f), (g), and (h) of this section.

(ii) In addition to any other applicable requirements in this part, all POTWs and other treatment works treating domestic sewage, including "sludge-only facilities," must submit with their applications the information listed at 40 CFR 501.15(a)(2).

* * * * *

6. Section 122.28 is proposed to be amended by revising the introductory text of paragraphs (a)(1) and (a)(2)(ii) and by revising paragraphs (a)(2)(ii) (B), and (C) and paragraphs (b)(2)(i) (B), (C), and (F) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(1) *Area.* The general permit shall be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. * * *

* * * * *

(2) *Sources.* * * *

(ii) A category of point sources other than storm water point sources, or a category of sludge facilities, if the sources or facilities all:

(A) * * *

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices:

(C) Require the same effluent limitations, operating conditions, or standards for sludge use and disposal;

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(B) The discharge or sludge facility is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or sludge facility;

* * * * *

(F) Standards for sludge use and disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

* * * * *

7. Section 122.41 is proposed to be amended by revising paragraphs (a)(1), (d), (j)(4), by adding a new paragraph (l)(1)(iii), and by revising paragraphs (l)(4)(i) and (l)(4)(ii), to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sludge use and disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

* * * * *

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

* * * * *

(j) * * *

(4) Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.

* * * * *

(l) * * *

(1) * * *

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit;

* * * * *

(4) * * *

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

* * * * *

8. Section 122.44 is proposed to be amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2), by adding a new paragraph (c)(4), by revising paragraphs (i)(1)(iii) and (i)(2), by adding a new paragraph (j)(3), and by revising paragraph (l)(1) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) *Standards for sewage sludge use and disposal* under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit shall include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use and disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director shall initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use and disposal.

(c) * * *

(4) For any permit issued to a treatment works which treats domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sludge use or disposal promulgated under section 405(d) of the CWA. The Director shall promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

* * * * *

(i) * * *

(1) * * *

(iii) Other measurements as appropriate including pollutants in

internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring (e.g., air emissions, groundwater monitoring) as specified in 40 CFR Part 503;

* * * * *

(2) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge or the sludge use or disposal practice, but in no case less than once a year.

* * * * *

(j) * * *

(3) For POTWs which are "sludge-only facilities," a requirement to develop a pretreatment program under 40 CFR Part 403 when the Director determines that a pretreatment program is necessary to assure compliance with section 405(d) of the CWA.

* * * * *

(l) *Reissued permits.* (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the provisions in the previous permit (unless the circumstances on which the previous permit were based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

* * * * *

9. Section 122.45 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) *Production-based limitations.* (1) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

* * * * *

10. Section 122.47 is proposed to be amended by revising paragraph (a)(3)(i) to read as follows:

§ 122.47 Schedules of compliance.

(a) * * *

(3) * * *

(i) The time between interim dates shall not exceed 1 year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

* * * * *

11. Section 122.62 is proposed to be amended by revising paragraphs (a)(1) and (a)(7) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

* * * * *

(a) * * *

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

* * * * *

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations and standards for sludge use and disposal, see also § 122.44 (c)) or 40 CFR 403.10 (e) (pretreatment program).

* * * * *

12. Section 122.64 is proposed to be amended by revising paragraph (a)(4) to read as follows:

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

(a) * * *

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

13. The authority citation for Part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

14. Section 123.1 is proposed to be amended by revising paragraphs (b) and (c) as follows:

§ 123.1 Purpose and scope.

* * * * *

(b) These regulations are promulgated under the authority of sections 101(e), 304(i), and 405(f) of CWA, and implement the requirements of those sections.

(c) The Administrator shall approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program. (Permit programs under section 405(f) of CWA (sludge management programs) may be approved independently of a section 402 permit program under 40 CFR Part 501.)

* * * * *

15. Section 123.2 of proposed to be revised to read as follows:

§ 123.2 Definitions.

The definitions in Part 122 and Part 501 apply to all subparts of this part.

16. Section 123.22 is proposed to be amended by adding a new paragraph (f) to read as follows:

§ 123.22 Program description.

* * * * *

(f) A State seeking approval of a sludge management program under section 405(f) of the CWA as part of its NPDES program in addition to the above requirements of this section, shall include the following:

(1) An inventory of all POTWs and other treatment works treating domestic sewage and a plan for developing and maintaining in inventory of all sewage sludge generators and disposal facilities in the State;

(2) An identification of any State program for regulating the disposal of septage and portable toilet pumpings if separate from the State's program for sewage sludge; and

(3) If applicable, a description of any bans or prohibitions imposed by State or local authorities on specific sewage sludge management practices.

17. Section 123.24 is proposed to be amended by revising the last sentence in the introductory text of paragraph (d), and by adding paragraph (d)(8) to read as follows:

§ 123.24 Memorandum of Agreement with the Regional Administrator.

* * * * *

(d) * * * While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following classes or categories:

* * * * *

(8) Facilities which are "Class I Sludge Management Facilities" as defined in 40 CFR 501.2.

* * * * *

18. Section 123.25 is proposed to be amended by revising the introductory

text of paragraph (a) and by revising paragraph (a)(37) to read as follows:

§ 123.25 Requirements for permitting.

(a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that a State which chooses not to administer a sludge management program pursuant to section 405(f) of the CWA as part of its NPDES program is not required to have legal authority to implement the portions of the following provisions which were promulgated after the enactment of the Water Quality Act of 1987 (Pub. L. 100-4) and which govern sewage sludge use and disposal. In all cases, States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

* * * * *

(37) 40 CFR Parts 129, 133, Subchapter N and 40 CFR Part 503.

* * * * *

19. Section 123.26 is proposed to be amended by revising paragraphs (e) (1) and (5) to read as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(e) * * *

(1) Maintaining a comprehensive inventory of all sources covered by NPDES permits (including permits which implement section 405 of CWA where applicable) and a schedule of reports required to be submitted by permittees to the State agency.

* * * * *

(5) Inspecting the facilities of all major dischargers and all Class I sludge management facilities where applicable at least annually.

20. Section 123.44 is proposed to be amended by revising paragraphs (c)(5) and (c)(6) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(c) * * *

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations or standards for sewage sludge use and disposal required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations or standards for sewage sludge use and disposal under sections 301, 302, 306, 307, 318, 403, and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA; the provisions of this paragraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines, to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403 or 405, and to sewage sludge use and disposal requirements developed on a case-by-case basis pursuasnt to section 405(d) of CWA, as the case may be;

* * * * *

21. Section 123.45 is proposed to be amended by adding a new paragraph (e) to read as follows:

§ 123.45 Noncompliance and program reporting by the Director.

* * * * *

(e) *Sludge noncompliance program reports.* The Director shall prepare and submit quarterly noncompliance and annual program reports as required under 40 CFR 501.21. The Director may include this information in reports submitted in accordance with paragraphs (a)-(d) of this section.

PART 124—PROCEDURES FOR DECISIONMAKING

22. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

23. Section 124.1 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits" (including "sludge-only" permits issued pursuant to § 122.1(b)(3)), other than RCRA and UIC "emergency permits" (see §§ 270.61 and 144.34) and RCRA "permits by rule" (§ 270.60).* * *

* * * * *

24. Section 124.2 is proposed to be amended by revising paragraph (a), and by revising the definitions of "applicable standards and limitations," "Facility or activity," and the first sentence of "General permit" to read as follows:

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in § 124.41.* * *

* * * * *

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge", a "sludge use or disposal practice" or a related activity is subject under the CWA, including "standards for sewage sludge use and disposal", effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

* * * * *

Facility or activity means any "HWM facility," UIC "injection well," NPDES "point source" or "treatment works" as defined in § 501.2, or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

General permit (NPDES and 404) means an NPDES or 404 "permit" authorizing a category of discharges or activities under the CWA within a geographic area.* * *

25. Section 124.3 is proposed to be amended by revising the third and sixth sentences in paragraph (c) to read as follows:

§ 124.3 Application for a permit.

* * * * *

(c) * * * Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source or sludge-only permittee should be reviewed for completeness within 60 days of receipt.* * * When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source or sludge-only permittee the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information.* * *

* * * * *

26. Section 124.6 is proposed to be amended by revising paragraph (d)(4)(v) to read as follows:

§ 124.6 Draft permits.

(d) * * *

(4) * * *

(v) NPDES permits, effluent limitations, standards, prohibitions, standards for sludge use and disposal, and conditions under §§ 122.41, 122.42, and 122.44, including when applicable any conditions certified by a State agency under § 124.55, and all variances that are to be included under § 124.63.

* * * * *

27. Section 124.8 is proposed to be amended by revising the first sentence in paragraph (a) to read as follows:

§ 124.8 Factsheet.

* * * * *

(a) A factsheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every Class I sludge management facility, for every 404 and NPDES general permit (§§ 237.37 and 122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under § 124.56(b), and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. * * *

* * * * *

28. Section 124.10 is proposed to be amended by revising paragraphs (c)(1)(ii) and the first sentence in (d)(1)(vii) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

(c) * * *

(1) * * *

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when the draft permit is prepared by the State);

* * * * *

(d) * * *

(1) * * *

(vii) For NPDES permits only (including "sludge-only permits"), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the location of each sludge management facility and disposal or use practice. For draft general permits, this requirement will be satisfied by a map or description of the permit area. * * *

* * * * *

29. Section 124.56 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 124.56 Factsheets.

* * * * *

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitation and conditions or standards for sludge use and disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sludge use and disposal as required by § 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

* * * * *

(c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

* * * * *

30. Section 124.71 is proposed to be amended by revising the first sentence in paragraph (a) to read as follows:

§ 124.71 Applicability.

(a) The regulations in this subpart govern all formal hearings conducted by EPA under CWA sections 402 and 405 (f), except those conducted under Subpart F. * * *

* * * * *

31. Section 124.111 is proposed to be amended by revising the first sentence of paragraph (a)(1)(i) to read as follows:

§ 124.111 Applicability.

(a) * * *

(1) * * *

(i) In any proceedings for the issuance of any NPDES permit under CWA sections 402 and 405(f) which constitute "initial licensing" under the Administrative Procedure Act, when the Regional Administrator elects to apply this subpart and explicitly so states in the public notice of the draft permit under § 124.10 or in a supplemental notice under § 124.14. * * *

* * * * *

31. Chapter I Of Title 40 of the Code of Federal Regulations is proposed to be amended by adding a new Subchapter O consisting of Part 501 to read as follows:

SUBCHAPTER O—SEWAGE SLUDGE

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

Subpart A—Purpose, Scope, and General Program Requirements

Sec.
501.1 Purpose and scope.
501.2 Definitions.
501.3 Coordination with other programs.

Subpart B—Development and Submission of State Programs

501.11 Elements of a sludge management program submission.
501.12 Program description.
501.13 Attorney General's statement.
501.14 Memorandum of Agreement with the Regional Administrator.
501.15 Requirements for permitting.
501.16 Requirements for compliance evaluation programs.
501.17 Requirements for enforcement authority.
501.18 Prohibition.
501.19 Sharing of information.
501.20 Receipt and use of Federal information.
501.21 Program reporting to EPA.

Subpart C—Program Approval, Revision and Withdrawal

501.31 Review and approval procedures.
501.32 Procedures for revisions of State programs.
501.33 Criteria for withdrawal of State programs.
501.34 Procedures for withdrawal of State programs.

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

Subpart A—Purpose, Scope and General Program Requirements

§ 501.1 Purpose and scope.

(a) These regulations are promulgated under the authority sections 101(e), 303(e), 304(i), 405(f) and 501(a) of the CWA, and implement the requirements of those Sections.

(b) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State sludge management programs under 405(f) that are not part of a State's NPDES program, and the requirements State programs must meet to be approved by the Administrator under section 405 of CWA. Sludge Management Program submissions may be developed and implemented under any existing or new State authority or authorities as long as they meet the requirements of this part. (States seeking approval of their sludge program as part of their NPDES program are to follow the requirements and procedures for program modification set forth in Part 123.)

(c) Any complete State Sludge Management Program submitted for approval under this Part shall have the following as a minimum:

(1) The authority to require compliance with sludge use and disposal requirements issued under section 405(d) of the CWA, including compliance by federal facilities;

(2) A requirement to prohibit sludge use and disposal except in compliance

with a permit issued to a POTW or other treatment works treating domestic sewage that applies and ensures compliance with applicable requirements of 40 CFR Part 503 and section 405 of the Clean Water Act, and procedures for issuance of such permits;

(3) Provisions for regulating the use or disposal of sewage sludge by non-permittees;

(4) The authority to take actions to protect public health and the environment from any adverse effects that may occur from toxic pollutants in sewage sludge; and

(5) The authority to abate violations of the State sludge program, including civil and criminal penalties and other ways and means of enforcement.

(d) In addition, any complete State Sludge Management Program submitted for approval under this part shall have authority to address:

(1) All sewage sludge management practices used in the State, including associated transport and storage, that are practiced or planned to be practiced in the State. Sludge management activities and practices shall include as applicable:

(A) Sludge treatment, processing, and short-term storage practices, including:

(i) Digestion, composting, heat treatment, and drying,

(ii) Lagoons, stockpiles, and other surface impoundments,

(iii) Sludge treatment, processing and transport activities, as may be covered by Federal regulations.

(B) Sludge use and ultimate disposal practices, including:

(i) Land application,

(ii) Landfill,

(iii) Distribution & marketing,

(iv) Incineration,

(v) Ocean disposal, and

(vi) Any other sludge use and disposal practices as may be covered by Federal regulations.

(e) A State may assign portions of its program responsibilities to local agencies, provided that

(1) No assignment is made to a local agency under the jurisdiction of a political subdivision which owns or operates a POTW or other facility that treats or disposes of sewage sludge;

(2) The program description required by § 501.12 of this part identifies any assignment of program responsibilities to the local agency(ies) and includes copies of any documents which affect the assignment and contain agreements between the State agency and the local agency(ies) defining their respective program responsibilities;

(3) The Attorney General's Statement required by § 501.13 of this part states that any assignment of program responsibilities to the local agency(ies) described in the program description is valid under State law and that State and local law do not otherwise prohibit the local agency(ies) from executing the program responsibilities assigned by the State agency;

(4) The Memorandum of Agreement (MOA) required by § 501.14 of this part includes adequate provisions for the State agency's oversight of the program responsibilities assigned to the local agency(ies);

(5) The State agency retains all responsibility for the program reporting required by § 501.21 of this part and for all other activities required by this part or by the MOA related to EPA oversight of the State's approved program; and

(6) The State agency retains full authority and ultimate responsibility for administering all aspects of the State's approved program in accordance with the requirements of this part and the MOA.

(f) The Administrator will approve State programs which conform to the applicable requirements of this part.

(g) Upon approval of a State program, the Administrator will suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval EPA will retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction will include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request, or variance request is not finally resolved when the Federally issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved.

(h) Notwithstanding approval of a State sludge program, EPA has the authority to take enforcement actions for any violations of this part or section 405 of the CWA.

(i) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.

(j) Nothing in this part precludes a State or political subdivision thereof, or interstate agency, from adopting or enforcing requirements established by State or local law that are more stringent or more extensive than those required in this part or in any other Federal statute or regulation.

(k) Nothing in this part precludes a State from operating a program with a greater scope of coverage than that required under this part. If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

(l) Sections 106 (a) and (d) of the Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 U.S.C. 1416, generally preclude States from regulating or issuing permits for ocean dumping. Nothing in this regulation is intended to confer on the States the authority to engage in the regulation or permitting of ocean dumping in contravention of the provisions of sections 106 (a) and (d) of the MPRSA.

§ 501.2 Definitions.

"Approved program" means a State program which has received EPA approval under this part.

"Class I sludge management facility" means any sludge facility classified as such by the Regional Administrator in conjunction with the State Program Director.

"Disposal practice" means the emitting, discharging, depositing, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land, air, or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Distributor" means the person responsible for distributing and marketing sewage sludge and sludge-derived products.

"Facility" means all land and structures, other appurtenances, and improvements on the land used for the treatment, storage, processing, utilization, or disposal of sewage sludge.

"Generator" means the owner or operator of a treatment works (but not including individual household septic tanks or portable toilets) or any person whose act or process produces sewage sludge.

"Municipality," as defined in section 502(4) of the Clean Water Act, means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, (or an Indian tribe or an authorized Indian tribal organization,) having jurisdiction over sewage sludge management, or a designated and approved management agency under section 208 of the Clean Water Act. This definition includes a special district created under State law

such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility.

"Permit" means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part.

"Publicly Owned Treatment Works" or "POTW" means a "treatment works" which is owned by a State or municipality.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic waste treatment system when the system is cleaned.

"Sewage sludge" means any solid, semi-solid, or liquid residue which contains materials removed from municipal or domestic wastewater during treatment, including primary and secondary solids, septage, and portable toilet wastes.

"Sludge management practice" means the collection, storage, treatment, transportation, processing, monitoring, use or disposal of sewage sludge.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. "State" also means an Indian tribe which is eligible for treatment as a State under regulations promulgated under section 518 of the CWA.

"State Program Director" or "Director" means the chief executive officer of the State sewage sludge management agency.

"State sewage sludge management agency" means the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved State program under this part.

"Treatment works" means any devices and systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage waste of a liquid nature, including land dedicated for the storage, treatment and disposal of sewage and resulting sludge.

"Use" or "utilization practice" means the treatment or final disposition of a waste material involving resource recovery, recycling, or beneficial use of all or part of the material for such purposes as energy recovery, and soil fertilization or conditioning.

"User(s)" means the person(s) responsible for proper end use of sewage sludge or sludge products.

§ 501.3 Coordination with other programs.

Issuance of State permits under this part may be coordinated with issuance of RCRA, UIC, NPDES, 404 and other permits whether they are controlled by the State, EPA, or the Corps of Engineers. (See for example 40 CFR 124.4 for procedures for coordinating permit issuance.)

Subpart B—Development and Submission of State Programs

§ 501.11 Elements of a sludge management program submission.

(a) Any State that seeks to administer a program under this part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 501.12 describing how the State intends to carry out its responsibilities under this part;

(3) An Attorney General's statement as required by § 501.13;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 501.14; and

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the 90-day review period will be deemed to have begun on the date of the completeness determination. If EPA finds that a State's submission is incomplete, the review period will not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the review period, the review period will begin again upon receipt of the revised submission.

(d) The State and EPA may extend the review period by agreement.

§ 501.12 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under any interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The reponsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency must be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the federally required portion of the program. This description shall include:

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program;

(2) An itemization of the estimated costs of establishing and administering the program including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support; and

(3) An estimate of the available resources for implementing the program.

(c) A description of applicable State procedures, including permitting procedures, and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program.

(e) A complete description of the State's compliance tracking and enforcement program (see 40 CFR 501.16 and 501.17).

(f) An inventory of all POTWs and other treatment works treating domestic sewage who generate, use or dispose of sewage sludge and procedures for developing an inventory of all sewage sludge generators and disposal facilities in the State;

(g) An identification of the State's program for regulating the disposal of septage and portable toilet pumpings if separate from the State's program for sewage sludge; and

(h) If applicable, a desciption of any bans or prohibitions imposed by State or local authorities on specific sewage sludge management practices.

§ 501.13 Attorney General's statement.

(a) Any State that seeks to administer a program under this part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 501.12 and to meet the requirements of this part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. If a State seeks to carry out the program on Indian lands, the statement shall include an appropriate opinion and analysis of the State's authority.

§ 501.14 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Program Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection. EPA shall follow the permit review procedures set forth in 40 CFR 123.44, except that where a State issues a general permit for sludge, the review by the Office of Water Enforcement and Permits provided in § 123.44(a)(2) for NPDES general permits will not apply.

(3) The Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits under section 402(d)(3), (e) or (f) of CWA. While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for facilities which are "Class I Sludge Management Facilities" as defined in § 501.2.

(4) Whenever a waiver is granted under paragraph (3) of this section, the Memorandum of Agreement shall contain a statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination.

(5) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. The procedures shall implement the requirements of § 501.21.

(c) The Memorandum of Agreement shall also provide for the following:

(1) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application or general permit, including a copy of each proposed or draft permit and any conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under paragraph (b)(3) of this section. The State shall supply EPA with copies of notices for which permit review has been waived whenever requested by EPA; and

(2) Transmission to the Regional Administrator of a copy of every permit issued to a Class I Sludge Management Facility. Copies of final permits issued to other sludge management facilities shall be transmitted to the Regional Administrator upon request.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs (See for example 40 CFR 124.4).

(5) Provisions for modification of the Memorandum of Agreement in accordance with this part.

(d) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

§ 501.15 Requirements for permitting.

(a) *General requirements.* All State programs under this Part shall have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) *Confidentiality of information.* State programs shall deny claims of confidentiality for the following information:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(2) *Information requirements.* All applicants for permits shall provide the following information to the Director:

(i) The activities conducted by the applicant which require it to obtain a permit.

(ii) Name, mailing address, and location of the facility for which the application is submitted.

(iii) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(iv) Whether the facility is located on Indian lands.

(v) A listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management program under RCRA.

(B) UIC program under SDWA.

(C) NPDES program under CWA.

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(E) Nonattainment program under the Clean Air Act.

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(G) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act.

(H) Dredge or fill permits under section 404 of CWA.

(I) Other relevant environmental permits, including State permits.

(vi) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the location of the sludge management facilities (including disposal sites).

(vii) Any sludge monitoring data the applicant may have which is representative of normal operating conditions at the facility, including available ground water monitoring data, with a description of the well locations, for landfills or land application sites (see Appendix 1 to 40 CFR Part 257).

(viii) A description of the applicant's sludge use and disposal practices (including, where applicable, the location of any sites where the applicant transfers sludge for treatment and/or disposal, as well as the name of the applicator or other contractor who land applies sludge if different from the applicant, and the name of any distributors when the sludge will be disposed of through distribution and marketing, if different from the applicant).

(ix) Annual sludge production volume.

(x) Any information required to determine the appropriate standards for permitting under 40 CFR Part 503 and

(xi) Any other information the Program Director may request and reasonably require to assess the sludge use and disposal practices, to determine whether to issue a permit, or to ascertain appropriate permit requirements.

(3) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

(4) *Signatories to permit applications and reports* as provided in 40 CFR 122.22.

(5) *Duration of permits.* (i) 405(f) permits shall be effective for a fixed term not to exceed 5 years.

(ii) The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(iii) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(6) *Schedules of compliance*—(i) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(ii) *Interim dates.* If a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the date for their achievement. The time between interim dates shall not exceed six months.

(iii) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(6)(ii) of this section is applicable.

(7) *Conflict of interest.* State sludge management programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(i) For the purposes of this paragraph:

(A) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(B) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(C) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(D) "Income" includes retirement benefits, consultant fees, and stock dividends.

(E) Income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

(b) *Permit conditions applicable to all permits.* In addition to permit conditions which must be developed on a case-by-case basis in order to meet all requirements of 40 CFR Part 503, section 405 of the CWA, and paragraph (a) (1)-(6) of this section, all permits shall contain the following:

(1) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(2) *Compliance with sludge standards.* The permittee shall comply with standards for sludge and disposal established under section 405(d) of the CWA within the time provided in the regulations that establish such standards, even if the permit has not yet been modified to incorporate the standards.

(3) *CWA penalties.* Section 309 of the Clean Water Act (CWA) sets out penalties applicable to persons who violate the Act's requirements. For example, section 309(d) provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Such violations also may be subject to administrative penalties assessed by the Administrator pursuant to section 309(g) of the CWA. Any person who negligently violates permit conditions implementing section 301.

302, 306, 307, 308, or 405 of the Clean Water Act is subject to a fine not less than $2,500 nor more than $25,000 per day of violation or by imprisonment for not more than 1 year, or both. Any person who knowingly violates a permit condition implementing section 301, 302, 304, 307, 308, or 405 shall be punished by a fine not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years or both.

(4) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(5) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(6) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

(7) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(8) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(9) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(i) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances, parameters or practices at any location.

(10) *Monitoring and records.* (i) The permittee shall report monitoring results with a frequency dependent on the nature and effect of its sludge use or disposal practices, but in no case less than once a year.

(ii) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall retain records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(iii) Records of monitoring information shall include:

(A) The date, exact place, and time of sampling or measurements;

(B) The individual(s) who performed the sampling or measurements;

(C) The date(s) analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of such analyses.

(iv) Monitoring must be conducted according to test procedures specified in 40 CFR Part 136 or 503 unless other test procedures have been specified in this permit.

(v) The Clean Water Act provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished for the first conviction by a fine of not more than $10,000 or by imprisonment for not more than 2 years per violation, or by both. Subsequent convictions for the same offense are punishable by a fine of not more than $20,000 per day of violation, or imprisonment of not more than 4 years, or both.

(11) *Signatory requirements.* (i) All applications, reports, or information submitted to the Director shall be signed and certified according to the provisions of 40 CFR 122.22.

(ii) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit shall, upon conviction, be punished for the first conviction by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both. Subsequent convictions shall be punishable by a fine of not more than $20,000 per day of violation or by imprisonment of not more than 4 years, or by both.

(12) *Notice requirements*— (i) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility, or changes planned in the permittee's sludge disposal practice, where such alterations, additions, or changes may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional disposal sites not reported during the permit application process.

(ii) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(iii) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.

(iv) *Other noncompliance reporting.* The permittee shall report all instances of noncompliance.

(v) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(13) *Reopener.* If an applicable "acceptable management practice" or numerical standard for pollutants in sewage sludge promulgated under section 405(d)(2) of the Clean Water Act as amended by the Water Quality Act of 1987 is more stringent than the sludge pollutant limit or acceptable management practice in this permit, or controls a pollutant not limited in this permit, this permit shall be promptly modified or revoked and reissued to

conform to the requirements promulgated under section 405 (d)(2). The permittee shall comply with the limitations by no later than the compliance deadline specified in the applicable regulations as required by section 405(d)(2)(D) of the Clean Water Act.

(c) *Permit actions.* All State programs under this Part shall have the legal authority to implement the following provisions as a minimum.

(1) *Transfer of permits*—(i) *Transfers by modification.* Except as provided in paragraph (ii) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(ii) *Automatic transfers.* As an alternative to transfers under paragraph (c)(1)(i) of this section, any sludge permit may be automatically transferred to a new permittee if:

(A) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (ii)(B) of this section.

(B) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(C) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (c)(1)(ii)(B) of this section.

(2) *Modification or revocation and reissuance of permits.* (i) When the Director receives any information (for example, where the Director inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under § 501.15(e)(3)(i), or conducts a review of the permit file), he or she may determine whether or not one or more of the causes listed in paragraphs (c)(2) (ii) and (iii) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit and may request an updated application if necessary. When a permit is modified, only the conditions subject to a modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. A draft permit must be prepared and other procedures in § 501.15(d) followed. If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit.

(ii) *Causes for modification.* The following are causes of modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(A) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(B) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(C) *New regulations.* New regulations have been promulgated, or the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.

(D) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an Act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy. However, in no case may a compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

(iii) The following are causes to modify or alternatively, revoke and reissue a permit.

(A) Cause exists for termination under § 501.15(c)(3) and the Director determines that modification or revocation and reissuance is appropriate.

(B) The Director has received notification (as required in the permit, see § 501.15(b)(12)(iii)) of a proposed transfer of the permit.

(3) *Termination of permits.* The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(i) Noncompliance by the permittee with any condition of the permit;

(ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(iii) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(iv) A change in any condition that requires either a temporary or a permanent reduction or elimination of any activity controlled by the permit.

(d) *Permit procedures.* All State programs approved under this part shall have the legal authority to implement each of the following provisions and must be administered in accordance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements.

(1) *Application for a permit.* (i) Any person who is required to obtain a permit for the use or disposal of sewage sludge under section 405 of the CWA shall complete, sign and submit to the Director an application for a permit.

(ii) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(2) *Modification, revocation and reissuance, or termination of permits.* (i) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 501.15(c). All requests shall be in writing and shall contain factors or reasons supporting the request.

(ii) If the Director tentatively decided to modify or revoke and reissue a permit he or she shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application. If the Director tentatively decides to terminate a permit he or she shall prepare a Notice of Intent to Terminate and follow the public notice and comment procedures outlined in § 501.15(d)(6).

(3) *Draft permits.* Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the necessary conditions to implement this part, 40 CFR Part 503, and section 405 of the CWA.

(4) *Fact sheets.* A fact sheet shall be prepared for every draft permit for a Class I Sludge Management Facility, and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(i) The fact sheet shall include, when applicable:

(A) A brief description of the type of facility or activity which is the subject of the draft permit;

(B) Any calculations or other necessary explanation of the derivation of limitations and conditions for sludge use and disposal, including a citation to the applicable standards under 40 CFR Part 503 and reasons why they are applicable.

(5) *Public notice of permit actions and public comment period.* (i) The Director shall give public notice that the following actions have occurred:

(A) A draft permit has been prepared. The public notice shall allow at least 30 days for public comment.

(B) A hearing has been scheduled. Public notice shall be given at least 30 days before the hearing.

(ii) *Methods.* Public notice of activities described in paragraph (d)(5)(i) of this section shall be given by the following methods:

(A) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

(*1*) The applicant;

(*2*) Any other Agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES, MPRSA, or 404 permit for the same facility or activity (including EPA);

(*3*) Any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e);

(*4*) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and to each State agency having any authority under State law with respect to the construction or operation of such facility; and

(*5*) Any person who requests a copy.

(B) For Class I Sludge Management Facilities permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(C) In a manner constituting legal notice to the public under State law; and

(D) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(iii) *Contents*—(A) *All public notices.* All public notices issued under this part shall contain the following minimum information:

(*1*) Name and address of the office processing the permit action for which notice is being given;

(*2*) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(*3*) A brief description of the activity described in the permit application.

(*4*) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

(*5*) A brief description of the comment procedures required by § 501.15(e)(8) and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

(*6*) Any additional information considered necessary or proper.

(B) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(6)(iii)(A) of this section, the public notice of a hearing shall contain the following information:

(1) Reference to the date of previous public notices relating to the permit;

(2) Date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(6) *Public comments and requests for public hearings.* During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (d)(10) of this section.

(7) *Public hearings.* The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. The Director may also hold a public hearing at his or her discretion, (e.g. where such a hearing might clarify one or more issues involved in the permit decision).

(8) *Response to comments.* At the time a final permit is issued, the Director shall issue a response to comments. The response to comments shall be available to the public, and shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing.

(e) *Optional program provisions.* The following provisions may be included in a State program at the State's option. If the State decides to adopt any of these provisions, they must be no less stringent than the corresponding Federal provisions:

(1) Continuation of expiring permits (40 CFR 122.6).

(2) General permits (40 CFR 122.28); and

(3) Minor modifications of permits (40 CFR 122.63).

§ 501.16 Requirements for compliance evaluation programs.

State Sludge management program shall have requirements and procedures for compliance monitoring and evaluation as set forth in § 123.26.

§ 501.17 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

Note: This paragraph ((a)(1)) requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit; and

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for the violation of any permit condition; any filing requirement; any duty to allow

or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Program Director. These penalties shall be assessable in at least the amount of $5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any permit condition; or any filing requirement. These fines shall be assessable in at least the amount of $10,000 a day for each violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any program form, or in any notice or report required by a permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Program Director. These fines shall be recoverable in at least the amount of $5,000 for each instance of violation.

Note: States which provide the criminal remedies based on "criminal negligence," gross negligence" or strict liability satisfy the requirement of paragraph (a)(3)(ii) of this section.

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

Note: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Program Director under paragraph (a)(3) of this section shall be appropriate to the violation.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 123.26(b)(4);

(ii) Not oppose intervention by any citizen in any civil or administrative proceeding when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 501.18 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under § 123.44.

§ 501.19 Sharing of information.

State sludge management programs shall comply with the requirements of § 123.41.

§ 501.20 Receipt and use of Federal information.

State sludge management programs shall comply with § 123.42.

§ 501.21 Program reporting to EPA.

The State Program Director shall prepare quarterly and annual reports as detailed below and shall submit any reports required under this section to the Regional Administrator. These reports shall serve as the main vehicle for the State to report on the status of its sludge management program, update its inventory of sewage sludge generators and sludge disposal facilities, and provide information on substantial incidents of noncompliance. The State Program Director shall submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The Quarterly Sludge Violation Reports and Annual Reports specified below may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate.

(a) *Quarterly reports.* Quarterly Sludge Violation Reports (QSVRs) shall provide a tabular summary of the incidents of "substantial" noncompliance which occurred in the previous quarter by Class I facilities. The State Program Director and Regional Administrator may choose to include reporting of incidents of substantial noncompliance by additional non-Class I facilities at their discretion.

(1) At a minimum, the following occurrences shall be considered incidents of substantial noncompliance which must be reported under this section:

(i) Significant failure to comply with minimum Federal requirements for sludge use or disposal practices;

(ii) Significant failure to comply with permit conditions;

(iii) Failure to complete construction of essential elements of a sludge management facility or meet other key milestone dates specified in a permit;

(iv) Failure to provide required compliance monitoring reports or submission of reports that are so deficient as to cause misunderstanding and thus impede the review of the status of compliance;

(v) Significant noncompliance with other program requirements.

(2) The tabular summary will identify:

(i) The non-complying facilities by name and reference number,

(ii) The type of noncompliance, a brief description and date(s) of the event. (See list in paragraph (a)(1) of this section.) If records for a facility show noncompliance of more than one type under the sludge management program, the information should be combined into a single entry for each such facility.

(iii) The date(s) and a brief description of the action(s) taken to ensure timely and appropriate action to achieve compliance,

(iv) Status of the incident(s) of noncompliance with the date of resolution, and

(v) Any details which tend to explain or mitigate the incident(s) of noncompliance.

(b) *Annual report.* In addition to the information required by paragraph (a) of this section, the annual report shall include the following:

(1) Information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports, including:

(i) Name and location,

(ii) NPDES, RCRA, Clean Air Act, and State permit number, if any,

(iii) Sludge management practice used,

(iv) Identification of non-complying facilities, and

(v) Sludge production volume.

(2) A summary of the number and type of violations by sludge use and disposal practice over the past year for Class I sludge management facilities.

(3) A list of Class I sludge management facilities brought into compliance since the last annual report;

(4) A summary of the results of periodic State compliance monitoring efforts to verify self-monitoring reports.

(5) Information on substantial noncompliance of Non-Class I Facilities which shall include:

(i) A tabular listing which identifies:

(A) The non-complying facility by name and reference number,

(B) The type of noncompliance (see list in paragraph (a)(1) of this section),

(C) How long the facility has been in noncompliance, and

(D) What steps are being taken to bring these facilities into compliance;

(ii) A summary of the number and type of violations by sludge use and disposal practice over the past year by non-Class I sludge management facilities;

(iii) A list of non-Class I facilities that have been brought into compliance since the last annual report; and

(iv) A separate list of all facilities (along with any applicable permit numbers) that are six or more months behind in their schedules for achieving compliance.

Subpart C—Program Approval, Revision and Withdrawal

§ 501.31 Review and approval procedures.

(a) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If it is incomplete, EPA will identify the needed information.

(b) After determining that a State program submission is complete, EPA will publish notice of the State's application in the **Federal Register** and in enough of the largest newspapers in the State to attract statewide attention. EPA will mail notice to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all permit holders and applicants within the State subject to sludge use and disposal requirements. The notice will:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register** and indicate when and where the hearing is to be held;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 90 days after determining that the State has submitted a complete program under § 501.11, the Administrator shall approve or disapprove the program based on the requirements of this part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(d) The State and EPA may extend the 90-day review period by mutual agreement.

(e) If the State's submission is materially changed during the 90-day review, either as a result of EPA's review or the State action, the official review period shall begin again upon receipt of the revised submission.

(f) Notice of program approval shall be published by EPA in the **Federal Register.**

(g) If the Administrator disapproves the State program he or she shall notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 501.32 Procedures for revisions of State programs.

(a) Any approved State program which requires revision to comply with amendments to federal regulations governing sewage sludge use or disposal (including revisions to this part) shall revise its program within one year after promulgation of applicable regulations, unless the State must amend or enact a statute in order to make the required revision, in which case such revision shall take place within 2 years.

(b) State sludge management programs shall follow the procedures for program revision set forth in 40 CFR 123.62.

§ 501.33 Criteria for withdrawal of State programs.

The criteria for withdrawal of sludge management programs shall be those set forth in § 123.63.

§ 501.34 Procedures for withdrawal of State programs.

The procedures for withdrawal of sludge management programs shall be those set forth in § 123.64.

[FR Doc. 88-4864 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Wednesday
March 9, 1988

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification Procedures; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3304-1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing revisions to the motor vehicle and motor vehicle engine emission certification procedures for 1990 and later model year light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines. The revisions under consideration are primarily intended to address emission control durability demonstration requirements pertaining to vehicle and engine manufacturers covered under the small-volume manufacturer and small-volume engine family regulations. Several minor changes are proposed which will affect all manufacturers.

EPA proposes that only firms having total U.S. sales not exceeding 300 units per year remain exempt from any durability testing requirement. This proposal would continue a small-volume certification program for firms selling fewer than 10,000 units annually. Firms in this category using what this proposal defines as "proven" technology would not experience a significant change from the way the current program works. Such firms would continue to be allowed the use of assigned deterioration factors (d.f.'s), although the methodology for determining those d.f.'s would be changed somewhat. Firms using "unproven" technology would be required to run a limited number of durability test vehicles (e.g., 50,000 miles for light-duty vehicles, etc.) to verify emission durability. Firms selling over 10,000 units will continue to be able to certify up to 10,000 units each year under the "small-volume engine family" provisions, as amended by this proposal. Because of the potential for reduced durability demonstration burden, those manufacturers eligible for the 300 or less sales exemption are clearly distinguished. For these reasons, EPA is also proposing to clarify its sales aggregation rules for determining eligibility for treatment as a small-volume manufacturer.

In addition, this proposal includes several minor changes that apply to all manufacturers completing the certification process. These changes essentially reflect actions currently being accomplished voluntarily by nearly all manufacturers completing the certification process. They include changes to the vehicle emission control label, establishment of a minimum mileage for emission-data vehicle service accumulation, and potential measures to give greater assurance that small-volume firms take reasonable steps to provide for maintenance and repair of emission control systems. The revisions are being proposed to assure the continuation of these actions and compliance by any new manufacturers requesting vehicle certification.

DATES: EPA will hold a public hearing beginning at 9:00 a.m., EST, April 26, 1988, in Ann Arbor, Michigan.

Persons wishing to provide testimony at the hearing should notify Mr. Cole, as noted below, not later than April 19, 1988. Any written comments must be received on or before May 26, 1988.

ADDRESSES: Interested parties are encouraged to participate in this rulemaking procedure by submitting comments to: Central Docket Section, U.S. Environmental Protection Agency, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460; Attention: Docket No. A-85-30. Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A-85-30 at the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460, and are available for review during normal business hours (8:00 a.m.-3:00 p.m.). As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. The public hearing will be held at the Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Charles D. Cole, Certification Policy and Support Branch, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4444.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Clean Air Act

Section 203(a)(1) of the Clean Air Act (the Act) prohibits the sale, offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the importation (except by persons specified by regulation by the Administrator) of any new motor vehicle unless the vehicle is covered by a certificate of conformity issued by the Administrator under the authority of section 206 of the Act. Section 203(b) of the Act provides two exceptions to this requirement. The exceptions are: (1) The Administrator may exempt a vehicle for certain specified purposes (i.e., research, investigations, demonstration, training, or national security); and (2) a vehicle may be imported under regulations prescribed by the Administrator and the Secretary of the Treasury (U.S. Customs Service (Customs)) which ensure that the vehicle will be brought into conformity with applicable standards.

In addition, the Act places a limit on the maximum amount of durability mileage accumulation that EPA can require for certification purposes for those small-volume manufacturers whose projected total sales in the United States for any model year will not exceed 300 units. Section 206(a)(1) prohibits the Administrator from prescribing regulations requiring more than 5,000 miles or 160 hours to be accumulated on any test vehicle or engine for these manufacturers. Instead, the Administrator is directed to "apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life." The determination of appropriate adjustment factors, known as deterioration factors (d.f.'s), is a primary focus of this proposal.

B. Applicable EPA Regulations

Under authority of the Act, EPA has not only promulgated regulations governing the certification of vehicles [1] to emission standards ("certification regulations"), but in addition has promulgated regulations governing the importation of nonconforming motor vehicles and motor vehicle engines [2] ("imports regulations"). EPA recently promulgated substantial revisions to the imports regulations [52 FR 36136, September 25, 1987]. Under the revised regulations, independent commercial importers (ICI's) ultimately will be required to obtain a certificate of conformity prior to importing and modifying most nonconforming vehicles or engines. EPA anticipates that the majority of these manufacturers will be eligible to seek certification under the EPA's current small-volume manufacturers certification regulations as discussed below.

The certification regulations historically have included special

[1] Unless otherwise specified, references to vehicles also pertain to heavy-duty engines.

[2] An imported nonconforming motor vehicle or engine is defined as a motor vehicle or engine which is not covered by a certificate of conformity prior to final or conditional importation and which has not been finally admitted into the United States under 40 CFR 85.1505, 85.1509, or 85.1512 (if applicable).

provisions [for example, see 40 CFR 86.085–24 (e)] which allow small-volume manufacturers [3] to request a reduction in the number of required test vehicles and allow certification to be based on d.f.'s provided by EPA rather than actual durability test results. The d.f.'s provided by EPA are often referred to as "assigned d.f.'s." Beginning in 1975, EPA published applicable assigned d.f.'s for each vehicle or engine category through EPA's advisory circular manufacturer guidance system.

The assigned d.f.'s obviate the need for the manufacturer to spend the money necessary to build, accumulate mileage and emission test a durability-data vehicle to develop its own d.f.'s. No other specific durability tests are required of the manufacturer as part of the current small-volume manufacturer certification program. Nonetheless, as with other manufacturers, those manufacturers certifying under the small-volume manufacturer certification regulations are responsible under the Act and the regulations for compliance of their in-use vehicles for their statutory useful lives, so long as the vehicles are properly maintained and used.

Deterioration factors are used to predict useful life emission performance from the results of low mileage test vehicles. These low mileage test vehicles (known as emission-data test vehicles) currently are tested at a mileage (typically between 2,500 and 5,000 miles) which the manufacturer determines is at or beyond the point where new engine and emission control system emission performance has stabilized. The likelihood of compliance with the applicable emission standards is then projected by comparing the emission-data vehicle test results, adjusted by the d.f.'s, to the applicable standards. The d.f. adjustment is intended to account for expected useful life in-use emission performance deterioration. Absent other information which would indicate the significant potential for in-use emission noncompliance, if these predicted emission values are equal to or less than the emission standards, emission compliance is sufficiently demonstrated to permit issuance of a certificate of conformity. The use of assigned d.f.'s significantly reduces the amount of time and cost incurred by the manufacturer in obtaining d.f.'s by performing actual durability testing. However, since an emission-data test vehicle is not subject to actual durability testing, there is some risk that the assigned d.f.'s may understate actual production vehicle deterioration in some cases. If production vehicles actually deteriorate at a faster rate than represented by the assigned d.f.'s, there is an increased possibility of in-use noncompliance and excess in-use emissions.[4]

Significant revisions to the small-volume manufacturers certification procedure were promulgated (46 FR 16259) in March 1981 to lessen the administrative and cost burden of the certification regulations on small-volume manufacturers. The optional (assigned d.f.) certification procedures were extended to small-volume manufacturers whose total yearly projected sales were fewer than 10,000 units. Some additional, relatively small manufacturers then could qualify for the durability exemption. The number of emission-data test vehicles was also reduced and the reporting burden greatly simplified, all for the purpose of reducing small-volume manufacturers' compliance demonstration costs.[5]

EPA realized that, without vehicle demonstration of emission control durability, there was some risk that the vehicles certified under the small-volume procedures might fail emission standards in use. However, the Agency anticipated no significant air quality risk under the revised regulations for several reasons. First, only a small number of manufacturers were expected to certify under the expanded regulations. Second, most small-volume manufacturers certifying at that time were using original equipment manufacturer (OEM) engine, drive line and emission control components which had been fully developed and evaluated for in-use durability by the OEM. Third, those small-volume manufacturers using other manufacturers' components typically had cooperative agreements with the OEM. These small-volume manufacturers then knew what running changes (e.g., new calibrations, emission control designs, etc.) were implemented by the OEM in the production of engine, drive train, or emission control components that could affect the small-volume manufacturer's vehicles.

In October 1981, EPA promulgated cost reduction revisions to the general certification regulations applicable to manufacturers with sales of 10,000 or more units. Included in these revisions was a provision which allows these larger manufacturers to certify up to 10,000 units of sales using assigned d.f.'s. Since this provision is very similar to that included in the small-volume manufacturer regulations, EPA is proposing similar revisions to both programs to assure technical improvements in assessing the expected emission performance of engine families the manufacturers wish to certify.

C. The Impact of Additional New Small-Volume Manufacturers

In general, the recent revisions to the rules covering the importation of nonconforming vehicles ultimately will require ICI's to obtain certification to import such vehicles. Most manufacturer-importers [6] that previously imported under "modification and test" provisions, rather than under a certificate of conformity, will eventually have to come in under the certification process. (The modification and test alternative will be reduced during a phase-in period between 1988–1993 and eventually limited to vehicles over five production years old (40 CFR 85.1509).) The vast majority of these importers are expected to certify according to the small-volume manufacturers certification regulations.

In addition, EPA has noted an increase in inquiries from prospective domestic manufacturers which could qualify for small-volume certification. The expected number of ICI and new domestic manufacturers seeking certification could substantially increase usage of the small-volume manufacturers' certification regulations.

The current certification procedures should result in improved in-use emission performance of the imported nonconforming vehicles brought in under the certification option since, via

[3] Prior to the 1982 model year, EPA regulations only allowed small-volume certification procedures to a manufacturer whose projected annual sales in the United States were less than 2,000 units in any vehicle or engine category

[4] Receipt of a certificate of conformity should not be interpreted as a license or approval to produce noncomplying vehicles. The certification program serves as a screen to prevent as many problem designs as possible from entering production. Vehicles which have been properly maintained and used, which later are determined to be failing emissions standards, are subject to recall by EPA under its authority in section 207(c) of the Act.

[5] The purpose of the small-volume certification regulations is to minimize the cost of running tests to demonstrate compliance with emissions standards prior to the sales of new vehicles. However, there is no relaxation in the manufacturer's responsibility under the Act to perform testing necessary to develop and build a product which will comply with emission standards over the regulated useful life. A key feature of the small-volume certification procedures is to draw upon information a responsible manufacturer should have available to assure itself that its product has been sufficiently developed and evaluated so that it and EPA can reasonably expect the product will comply with emission standards during in-use operation.

[6] Under section 216(1) of the Clean Air Act, any person engaged in importing new motor vehicles for resale is included in the definition of "manufacturer."

the assigned d.f.'s, some anticipated emission performance deterioration is considered prior to certification. However, the large-scale use of the small-volume manufacturers certification procedures by numerous new manufacturers, including domestic manufacturers as well as ICI's, was not envisioned at the time the current regulations were promulgated in 1981. As previously discussed, although small-volume certified vehicles demonstrate compliance with emission standards at low mileage, the useful life emission compliance of some vehicles may be questionable. EPA has no formal program or procedure for evaluating each small-volume manufacturer's vehicle designs for physical signs that in-use emission deterioration may be excessively high. However, on occasion, EPA has noted potentially inadequate designs which, in EPA's opinion, presented a high risk of emission failure. For example, although passing emission standards at low mileage, a vehicle with an emission-related hose or electrical wire routed too close to a high temperature source such as an exhaust manifold or catalytic converter, could rapidly deteriorate under extended in-use operation. The hose or wire could fail causing an emission control system malfunction and vehicle emission failure potentially undetected by the vehicle operator. In the high-risk cases discovered by EPA, EPA has been successful in working with the vehicle manufacturer to improve its design. However, with the new potential for expanded use of the small-volume manufacturer regulations, it will be more difficult for EPA to detect each potentially inadequate design. EPA wants to limit to the extent possible the in-use noncompliance risk associated with certifying such potentially inadequate or unproven designs. Therefore, EPA is proposing revisions to the certification procedure to improve EPA's ability to screen out potentially inadequate designs and limit the number of unproven designs before these designs are certified.

II. Summary of the Proposals

A. Durability Demonstration

EPA proposes to address durability requirements for three categories of manufacturers: (1) Small-volume manufacturers whose annual sales do not exceed 300 units, (2) small-volume manufacturers with annual sales between 300 and 10,000 units, and (3) large-volume manufacturers (with annual sales of 10,000 units or greater) wishing to certify small-volume engine families. The durability procedures which the manufacturer is required to comply with will vary depending on the manufacturer's annual sales.

The Act limits the amount of durability mileage accumulation EPA can require on vehicles built by manufacturers whose annual sales do not exceed 300 vehicles. It will continue to be EPA's responsibility to determine appropriate d.f.'s for these firms. Currently the guidelines for determining these d.f.'s are contained in Advisory Circular Number (A/C No.) 51C. A copy of A/C No. 51C has been placed in the public docket. As is current practice, the manufacturer has the responsibility for providing sufficient information and/or data on the manufacturer's vehicles and emission control systems to allow EPA to determine the appropriate assigned d.f.'s.

EPA is proposing revised durability requirements for manufacturers with total projected annual sales between 300 and 10,000 units. Changes to the existing regulation are minimized for manufacturers using proven emission control components or systems (and fuel metering systems) [7] because EPA believes that deterioration of these components or systems is adequately represented by assigned d.f.'s. This less stringent requirement is meant to encourage manufacturers to use proven components in their small-volume designs. EPA is proposing more extensive changes for manufacturers using unproven emission components (and fuel metering components) in their designs. These changes will increase EPA's confidence in the ability of a vehicle equipped with unproven emission control components and systems [8] to meet emission standards for the vehicle's useful life.

EPA proposes to allow manufacturers using proven emission components and systems (and fuel metering systems) to continue to certify using assigned d.f.'s. However, the assigned d.f.'s will no longer be supplied by EPA, but will be determined by the manufacturer based on good engineering judgment, subject to certain conditions as described in the following paragraph. Not allowing a manufacturer to simply assume the validity of EPA-supplied d.f.'s to its product is consistent with the intent of the existing regulations and the Act which presume that the manufacturer has determined that its vehicles are likely to comply in use prior to requesting a certificate. In addition, the manufacturer is likely to have development data and other relevant information available for the purpose of assuring itself of this expected in-use compliance. These data and other information should be directly useful in determining the appropriateness of potential assigned d.f.'s. Therefore, requiring the manufacturers to determine the appropriateness of the assigned d.f.'s used in certification should represent an insignificant additional burden on manufacturers that have been complying with the Act.

EPA proposes that the manufacturer-determined assigned d.f.'s not be less than the average of the d.f.'s. from all engine families previously certified by the manufacturer (hereinafter referred to as manufacturer-specific average d.f.'s). In certain circumstances, the manufacturer-specific average d.f.'s may be greater than the 70th percentile of the d.f.'s from all engine families previously certified by the manufacturer (hereinafter referred to as manufacturer-specific 70th percentile d.f.'s) due to outlier data. In these limited cases, the manufacturer may use the manufacturer-specific 70th percentile d.f.'s to offset the data from engine families with unusually high d.f.'s ("outlier data"). If the manufacturer does not have at least two data points to calculate manufacturer-specific average d.f.'s, the manufacturer-determined assigned d.f.'s may not be lower than the 70th percentile industrywide assigned d.f.'s as calculated by EPA.

For manufacturers using previously unproven emission control systems (and fuel metering systems) EPA is proposing to require durability mileage accumulation for emission control systems representing a percentage of the manufacturers' sales equipped with unproven emission control components or systems (and fuel metering systems). The manufacturer will be required to complete a durability demonstration

[7] Proven emission control components or systems (and fuel metering systems) are components or systems that have completed full durability testing evaluation over a vehicle's useful life in some other certified engine family or are, as determined by EPA, of comparable functional quality and manufactured using comparable materials and production techniques as components or systems which have been durability demonstrated in some other certified engine family.

[8] Unproven emission control components or systems (and fuel metering systems) are components or systems that have not completed full durability testing evaluation over the useful life of a vehicle in some other certified engine family. In addition, unproven emission control components or systems (and fuel metering systems) are components or systems that are not of comparable functional quality, and manufactured using similar production materials and techniques, as components which have been demonstrated to be durable in some other certified engine family.

each year on remaining or new unproven engine/emission control system combinations representing a minimum of 25 percent of the manufacturer's "unproven" sales. The remainder of the manufacturer's annual unproven sales will be certified using assigned d.f.'s determined by the manufacturer, but no lower than those assigned d.f.'s used to certify its proven systems.

Manufacturers with annual sales greater than 10,000 units will be allowed to certify up to 10,000 units per year using assigned d.f.'s. These manufacturers must determine the appropriate d.f.'s in the same manner as described above for manufacturers in the 300 to 10,000 sales group.

B. Aggregation of Firms for the Purpose of Determining Applicability of Small-Volume Regulations

Presently when determining the applicability of small-volume certification procedures, EPA aggregates the sales of multiple importers who have contractual agreements or are subsidiaries of the same parent automobile manufacturer. EPA proposes to clarify the wording of the current aggregation criteria to assure appropriate implementation and intended effect.

C. Other Changes

EPA is also proposing the following changes to the certification procedures which will be applicable to both small-volume manufacturers and other manufacturers.

Vacuum hose routing—EPA proposes to require light-duty vehicle and light-duty truck manufacturers to include a vacuum hose routing diagram on the vehicle emission control information label. This information is currently required by the State of California for vehicles sold in that state and is voluntarily being included on other vehicles by most manufacturers.

Minimum EDV mileage—The current rules set no lower mileage limit for EDV's. EPA now proposes a 2,000 mile minimum (62 hours for catalyst equipped heavy-duty engines) requirement on all EDV's. In practice, no manufacturer has used an EDV with less than 2,000 miles to certify.

In-use vehicle maintenance—EPA is requesting public comment on whether availability of service by small-volume manufacturers will be adequate to meet the warranty requirements of section 207(b) of the Act. In the event that EPA decides that service and parts availability may be a problem, EPA is proposing changes which should increase the likelihood that owners will also be able to obtain proper maintenance and warranty service. EPA is proposing that each small-volume manufacturer provide a statement to EPA at the time it requests certification stating that it has provided the vehicle purchaser a list of emission and emission-related parts and instructions for performing any maintenance which might be expected to affect emission performance. Additionally, EPA proposes that the manufacturer notify the owner, at the time of sale, of the nearest maintenance location if maintenance service is not available at the authorized point of sale for its vehicle, and assure the purchaser that emission-related service parts will be available at or through these service locations. Finally, EPA is proposing that all manufacturers already required to have an insurance policy guaranteeing warranty service [40 CFR 85.1510], provide evidence of the fully paid policy or proof of a contractual agreement to purchase insurance as a prerequisite to certification.

Reduction in the number of EDV's—EPA is proposing to reduce the number of EDV's required to one vehicle in those engine families certified by large-volume manufacturers under the small-volume engine family certification procedure.

Elimination of EPA-determined assigned d.f.'s in specific cases—EPA is proposing to eliminate EPA-assigned d.f.'s in those categories where the current certification regulations direct the manufacturer to determine the appropriate emissions deterioration. The applicable categories are light-duty trucks (LDT's) or heavy-duty engines (HDE's) for exhaust emissions and light-duty vehicles (LDV's) and LDT's for evaporative emissions.

III. Proposed Revisions to the Small-Volume Manufacturers and Small-Volume Engine Family Certification Durability Program

A. Durability Requirements

The current small-volume manufacturers certification procedure allows eligible small-volume manufacturers to certify up to 9,999 units (combined total sales of LDV's, LDT's and HDE's) per year using assigned d.f.'s. Under the current regulations no other durability demonstration is required. As a result, the small-volume manufacturer certifying its product line has the same durability demonstration responsibility whether it uses components with proven or unproven emission durability in its design. Only when EPA has information indicating that a system is likely to be non-durable will EPA not certify until EPA's concerns are resolved.

EPA is proposing to change the small-volume manufacturers' durability demonstration by: (1) Proposing to use manufacturer-specific d.f.'s when sufficient data is available; (2) proposing durability procedures for unproven emission control components and systems (and fuel metering systems); and (3) proposing to eliminate the availability of assigned d.f.'s in those applications where the current certification procedures direct the manufacturer to determine appropriate deterioration factors for the vehicles.

1. Manufacturers Certifying Systems With Proven Technology Using Manufacturer-Specific D.F.'s

The current regulations provide EPA with wide discretion on how to determine appropriate assigned d.f.'s. EPA is proposing to revise the certification regulations to change the method used in determining assigned d.f.'s. Under this proposal, the current EPA policy of industrywide assigned d.f.'s would be replaced by manufacturer-determined assigned d.f.'s in certain circumstances.

EPA is proposing that these assigned d.f.'s be determined by the manufacturer using its good engineering judgment subject to certain conditions as previously described.[9] EPA is also proposing that the manufacturer-determined d.f.'s be no lower than the manufacturer-specific average d.f.'s to preclude manufacturers from determining inappropriately low assigned d.f.'s. Using this method may result in specific cases where the manufacturer-specific average d.f.'s of a particular firm are higher than the manufacturer-specific 70th percentile d.f.'s for that same firm due to outlier data. In these limited cases, the manufacturer may use the manufacturer-specific 70th percentile d.f.'s for certification to reduce the impact of the outlier data.[10]

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[9] Note that, as discussed below, EPA is proposing to no longer provide assigned d.f.'s for LDT and LDV evaporative emissions and LDT and HDE exhaust emissions for manufacturers with annual sales of over 300 units. Therefore, for these manufacturers, assigned d.f.'s would only apply to the general engine and emission control system categories of gasoline-fueled and diesel-fueled LDV's.

[10] Of course, if the high d.f.-producing engine family is still in production it must continue to use its own specific d.f.'s for certification of that particular engine family unless the manufacturer completes a replacement durability vehicle which produces lower d.f.'s.

If the manufacturer does not have sufficient data points to derive manufacturer-specific d.f.'s (i.e., d.f.'s from less than two engine families), then the manufacturer-determined assigned d.f.'s must not be less than the industrywide d.f.'s as published by EPA.[11] For example, if a small-volume manufacturer has generated actual durability test results for a portion of its product line, assigned d.f.'s can be calculated on the basis of manufacturer-specific data. However, if a small-volume manufacturer has not previously generated sufficient durability test results, EPA will continue to publish industrywide assigned d.f.'s for proven systems. EPA is also proposing to specify in the certification regulation that the EPA-provided assigned d.f.'s will be periodically redetermined to estimate the 70th percentile industrywide d.f.'s.

Manufacturer-determined assigned d.f.'s would be more representative of a manufacturer's particular technological capability than the current practice of using industrywide data to determine assigned d.f.'s. Experience has shown that each unique emission system design is liable to perform differently in use, and therefore each system is likely to deteriorate at a different rate. Actual certification d.f.'s generated using durability-data vehicles often vary widely between manufacturers. Therefore, industrywide assigned d.f.'s are not in all cases accurate predictors of every manufacturer's designs. Manufacturer-determined d.f.'s benefit manufacturers with good designs because they get lower d.f.'s. By the same token, it is appropriate for manufacturers with a history of deterioration higher than the industry average to be assigned higher d.f.'s. Since these data are specific to a particular manufacturer and, therefore, represent a manufacturer's actual capability, it is more appropriate to use the manufacturer-determined assigned d.f.'s rather than industrywide d.f.'s.

Incorporating the basis for the assigned d.f.'s more specifically in the small-volume manufacturers certification regulations is intended to more clearly identify the method to be used to certify small-volume manufacturer and small-volume engine family sales. By putting more specific language in the regulations, the industry will be kept as aware as possible of procedures that will have an impact on them. Secondarily, putting the procedural details in the regulations should reduce the need for additional guidance and therefore reduce the administrative burden of the small-volume manufacturers' program.

EPA realizes that the majority of the small-volume manufacturers (manufacturers with total sales of less than 10,000 units) do not have current durability-data vehicle results to use to calculate their manufacturer-specific d.f.'s. Small-volume manufacturers were previously not required to test and evaluate durability-data vehicles. Thus, EPA will provide industrywide assigned d.f.'s for small-volume manufacturers (using proven emission systems) who have not run sufficient (i.e., two) durability vehicles to calculate manufacturer-specific assigned d.f's within an engine and emission control system category.[12] Since section 206(a)(1) of the Act does not permit EPA to require that manufacturers of fewer than 300 vehicles per year complete full durability testing, the industrywide d.f.'s will also be available to them.

2. Manufacturers Certifying Systems With Unproven Technology

EPA is proposing placing new durability vehicle requirements on small-volume manufacturers with sales over 300 units when certifying vehicles equipped with unproven technology emission systems. EPA will define unproven technology as emission control components or systems (and fuel metering systems) which have not been previously certified by EPA on engine families which have been certified with full (e.g., 50,000 mile) durability demonstration. For systems with unproven components, EPA often lacks information that would demonstrate that the emission system is sufficiently durable, and sometimes has insufficient data to determine which particular set of d.f.'s are the most technically appropriate for those system components. In the current program, if EPA has information suggesting that a system is *not* likely to be sufficiently durable, then the Agency will elect not to certify the vehicle design until the Agency's concerns are resolved. Otherwise, EPA has typically certified the unproven design on the basis of industrywide assigned d.f.'s. In such cases, EPA would prefer to rely on durability vehicle data to demonstrate compliance.

EPA considered two alternatives for durability demonstration when small-volume manufacturers use unproven emission control components or systems: (1) Require testing of durability vehicles representing all of the manufacturer's sales equipped with unproven emission control components or systems; or (2) require new durability vehicles representing some percentage of the manufacturer's sales each year in each compliance category that is equipped with unproven emission control components or systems.

The first alternative would provide durability testing representing all of the manufacturer's vehicles equipped with unproven emission control technology. This alternative provides the highest degree of confidence in the vehicles' abilities to comply with emission standards for the vehicles' useful lives. However, this alternative could also be the most costly for a small-volume manufacturer. EPA is not proposing this alternative.

To lessen the cost impact of durability demonstrations on the manufacturers, EPA is proposing the second alternative for manufacturers of more than 300 vehicles per year. The second alternative would require such manufacturers each year to first test and evaluate durability vehicles representing some percentage of the unproven technology sales in each engine and emission control system category equipped with unproven technology. Carryover data could not be used to satisfy this durability data requirement. Upon successful completion of the durability testing requirement and certification of those vehicles, the remainder of these small-volume manufacturers' unproven emission control technology sales for that year may be certified using manufacturer-determined assigned d.f.'s.

EPA is proposing to require durability data for engine/emission control system combinations representing a minimum of 25 percent of each manufacturer's unproven technology sales each year. Twenty-five percent durability demonstration would provide reasonable, short-term confidence that the manufacturer is capable of designing and building vehicles which will have useful life emissions compliance. In addition, requiring only 25 percent of the unproven systems to be represented by durability-data vehicles each year would minimize the yearly cost impact on the manufacturer and allow a phase-in period for the manufacturer to demonstrate the durability of its unproven technology and to generate the

[11] Industrywide assigned d.f.'s currently are calculated using the 70th percentile of the industrywide durability data base. The 70th percentile d.f.'s provide a larger safety margin than, say, the 50th percentile or average d.f.'s and were chosen in part to reflect that the data is not specific to one manufacturer.

[12] These manufacturers will determine their own most appropriate d.f.'s. However, the d.f.'s used cannot be lower than the industrywide d.f.'s provided.

data necessary to calculate manufacturer-specific assigned d.f.'s.

Once a durability-data vehicle has been run successfully to represent an unproven technology system, that system and closely comparable system designs of that manufacturer would become proven technology.[13] The manufacturer could use the d.f.'s generated for those systems for certification of the sales represented by the durability vehicles during that year and for carryover purposes in subsequent years.

Of course, for manufacturers of less than 300 vehicles per year, EPA will continue to allow the use of industrywide assigned d.f.'s for certification of all vehicles, including those vehicles equipped with unproven technology, meeting the guidelines of A/C No. 51C.

3. Exhaust Emissions for LDT's and HDE's and Evaporative Emissions for LDV's and LDT's

EPA is proposing that EPA-derived assigned d.f.'s no longer be made available to small-volume manufacturers with sales over 300 units per year for the purpose of certifying LDT's or HDE's for exhaust emissions or for certifying LDV's and LDT's for evaporative emissions. This proposal also applies to large-volume manufacturers certifying according to the small-volume engine family certification regulations. In each of these cases, the current regulations (e.g., 40 CFR 86.085–24(c)) direct each manufacturer not covered by the small-volume procedures to determine its own d.f.'s. The manufacturers are to use good engineering judgment in selecting the engines, subsystems, or components used to determine the emission deterioration so that their emissions deterioration may be expected to represent that of in-use vehicles or engines. This proposal extends this provision (for determining their own d.f.'s) to small-volume manufacturers with sales over 300 units per year and large-volume manufacturers certifying small-volume engine families.

In adopting the existing regulations, EPA anticipated that a manufacturer might make use of development data, bench test data or other available sources of information to develop appropriate d.f.'s. Using this information would be less costly to the manufacturer compared to running a durability-data vehicle for its useful life. In this regard, allowing a manufacturer to determine its own d.f.'s can provide substantial cost savings similar to the savings afforded to manufacturers by assigned d.f.'s. In addition, by providing this flexibility and using these other data, manufacturers should be able to come up with d.f.'s which are more technically representative of emissions deterioration than EPA-derived assigned d.f.'s. Under this proposal, these benefits will also be realized by small-volume manufacturers with sales over 300 units per year and large-volume manufacturers certifying small-volume engine families.

Moreover, in these specific certification categories, there appears to be no technical benefit in using EPA-derived assigned d.f.'s rather than manufacturer-derived d.f.'s. Further, the current assigned d.f. program requires a manufacturer to demonstrate the appropriateness of the assigned d.f.'s to the manufacturer's vehicles. The manufacturer's responsibility under the assigned d.f. program is very similar to the manufacturer's responsibility when it is required to independently determine the appropriate d.f.'s under the current certification procedures. Finally, for large-volume manufacturers certifying small-volume engine families the manufacturer-specific d.f.'s for these categories of vehicles and engines would be based on manufacturer-determined d.f.'s for the rest of the product line.

For these reasons, EPA is proposing to delete the assigned d.f. option for all manufacturers with sales over 300 units for the specific applications of LDT exhaust and evaporative emission, and LDV evaporative emissions and HDE exhaust emissions. This proposal does not extend to manufacturers with annual sales of 300 units or less. Consistent with section 206(a)(1) of the Act, EPA will continue to provide assigned d.f.'s for these manufacturers. These very small manufacturers may not have as much development data and other sources of durability information to allow them to as easily determine appropriate design-specific d.f.'s as larger volume manufacturers would have.

4. Cost Impact of Durability Program Revisions

EPA analyzed the cost impact of the proposed revisions to the small-volume manufacturers durability program. Manufacturers using unproven emission control components or systems will be required to complete some durability vehicle testing which will increase the cost of certification for these manufacturers. However, the d.f.'s developed from the durability-data vehicles should be more representative of the vehicles' emission deterioration than assigned d.f.'s. This will provide greater assurance of useful life emission compliance. Also, EPA anticipates that manufacturers often will elect to use proven emission control hardware (which is usually readily available at a reasonable cost) rather than unproven systems due to (1) emission performance reliability and (2) lower compliance demonstration costs.

There should be no significant cost impact from the proposed changes to provide for manufacturer-determined assigned d.f.'s, and the proposed elimination of assigned d.f.'s for exhaust emission for LDT's and HDE's and evaporative emissions for LDV's and LDT's, for manufacturers with sales over 300 units per year.

EPA's analysis of the cost impact of the proposed revisions to the small-volume manufacturers and small-volume engine family durability program has been placed in Public Docket No. A–85–30.

B. Maintenance and Warranty Service

The current certification program presumes: (1) That emissions warranty coverage required by sections 207(a) and 207(b) of the Act will be supplied by the manufacturer to correct any covered emission and emission-related problems identified during a vehicle's useful life; and (2) that manufacturers will have qualified service facilities and maintenance parts available for use by their customers. In-use emission performance is likely to be worse than that predicted in the certification program if, due to lack of either of these services, vehicles are unable to obtain proper maintenance and warranty service.

EPA is concerned that some small-volume manufacturer vehicles might not be assured warranty service by the manufacturer. In the case of ICI's, the recent imports regulations amendments (52 FR 36136, September 25, 1987) address this issue by requiring the certificate holder who modifies imported nonconforming vehicles to obtain an insurance policy to assure payment of in-use emission warranty repairs if the manufacturer defaults on its obligation. While EPA expects that in most cases the existing regulations (including the recent imports regulation amendments) will assure the availability of warranty service, in some cases (e.g., due to inexperience of some small-volume manufacturers), they may not.

[13] A closely comparable design is a design that would qualify under EPA's guidelines for durability data carryover from a system that has completed durability testing to another system. The carryover guidelines are contained in A/C No. 17F. A copy of A/C No. 17F has been placed in the public docket.

Therefore, EPA is proposing that proof of this insurance be provided to EPA at the time of the manufacturer's application for certification. This makes the availability of the insurance a condition of receiving certification and will help ensure that small-volume manufacturers fulfill their warranty responsibility. Requiring the manufacturer to provide proof that the insurance policy has been purchased or proof of a contractual agreement to purchase insurance prior to receiving certification should pose no additional burden to the manufacturer except that the manufacturer may have to obtain the insurance policy a month or two earlier than if proof of purchase were not a condition of certification.

Second, without adequate service facilities and maintenance parts the vehicle owners cannot properly maintain their vehicles. EPA is somewhat concerned that under the existing regulations some vehicles might be certified as capable of complying with emission standards for the vehicles' useful lives (if properly maintained and used) when in fact some emission and emission-related parts might not be available to properly maintain the vehicles. Without proper maintenance, the in-use emission deterioration is likely to be significantly greater than predicted in the certification program.

Although the small-volume manufacturer is subject to the same sanctions as the large-volume manufacturer under the Act, other considerations may make the large-volume manufacturer more likely to make service facilities available for maintenance and warranty service for the emission systems of vehicles they sell. The large-volume manufacturer's future vehicle sales are in part based on current customer satisfaction which can be influenced by the vehicle manufacturer's maintenance services. Further, most dealerships for large-volume manufacturers view their service facilities as a major source of revenue. These incentives are substantial, as evidenced by the fact that it is most common for large-volume manufacturers to combine their sales dealerships with full service facilities. Therefore, EPA sees no need for further assurance that large-volume manufacturers will make service available.

By contrast, the small-volume manufacturers' future sales may not be as closely influenced by the manufacturers' maintenance services. Small-volume manufacturers' vehicles are, in most cases, exotic, expensive, "one of a kind" limited production, or, as in the case of ICI's, modified versions of OEM vehicles. Some small-volume manufacturer sales are probably substantially influenced by brand familiarity. Other small-volume manufacturer sales may be influenced by the consumer's desire to purchase an exotic vehicle. In either case, the consumer may travel considerable distances to purchase the vehicle, thereby making it difficult to return to the dealer for maintenance. As a result, the purchaser may not be as influenced by the dealer's maintenance services, or the lack of maintenance services. In addition, some small-volume manufacturer vehicles, especially the more exotic vehicles, may be once-in-a-lifetime purchases. Again, since the consumer may never purchase another exotic vehicle or at least not the same make, the consumer may not be influenced by the availability of maintenance services.

In the case of ICI's, some vehicle purchasers may think that service is available from the OEM maintenance shop. The vehicle purchaser may not care (at the time of purchase) about such issues and the ICI may not have a marketing incentive to identify available service locations. Moreover, that same consumer may not be aware of, or may not be willing to make any significant effort to have repaired an emission system malfunction that does not otherwise affect the normal operation (i.e., driveability) of the vehicle. Therefore, although EPA currently believes that small-volume manufacturer warranty service generally should be available, EPA is concerned that, under the current program, some small-volume manufacturers may not have sufficient incentives to provide adequate service availability. Without additional incentive to these manufacturers to provide maintenance and warranty service, EPA would be somewhat concerned that the emission systems of some of these vehicles might not be properly maintained. EPA invites public comment on whether availability of service by small-volume manufacturers will be adequate to meet the warranty requirements of section 207(b) of the Act.

In the event that EPA decides that service and parts availability may be a problem, EPA is proposing two changes which should increase the likelihood that owners will also be able to obtain proper maintenance and warranty service from small-volume manufacturers. For the reasons just discussed, these changes will only apply to small-volume manufacturers. The first proposal addresses the availability of emission and emission-related parts and service. The second proposal addresses alternatives to ensure that warranty service will be performed.

First, EPA is proposing that as a condition of certification, the small-volume manufacturer provide a written statement prior to certification affirming that it will have qualified service facilities [14] and repair parts conveniently available [15] in the field for its customers. Specifically, prior to certification the manufacturer must state that it will provide each vehicle purchaser a list of emission and emission-related service parts, including part number designations and sources of parts, for all engine and emission control system parts which might affect vehicle emission performance throughout the full useful life of the vehicle. It must also state that the manufacturer will have qualified service facilities and emission and emission-related spare parts available to service its vehicles. In addition, the small-volume manufacturer must agree to provide the vehicle purchaser at the time of sale with information identifying the closest service facility to the point of sale authorized to perform emission-related warranty service if this service is not available at the point of sale. The manufacturer must also state in its application for certification that vehicle purchasers will be informed of the closest service facility if service is not available at the point of sale.

Second, in addition to the above statement, EPA proposes to require that the small-volume manufacturer provide EPA, upon request, evidence or other information demonstrating that: (1) Qualified service facilities are available at the point of sale of the manufacturer's vehicles, or the vehicle purchaser will be notified of the closest service facilities at the time of sale; and (2) that necessary emission and emission-related parts are readily available at or through these repair facilities. Failure to fulfill this requirement could result in the certificate of conformity being suspended or revoked. Examples of the evidence or other information EPA currently considers acceptable as

[14] Qualified service facilities are service facilities which have: Vehicle maintenance instructions; trained service personnel; applicable tools and equipment, including special tools if required; and spare parts for the manufacturer's vehicles.

[15] Conveniently Available—For small-volume manufacturers "conveniently available" means that the vehicle manufacturer maintains an inventory of all spare parts or has made arrangements for the parts manufacturers to supply the parts by expedited shipment (e.g., UPS, overnight xpress, etc.).

demonstrating service facilities and spare parts availability include: Photographs of service facilities; personnel rosters with personnel qualifications; inventory list of spare parts available at the service facility and/or the manufacturers; copy of nearest service facility location notice the manufacturer issued to the vehicle purchaser, if applicable.

EPA analyzed the potential impact of the provisions in the event EPA determines that they are necessary. Providing the information proposed in this section should represent an insignificant administrative burden for the manufacturers, since the responsible manufacturer should already be obtaining the required insurance and providing these services and parts in order to meet its obligations under the Act and the existing regulations.

C. Vacuum Hose Routing Diagram

EPA is proposing that a vacuum hose routing diagram be included on the vehicle emission control information label. This will aid in-use vehicle inspection by making it easier for vehicle inspectors to verify that the emission control hardware is properly installed. Further, it should assist mechanics in checking their work for proper installation. Such a vacuum hose routing diagram is currently required by State of California motor vehicle regulations and is voluntarily included on the vast majority of vehicles sold in the rest of the U.S. Although most manufacturers are already voluntarily installing a vacuum hose routing diagram on all their vehicles, EPA wants to be sure that all manufacturers, including new manufacturers, also include a routing diagram on their vehicles. Therefore, EPA proposes that all manufacturers be required to include a vacuum hose routing diagram on their vehicles. Since this is a standard industry practice voluntarily being implemented by most manufacturers, EPA believes this amendment will represent an insignificant burden to manufacturers.

EPA analyzed the impact of the proposed revision to the vehicle emission control information label. EPA estimates that the cost for including the proposed additional information on the label should not result in a significant increase in the manufacturer's costs. The additional cost is estimated to be only a few cents per label. EPA believes that the additional information on the label will significantly improve maintenance of the vehicles. EPA anticipates that the improved maintenance benefits will far outweigh the additional cost of the label. (See cost analysis in Public Docket A-85-30.)

D. Aggregation

EPA put in place several constraints to stop a large manufacturer from attempting to certify as several small-volume subdivisions when it adopted its 1981 regulations (46 FR 16259, March 12, 1981). In the existing regulations and in their implementation, EPA has aggregated the projected sales of all firms having any significant financial or managerial link, including common ownership. Section 86.085-1(e) of the regulations specifies that "vehicles produced at facilities leased, operated, controlled, supervised, or in ten percent or greater part owned by the manufacturer shall be counted in calculating the total sales of the manufacturer." Also, according to § 86.084-14(b)(2), where there is more than one importer or distributor of vehicles manufactured by the same person, the sales of all these importers and distributors shall be aggregated. EPA generally has not applied this provision to aggregate sales of genuinely independent ICI's who import nonconforming vehicles for resale, modify these vehicles to allow them to meet emission standards, and thus become manufacturers of the vehicle.

EPA proposes to add three provisions to the current regulations. First, EPA proposes to change the wording of 40 CFR 86.085-1(e) in order to preclude possible misunderstanding and to clarify its interpretation. EPA is proposing to make clear that if one firm leases, operates, controls, supervises or in ten percent or greater part owns production facilities used by another manufacturer, then the combined sales of both manufacturers (or multiple manufacturers in the case of three or more) is used to determine the eligibility of each manufacturer to certify under the small-volume manufacturer rules. EPA has always interpreted the reference to "manufacturer" in this provision as applying to all manufacturers in the relationship. Thus, EPA has always used the combined sales of both manufacturers in determining small-volume manufacturer eligibility for each and every manufacturer involved in the arrangement.

Second, in order to clarify the interpretation of "controlled" as used in 40 CFR 86.085-1(e), EPA proposes to add the wording that where two or more firms have common corporate officers who are responsible for the overall direction of the companies, the sales should be grouped together. The interrelationship resulting from such common corporate officers is consistent with the other financial and managerial links which result in sales aggregation.

Third, EPA proposes to amend the regulations to clarify mutual equity ownership, (i.e., to specify aggregating the sales of two or more firms if a third party has equity ownership of ten percent or more in each of the firms). This is a natural extension of current language which specifies that one firm will be aggregated with another if one of them owns ten percent or more of the other.

E. Changes to Emission-Data Vehicle (EDV) Mileage Requirements

EPA is proposing to establish a minimum mileage requirement for EDV's for all manufacturers. Prior to the certification procedure revisions of March 12, 1981 and October 13, 1981, manufacturers were required to accumulate 4,000 miles on each EDV to assure that its emission performance had stabilized prior to being emission tested. The 1981 certification procedure revisions allowed manufacturers to determine the minimum amount of mileage accumulation required to stabilize the vehicle's emission performance. A review of the certification data base indicates that manufacturers have typically accumulated a minimum of around 2,500 miles on EDV's to assure the vehicles emission performance had stabilized. No manufacturer accumulated less than 2,000 miles on an EDV.

EPA is somewhat concerned that in the future some manufacturers may use this flexibility in mileage accumulation to determine, whether intentionally or inadvertently, inappropriately low EDV test results. Specifically, when new, a catalyst has exceptionally high performance and is very effective at converting most hydrocarbon, carbon monoxide and oxides of nitrogen emissions coming out of the engine, thus keeping the regulated emissions atypically low. This exceptional catalyst performance quickly drops off as mileage accumulates until the catalyst conversion efficiency stabilizes and then deteriorates much more gradually with additional mileage. If a manufacturer chooses to test its EDV's prior to the stabilized emission mileage, the manufacturer could take advantage of this exceptional catalyst performance and obtain emission test results uncharacteristically low compared to a stabilized vehicle. Application of the d.f.'s to such results would predict an inappropriately low useful life emission. Allowing EDV testing before the vehicle has stabilized could mean that a vehicle

design is inappropriately certified (i.e., the certification test data predicted useful life compliance but in reality this prediction was too low). Therefore, EPA proposes to establish a minimum mileage requirement of 2,000 miles for EDV's (62 hours for catalyst equipped heavy-duty engines) regardless of manufacturer size. EPA expects that these low mileage EDV concerns would be eliminated by this minimum mileage requirement.

The impact of the proposed 2,000-mile minimum for EDV mileage accumulation on the cost of the manufacturers' certification program was analyzed. Since all current manufacturers have accumulated at least 2,000 miles on EDV's, the 2,000-mile minimum mileage requirement will not cause an impact on them. For those manufacturers using unproven emission control systems, EPA also believes that the proposed change would have little or no impact on them given that virtually all such manufacturers who have certified new designs in the past have accumulated at least 2,000 miles prior to emission data testing. In such a case, the proposed regulation change would have no impact on these manufacturers.

F. Reduction in the Number of Required Emission-Data Vehicles

The current regulations applicable to manufacturers with sales of 10,000 units or more require the testing of two EDV's in those small-volume engine families certified with assigned d.f.'s. For manufacturers with sales of less than 10,000 units, the regulations require only one EDV per engine family. EPA proposes to also require only one emission-data test vehicle for small-volume engine families certified using assigned d.f.'s by manufacturers with sales of 10,000 units or more. This proposal will reduce the regulatory burden in these manufacturers. However, given the limited diversity of designs typical of these small-volume engine families, the increased risk of inappropriately certifying an engine due to less emission test data is insignificant. This proposal will make the small-volume manufacturer's and small-volume engine family certification requirements consistent for all engine families certified with assigned d.f.'s.

G. Other Changes

The Agency proposes to standardize the worst-case EDV (engine) selection criteria contained in the certification procedures. Currently, the small-volume manufacturer worst-case EDV selection criteria differs slightly from the EDV selection criteria applicable to manufacturers whose projected sales exceed 10,000 units per year. The differences (e.g., heaviest (including options) vehicle versus heaviest equivalent test weight (including options) and largest frontal area vs. highest road load horsepower, etc.) resulted when the Agency promulgated changes to the EDV selection criteria (46 FR 50464, October 13, 1981) for large-volume manufacturers. The larger manufacturers have a more diverse product line; therefore, the Agency was more definitive than in the small-volume manufacturer certification procedure.

Changing the small-volume manufacturer EDV selection criteria to be consistent with the larger volume manufacturer vehicle selection criteria should not impact the small-volume manufacturer worst-case vehicle selections. The majority of the small-volume manufacturer engine families have only one vehicle with few, if any, options. Therefore, the same EDV would be selected under the revised selection criteria as under the original small-volume manufacturer EDV selection criteria. In addition, the Agency is proposing that larger volume manufacturers utilize the small-volume manufacturer EDV selection criteria when certifying engine families under the optional certification procedures (§ 86.090–24(e)(2)) available to larger manufacturers for small-volume engine families. Therefore, revising the small-volume manufacturer EDV selection criteria to be consistent with the larger volume manufacturer vehicle selection criteria should reduce potential confusion resulting from differing EDV selection criteria for these larger manufacturers.

IV. Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of proposed Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a preliminary Regulatory Flexibility Analysis (RFA). EPA has determined that the certification revisions proposed herein will not have a significant impact on a substantial number of small-volume manufacturers.

The actual impact of the proposed revisions on each manufacturer is affected by the emission control system chosen by the manufacturer. Under the proposed revisions, the previous certification history of the emission control system (and fuel metering system) the manufacturer chooses to use on its vehicles or engines will determine the durability demonstration requirements the manufacturer must complete. Manufacturers using proven emission control systems (and fuel metering systems) will not incur significant additional costs. Therefore, there will be no significant impact on these manufacturers.

If a manufacturer chooses on its own volition to use unproven emission control or fuel metering systems, EPA is proposing to require additional durability demonstration. In most cases it is unlikely that the manufacturer would choose to use unproven emission control or fuel metering systems. Proven emission control systems and fuel metering systems are readily available from OEM's (or the suppliers of OEM equipment), generally at less cost to the small-volume manufacturer than developing a new, unique system. However, if the small-volume manufacturer is projecting a large number of vehicle sales in an engine family the cost of system development and durability demonstration could be less, on a per-vehicle basis, than purchasing previously proven emission control systems. The manufacturer will likely make the decision to use either previously proven or unproven emission control or fuel metering systems based on economic considerations.

EPA analyzed the potential impact of the durability requirements associated with the use of unproven emission control or fuel metering systems on the small-volume manufacturer. A copy of the economic impact analysis has been placed in the public docket. Those manufacturers choosing to use unproven emission control or fuel metering systems will incur additional time and cost to complete the certification process. The amount of time required to complete a durability-data vehicle considerably lengthens the certification process. Approximately four months are required to accumulate the necessary durability mileage (e.g., 50,000 miles for light-duty vehicles) versus less than one month for EDV mileage accumulation (i.e., typically between 2,500 and 5,000 miles). EPA estimates that, for the initial year these regulations are in effect, less than 15 percent of the small-volume manufacturers may choose to use unproven emission control systems. Once these unproven systems are initially evaluated, subsequent model years should see significantly less unproven systems certified. This low incidence should not represent a significant number of small entities. Furthermore, even for those designs certified with unproven systems, the additional costs due to durability demonstration should not exceed three percent of the purchase price of an

average vehicle for that initial model year. The estimated increase in the purchase price of an average vehicle varies significantly with the number of vehicles represented by the durability demonstration. The estimated price increase for sixty typically imported vehicles is less than three percent, whereas the price increase decreases to about one-half (0.5) percent per vehicle for sales of 300 vehicles. Therefore, there is not a significant impact on these specific manufacturers.

Therefore, based on the above, the certification revisions proposed herein should not have a significant impact on a substantial number of small entities.

V. Economic Impact

Section 3(b) of Executive Order 12291 requires EPA to determine whether a rule it intends to propose or to issue is a major rule and to prepare a Regulatory Impact Analysis (RIA) for all major rules. EPA has determined that this action is not a "major rule" requiring preparation of an RIA since it will not have an annual effect on the economy of $100 million or more. Additionally, it will not result in a major increase in overall industry costs or prices. Finally, this action will not have a significant adverse effect overall on industry, competition, employment, investment, productivity, innovation, or the ability of domestic businesses to compete with foreign companies since imported vehicles are a small portion of the total number of vehicles sold in the U.S. Therefore, a preliminary RIA has not been prepared. Potential economic effects of the proposed small-volume certification rules, however, have been addressed in an economic impact analysis which was prepared in accord with the RIA requirements. The Agency's economic impact analysis for the recent rule on the importation of nonconforming motor vehicles and motor vehicle engines also is incorporated by reference herein and has been placed in the public docket for this rulemaking. The estimated first year cost for the proposed revision to the certification procedure is less than $500,000 for the industry. The estimated cost for the second and subsequent years would likely be reduced substantially by the use of data carryover. The use of maximum carryover of emission data could reduce costs to less than $6,000 for the industry. This analysis has been placed in the Public Docket for this rulemaking. The combined rules will not have an annual effect on the economy of $100 million or more.

VI. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection at Public Docket A-85-30 located in EPA's Central Docket Section (LE-131), 401 M Street SW., Washington, DC 20460.

VII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 783) and a copy may be obtained from IPB Desk Officer Carla Levesque, Information Policy Branch, EPA, 401 M Street SW. (PM-223), Washington, DC 20460 or by calling (202) 382-2740. Comments on these requirements may be submitted to EPA and the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

Date: February 26, 1988.

Lee M. Thomas,

Administrator.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES

Section	Change	Reason
1. Part 86, Authority	None.	
2. Add new § 86.090-1:		To implement the following changes for the 1990 model year
(a)	Revise language to specify year of applicability	First year regulations are applicable.
(d)	do	Do.
(e)	Revise language to include heavy-duty vehicles and vehicles or engines imported under 40 CFR 85.1505 and 40 CFR 85.1509.	To include all vehicle or engine categories in manufacturer's combined total sales.
3. Add new § 86.090-2	Revise to include new definitions	To include definitions of proven and unproven emission control systems.
4. Amend § 86.091-2	Incorporated definitions contained in § 86.090-2	To continue definitions.
5. Add new § 86.090-14:		
(b)(1)	Revise language to include heavy-duty vehicles and all vehicles or engines imported under 40 CFR 85.1505 and 40 CFR 85.1509.	To include all vehicles or engines in manufacturer's combined total sales.
(b)(2)	Revise language to specify aggregated relationships	To define all relationships which cause manufacturer's sales to be combined with another manufacturers.
(b)(2)(i)	Added language specifying relationships which will result in aggregation.	Do.
(b)(2)(ii)	do	Do.
(b)(2)(iii)	do	Do.
(b)(2)(iv)	do	Do.
(c)(7)(i)(A)	Revised language to specify one emission-data test vehicle (engine) per engine family.	Clarification.
(e)(7)(i)(A)(*1*)	Revised language defining worst-case vehicle selection criteria	To be consistent with criteria contained in § 86.090-24(b).
(c)(7)(i)(A)(*2*)	Revised language defining worst-case engine selection criteria	Do.
(c)(7)(i)(B)	Revised language to include minimum service accumulation distance or time.	To include new requirement of minimum service accumulation.
(c)(7)(i)(C)	Revised language to identify new requirements	To include new durability requirements.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES—Continued

Section	Change	Reason
(c)(7)(i)(C)(*1*)	Add language to define durability requirements for manufacturers with aggregated total sales less than 300 units per year and to define assigned deterioration factors provided by the Administrator.	To include new durability requirements and define assigned deterioration factors.
(c)(7)(i)(C)(*2*)	Add language to define durability requirements for manufacturers with aggregated total sales of 300 through 9,999 units per year.	To include new durability requirements.
(c)(7)(i)(C)(*2*)(*i*)	Add language to define exhaust emissions durability requirements for light-duty vehicles equipped with proven emission control systems.	Do.
(c)(7)(i)(C)(*2*)(*ii*)	Add language to define exhaust emissions durability requirements for light-duty vehicles equipped with unproven emission control systems.	Do.
(c)(7)(i)(C)(*2*)(*iii*)	Add language to define durability requirements for light-duty vehicles, light-duty trucks, and heavy-duty vehicle evaporative emission and light-duty truck and heavy-duty engine exhaust emissions.	Do.
(c)(8)	Revise language to clarify maintenance requirements for durability-data vehicles or engines and maintenance instructions provided to vehicle or engine purchaser.	Clarification to make consistent § 86.088-25.
(c)(9)(i)	Redesignation of (c)(9) and added language to make section 26 of this subpart applicable.	To incorporate mileage and service accumulation requirements.
(c)(9)(ii)	Added to continue nonapplicability of section 27 of this subpart	Added due to redesignation of (c)(9).
(c)(11)(ii)(B)(*1*)	Added evaporative emission family name	Clarification.
(c)(11)(ii)(B)(*2*)	Added the word "carline"	Clarification.
(c)(11)(ii)(B)(*10*)	Added the words "surface area" and "total precious metal loading".	Clarification.
(c)(11)(ii)(B)(*18*)	Added language requiring submission of proof of insurance coverage required by 40 CFR 85.1510(b), if applicable.	New Requirement.
(c)(11)(ii)(D)(*7*)	Added language requiring statement concerning maintenance facilities and emission and emission-related service parts.	To include new requirement.
(c)(11)(ii)(E)	Added language requiring submission of information on manufacturer-determined deterioration factors.	To include new requirement.
6. Add New § 86.090-24:		To implement the following changes for 1990 model year.
(e)(1)	Deleted contents and reserve subparagraph	No longer required, requirements included in subparagraph (e)(2).
(e)(2)	Revised language to reference § 86.090-14	To include new durability and emission-data test vehicle requirements consistent with § 86.090-14.
7. Add New § 86.090-26:		To implement the following changes for the 1990 model year.
(a)(3)(i)(A)	Added language to include minimum mileage requirements, and recording and reporting of vehicle mileage.	New requirement.
(a)(3)(ii)(A)	do	Do.
(b)(4)(i)(A)	do	Do.
(b)(4)(ii)(A)	do	Do.
(c)(4)	Added language specifying minimum service accumulation time for engines equipped with catalyst.	Do.
8. Add New § 86.090-35:		To implement the following changes in the 1990 model year.
(a)(1)(iii)(C)	Added language to identify new requirement	To include requirement for vacuum hose routing diagram.
(a)(1)(iii)(J)		To include labeling requirement specified in 40 CFR 85.1510.
(a)(2)(iii)(L)	do	To include requirement for vacuum hose routing diagram.
(a)(2)(iii)(M)	do	To include labeling requirement specified in 40 CFR 85.1510.
(a)(3)(iii)(L)	do	To include labeling requirement specified in 40 CFR 85.1510.
(a)(4)(iii)(F)	do	Do.
9. Amended § 86.091-35	Added language to incorporate labeling requirement implemented in the 1990 model year as defined in No. 8 above.	To implement labeling requirements as specified in No. 8 above for the 1991 model year.

For reasons set forth in the preamble, 40 CFR Part 86 is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a)(1) of the Clean Air Act as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)(1).

2. A new § 86.090-1, which is identical to § 86.085-1, except for revisions to paragraphs (a), (d), and (e), is added to read as follows:

§ 86.090-1 General applicability.

(a) The provisions of this subpart apply to 1990 and later model year new gasoline-fueled and diesel light-duty vehicles, 1990 and later model year new gasoline-fueled and diesel light-duty trucks, and 1990 and later model year new gasoline-fueled and diesel heavy-duty engines.

(b) *Optional applicability.* A manufacturer may request to certify any heavy-duty vehicle 10,000 pounds GVWR or less in accordance with the light-duty truck provisions. Heavy-duty engine or vehicle provisions do not apply to such a vehicle.

(c) [Reserved]

(d) *Alternative Durability Program.* For 1990 and later model year light-duty vehicles and light-duty trucks, a manufacturer may elect to participate in the Alternative Durability Program. This optional program provides an alternative method of determining exhaust emission control system durability. The general procedures and a description of the programs are contained in § 86.085-13 and specific provisions on test vehicles and compliance procedures are contained in § 86.090-24 and § 86.088 28 respectively.

(e) *Small volume manufacturers.* Special certification procedures are available for any manufacturer whose projected combined U.S. sales of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 40 CFR 85.1509) are fewer than 10,000 units for the model year in which the manufacturer seeks certification. In order to certify its product line under these optional procedures, the small-volume manufacturer must first obtain the Administrator's approval. The manufacturer must meet the eligibility criteria specified in § 86.090–14(b) before the Administrator's approval will be granted. The small-volume manufacturer's certification procedures are described in § 86.090–14.

(f) *Optional Procedures for Determining Exhaust Opacity.* (1) The provisions of Subpart I apply to tests which are performed by the Administrator, and optionally, by the manufacturer.

(2) Measurement procedures, other than that described in Subpart I, may be used by the manufacturer provided the manufacturer satisfies the requirements of § 86.088–23(f).

(3) When a manufacturer chooses to use an alternative measurement procedure it has the responsibility to determine whether the results obtained by the procedure will correlate with the results which would be obtained from the measurement procedure in Subpart I. Consequently, the Administrator will not routinely approve or disapprove any alternative opacity measurement procedure or any associated correlation data which the manufacturer elects to use to satisfy the data requirements for Subpart I.

(4) If a confirmatory test(s) is performed and the results indicate there is a systematic problem suggesting that the data generated under an optional alternative measurement procedure do not adequately correlate with Subpart I data, EPA may require that all certificates of conformity not already issued be based on data from Subpart I procedures.

3. A new § 86.090–2 is added, to read as follows:

§ 86.090–2 Definitions.

The definitions of § 86.088–2 remain effective. The definitions listed in this section apply beginning with the 1990 model year.

Proven emission control systems are emission control systems (and fuel metering systems) that have completed full durability testing evaluation over the vehicle's or engine's useful life in some other certified engine family or are, as determined by the Administrator, of comparable functional quality and manufactured using comparable material and production techniques as systems which have been durability demonstrated in some other certified engine family.

Unproven emission control systems are emission control systems (and fuel metering systems) that have not completed full durability testing evaluation over the vehicle's or engine's useful life in some other certified engine family or are not of comparable functional quality and manufactured using comparable materials and production techniques as systems which have been durability demonstrated in some other certified engine family.

4. The introductory text in § 86.091–2 is revised to read as follow:

§ 86.091–2 Definitions.

The definitions of § 86.090–2 remain effective. The definitions listed in this section apply beginning with the 1991 model year.

* * * * *

5. A new § 86.090–14 is added to read as follows:

§ 86.090–14 Small-volume manufacturers certification procedures.

(a) The small-volume manufacturers certification procedures described in paragraphs (b) and (c) of this section are optional. Small-volume manufacturers may use these optional procedures to demonstrate compliance with the general standards and specific emission requirements contained in this subpart.

(b)(1) The optional small-volume manufacturers certification procedures apply to light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines produced by manufacturers with U.S. sales including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 40 CFR 85.1509 (for the model year in which certification is sought) of fewer than 10,000 units (LDV, LDT, HDV and HDE combined).

(2) For the purpose of determining the applicability of paragraph (b)(1) of this section, the sales the Administrator shall use shall be the aggregate of the projected or actual sales of those vehicles and/or engines in any of the groupings identified below in this subparagraph. If the aggregate sales is equal to or greater than 10,000 units, then each firm involved will be denied use of the small-volume manufacturers certification procedures, even if they operate as independent firms.

(i) Vehicles and/or engines produced by two or more firms, one of which is 10 percent or greater part-owned by another.

(ii) Vehicles and/or engines produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies;

(iii) Vehicles and/or engines produced by any two or more firms if a third party has equity ownership of 10 percent or more in each of the firms;

(iv) Vehicles and/or engines imported or distributed by all firms where the vehicles and/or engines were manufactured by the same person and the importer or distributer is an authorized agent of the person.

(c) Small-volume manufacturers shall demonstrate compliance with the applicable sections of this subpart as follows:

(1) Sections 1 through 11 of this subpart are applicable.

(2) Section 12 of this subpart is not applicable.

(3) Sections 13 through 20 of this subpart are applicable.

(4) Small-volume manufacturers shall include in their records all of the information that EPA requires in section 21 of this subpart. This information will be considered part of the manufacturer's application for certification. However, the manufacturer is not required to submit the information to the Administrator unless the Administrator requests it.

(5) Section 22 of this subpart is applicable except as noted below.

(i) Small-volume light-duty vehicle and light-duty truck manufacturers may satisfy the requirements of paragraph (e) of section 22 by including a statement of compliance on adjustable parameters in the application for certification. In the statement of compliance the manufacturer shall state that the limits, stops, seals, or other means used to inhibit adjustment have been designed to accomplish their intended purpose based on good engineering practice and past experience. If the vehicle parameter is adjustable the vehicle must meet emission standards with the parameter set any place within the adjustable range (Reference section 21 of this subpart).

(ii) Paragraphs (a), (b), (c), and (d) of section 22 of this subpart are not applicable.

(6) Section 23 of this subpart is applicable.

(7) Section 24 of this subpart is applicable except as noted below.

(i) Small-volume manufacturers may satisfy the requirements of paragraphs

(b) and (c) of section 24 of this subpart by:

(A) *Emission-data*—Selecting one emission-data test vehicle (engine) per engine family by the worst-case emissions criteria as follows:

(*1*) *Light-duty vehicles and light-duty trucks.* The manufacturer shall select the vehicle with the heaviest equivalent test weight (including options) within the engine family. Then within that vehicle the manufacturer shall select, in the order listed, the highest road load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in the engine family, and the maximum fuel flow calibration.

(*2*) *Heavy-duty gasoline-fueled engines.* The manufacturer shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the manufacturer shall select, in the order listed, highest fuel flow at the speed of maximum-rated torque, the engine with the most advance spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(*3*) *Heavy-duty diesel engines.* The manufacturer shall select one emission data engine based on the highest fuel feed per stroke, primarily at the speed of maximum-rated torque and secondarily at rated speed.

(B) Testing light-duty vehicles or light-duty truck emission-data vehicles at any service accumulation distance of at least 2,000 miles (3,219 kilometers) or, catalyst—equipped heavy-duty emission-data engines at any service accumulation time of at least 62 hours, or non-catalyst-equipped heavy-duty engine emission-data engines at any service accumulation time determined by the manufacturer to result in stabilized emissions. The emission performance of the emission-data vehicle or engine must be stabilized prior to emission testing.

(C) *Durability data*—Satisfying the durability-data requirements by complying with the applicable procedures below:

(*1*) Manufacturers with aggregated sales which would not exceed 300 motor vehicles and motor vehicle engines per year may use assigned deterioration factors that the Administrator determines and prescribes. The factors will be the Administrator's estimate, periodically updated and published in an advisory letter or advisory circular, of the 70th percentile deterioration factors calculated using the industrywide data base of previously completed durability-data vehicles or engines used for certification. However, the manufacturer may, at its option, accumulate miles (hours) on a durability-data vehicle (engine) and complete emission tests for the purpose of establishing its own deterioration factor(s).

(*2*) Manufacturers with aggregated sales from and including 301 through 9,999 motor vehicles and motor vehicle engines per year shall use:

(*i*) For light-duty vehicle exhaust emissions from vehicles equipped with proven emission control systems, assigned deterioration factors that the manufacturer determines based on its good engineering judgment. However, the manufacturer may not determine deterioration factors less than either the manufacturer's specific average or 70th percentile deterioration factors, whichever is less (or the EPA supplied industrywide deterioration factors if the manufacturer does not have at least two data points to calculate manufacturer specific average deterioration factors.) The manufacturer specific average deterioration factors are the average of the deterioration factors from all engine families, within the same vehicle/engine-fuel usage category (e.g., gasoline-fueled light-duty vehicle, etc.), previously certified to the same emission standards by the manufacturer. The manufacturer's specific 70th percentile deterioration factors are calculated using the same data base. The manufacturer may, at its option, accumulate miles on durability-data vehicles and complete emission tests for the purpose of establishing its own deterioration factors.

(*ii*) For light-duty vehicle exhaust emissions from vehicles equipped with unproven emission control systems, deterioration factors that the manufacturer determines from official certification durability data generated on vehicles run on engine families representing a minimum of 25 percent of the manufacturer's sales equipped with unproven emission control systems. The sales projections are to be based on total sales projected for each engine/system combination. The durability-data vehicle (engine) mileage accumulation and emission tests are to be conducted according to section 26. The manufacturer must develop deterioration factors by generating durability data in accordance with section 26 of this subpart on a minimum of 25 percent of the manufacturer's projected sales (by engine/system combination) that is equipped with unproven emission control systems. The manufacturer must complete the 25 percent durability requirement before the remainder of the manufacturer's sales equipped with unproven emission control systems is certified using manufacturer-determined deterioration factors. The manufacturer may, at its option, accumulate miles on durability-data vehicles and complete emission tests for the purpose of establishing its own deterioration factors on the remaining sales.

(*iii*) For light-duty vehicle, light-duty truck, and heavy-duty vehicle evaporative emissions and light-duty truck, and heavy-duty engine exhaust emissions, deterioration factors determined in accordance with section 24 of this subpart.

(ii) Paragraphs (d) and (e) of section 24 of this subpart are not applicable.

(8) Section 25 of this subpart is applicable to maintenance performed on durability-data light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines when the manufacturer completes durability-data vehicles or engines; section 38 of this subpart is applicable to the recommended maintenance the manufacturer includes in the maintenance instructions furnished the purchasers of new motor vehicles and new motor vehicle engines under section 38 of this subpart.

(9)(i) Section 26 of this subpart is applicable if the manufacturer completes durability-data vehicles or engines.

(ii) Section 27 of this subpart is not applicable.

(10) Sections 28 and 29 of this subpart are applicable.

(11)(i) Section 30 of this subpart is applicable, except for paragraph (a) (2) and (b) of that section. In the place of these paragraphs, small-volume manufacturers shall comply with paragraphs (c)(11) (ii) through (11)(v) of this section, as shown below.

(ii) Small-volume manufacturers shall submit an application for certification containing the following:

(A) The names, addresses, and telephone numbers of the persons the manufacturer authorizes to communicate with us.

(B) A brief description of the vehicles (or engines) covered by the certificate (the manufacturers' sales data book or advertising, including specifications, may satisfy this requirement for most manufacturers). The description shall include, as a minimum, the following items as applicable:

(*1*) Engine evaporative family names and vehicle (or engine) configurations.

(*2*) Vehicle carlines or engine models to be listed on the certificate of conformity.

(3) The test weight and horsepower setting for each vehicle or engine configuration.

(4) Projected sales.

(5) Combustion cycle.

(6) Cooling mechanism.

(7) Number of cylinders.

(8) Displacement.

(9) Fuel system type.

(10) Number of catalytic converters, volume, composition, surface area, and total precious metal loading.

(11) Method of air aspiration.

(12) Thermal reactor characteristics.

(13) Suppliers' and/or manufacturer's name and model number of any emission-related items of the above, if purchased from a supplier who uses the items in its own certified vehicles(s) or engine(s).

(14) A list of emission component part numbers.

(15) Drawings, calibration curves, and descriptions of emission-related components, including those components regulated under paragraph (e) of section 22 of this subpart, and schematics of hoses and other devices connecting these components.

(16) Vehicle adjustments or modifications necessary for light-duty trucks, to assure that they conform to high-altitude standards.

(17) A description of the light-duty vehicles and light-duty trucks which are exempted from the high-altitude emission standards.

(18) Proof that the manufacturer has obtained or entered an agreement to purchase, when applicable, the insurance policy, required by § 85.1510(b). The manufacturer may submit a copy of the insurance policy or purchase agreement as proof that the manufacturer has obtained or entered an agreement to purchase the insurance policy.

(C) The results of all emission tests the manufacturer performs to demonstrate compliance with the applicable standards.

(D)(1) The following statement signed by the authorized representative of the manufacturer: "The vehicles (or engines) described herein have been tested in accordance with [list the applicable Subparts A, B, D, I, N, or P] of Part 86, Title 40, United States Code of Federal Regulations, and on the basis of those tests are in conformance with that subpart. All of the data and records required by that subpart are on file and are available for inspection by the EPA Administrator. We project the total U.S. sales of vehicles (engines) subject to this subpart to be fewer than 10,000 units."

(2) A statement as required by and contained in paragraph (c)(5) of this section signed by the authorized representative of the manufacturer.

(3) A statement that the vehicles or engines described in the manufacturer's application for certification are not equipped with auxiliary emission control devices which can be classified as a defeat device as defined in section 2 of this subpart.

(4) A statement of compliance with section 206(a)(3) of the Clean Air Act.

(5) A statement that, based on the manufacturer's engineering evaluation and/or emission testing, the light-duty vehicles comply with emission standards at high altitude unless exempt under paragraph (h) of section 8 of this subpart.

(6) A statement that, based on the manufacturer's engineering evaluation and/or emission testing, the light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements and that all other light-duty trucks are at least capable of being modified to meet high-altitude standards unless exempt under paragraph (g)(2) of section 9 of this subpart.

(7) A statement affirming that the manufacturer will provide a list of emission and emission-related service parts, including part number designations and sources of parts, to the vehicle purchaser for all emission and emission-related parts which might affect vehicle emission performance throughout the useful life of the vehicle. Secondly, it must state that qualified service facilities will be available to service its vehicles. In addition, the manufacturer must indicate that the vehicle purchaser will be provided information identifying the closest authorized service facility to the point of sale if service facilities are not available at the point of sale. Such information should also be made available to the Administrator upon request.

(E) Manufacturers utilizing deterioration factors determined by the manufacturer based on its good engineering judgment (regarding paragraph (e)(7)(i)(C) of this section) shall provide a description of the method(s) used by the manufacturer to determine the deterioration factors.

(iii) If the manufacturer meets requirements of this subpart, the Administrator will issue a certificate of conformity for the vehicles or engines described in the application for certification.

(iv) The certificate will be issued for such a period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any vehicle or engine covered by the certificate will meet the requirements of the Act and of this subpart.

(v)(A) If, after a review of the statements and descriptions submitted by the manufacturer, the Administrator determines that the manufacturer has not met the applicable requirements, the Administrator shall notify the manufacturer in writing of his intention to deny certification, setting forth the basis for his determination. The manufacturer may request a hearing on the Administrator's determination.

(B) If the manufacturer does not request a hearing or present the required information the Administrator will deny certification.

(12) Sections 31 and 32 of this subpart are not applicable.

(13) Under section 33 of this subpart, small-volume manufacturers are covered by the following.

(i) Small-volume manufacturers may make production changes (running changes) without receiving the Administrator's prior approval. The manufacturer shall assure (by conducting emission tests as it deems necessary) that the affected vehicles (engines) remain in compliance with the requirements of this part.

(ii) The manufacturer shall notify the Administrator within seven days after implementing any production-related change (running change) that would affect vehicle emissions. This notification shall include any changes to the information required under paragraph (c)(11)(ii) of this section. The manufacturer shall also amend as necessary its records required under paragraph (c)(4) of this section to conform with the production design change.

(14) Section 34 of this subpart is not applicable.

(15) Sections 35 through 39 of this subpart are applicable.

6. A new § 86.090–24, which is identical to § 86.085–24, except for revisions to paragraphs (e)(1) and (e)(2), is added as follows.

§ 86.090–24 Test vehicles and engines.

(a) (1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)—(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled; L-6, 90° V-8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8)(i) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L-6, V-8, rotary, etc.).

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multi-displacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (non-catalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group, engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirements of paragraphs (a)(8) through (a)(10) of this section.

(12) The gasoline-fueled heavy-duty vehicles covered by an application for certification will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled heavy-duty vehicles to be classed in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (i.e., carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For gasoline-fueled heavy-duty vehicles to be classed in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Method of carburetor sealing.

(iii) Method of air cleaner sealing.

(iv) Vapor storage working capacity, within a 20g range.

(v) Number of storage devices.

(vi) Method of purging stored vapors.

(vii) Method of venting the carburetor during both engine off and engine operation.

(viii) Liquid fuel hose material.

(ix) Vapor storage material.

(15) Where gasoline-fueled heavy-duty vehicles are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) *Emission data*—(1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family groupings. Within each engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. Then within

that vehicle the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family, and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission-data vehicle (or other vehicles such as including current or previous model year emission-data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission-data vehicles' protocol) to represent more than one selection under paragraphs (b)(1) (i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family.

(v) For high-altitude exhaust emission compliance for each engine family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the vehicle expected to exhibit the highest emissions from the nonexempt vehicles selected in accordance with paragraphs (b)(1) (ii), (iii), and (iv) of this section or,

(B) In lieu of testing vehicles according to paragraph (b)(1)(v)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) All light-duty vehicles not exempt under § 86.087–8(h) comply with the emission standards at high altitude; and

(*2*) Light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements unless exempt under § 86.088–9(g)(2), and that all light-duty trucks sold for principal use at low altitude, which are not exempt under § 86.088–9(g)(2), are capable of being modified to meet high-altitude standards.

(vi) If 90 percent or more of the engine family sales will be in California, a manufacturer may substitute emission-data vehicles selected by the California Air Resources Board criteria for the selections specified in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) of this section.

(vii) (A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative emissions, from within each evaporative family to be certified, from among the vehicles represented by the exhaust emission-data selections for the engine family, unless evaporative testing has already been completed on the vehicle expected to exhibit the highest evaporative emissions for the evaporative family as part of another engine family's testing.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative emission control system, then the Administrator will select the highest expected evaporative emission vehicle from within the unrepresented evaporative system.

(viii) For high-altitude evaporative emission compliance for each evaporative emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraphs (b)(1)(vii) (B) or (C) of this section which is expected to have the highest level of evaporative emissions when operated at high altitude or

(B) In lieu of testing vehicles according to paragraph (b)(1)(viii)(A) of this section, a manufacturer may provide a statement in its application of certification that based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) All light-duty vehicles not exempt under § 86.087–8(h) comply with the emission standards at high altitude, and

(*2*) Light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements unless exempt under § 86.088–9(g)(2), and that all light-duty trucks sold for principal use at low-altitude, which are not exempt under § 86.088–9(g)(2), are capable of being modified to meet high-altitude standards.

(ix) Vehicles selected under paragraph (b)(1)(v)(A) of this section may be used to satisfy the requirements of paragraph (b)(1)(viii)(A) of this section.

(x) (Light-Duty Trucks Only) (A) The manufacturer may reconfigure any of the low-altitude emission-data vehicles to represent the vehicle configuration required to be tested at high altitude.

(B) The manufacturer is not required to test the reconfigured vehicle at low altitude.

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(i)—(ii) [Reserved]

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in the engine family as follows:

(A) The Administrator shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the Administrator shall select, in the order listed, highest fuel flow at the speed of maximum-rated torque, the engine with the most advanced spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar, the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraphs (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section applies to diesel heavy-duty emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family,

the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each engine system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(iv) Within an engine family control system combination, the manufacturer may alter any emission-data engine (or other engine such as including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) *Durability data*—(1) *Light-duty vehicle durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* Paragraph (c)(2) of this section applies to vehicles, engines, subsystems, or components used to establish exhaust emission deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(3) *Heavy-duty engines.* Paragraph (c)(3) of this section applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(d) For purposes of testing under § 86.090–26 (a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, *provided* that the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) [Reserved]

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines utilizing the procedures contained in § 86.090–14 of this subpart for emission-data vehicle selection and determination of deterioration factors. The deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission-data or durability-data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.088–23 has previously been submitted.

(g)(1) This paragraph applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2) (i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment of an option), no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional items weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional

equipment required by paragraph (g)(3)(i) of this section does not effect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission-data vehicle or durability-data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(h) Alternative Durability Program durability-data vehicles. This section applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) In order to update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability-data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability-data vehicle selected under paragraph (h)(1) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been submitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

7. A new § 86.090–26, which is identical to § 86.084–26, except for revisions to paragraphs (a)(3)(i)(A), (a)(3)(ii)(A), (b)(4)(i)(A), and (b)(4)(ii)(A), is added as follows:

§ 86.090–26 Mileage and service accumulation; emission measurements.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight.

(3) *Emission-data vehicles.* Unless as otherwise provided for in § 86.088–23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust and evaporative (if required) emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (v) or (viii) shall be conducted at the mileage (2,000 mile

minimum) at which the engine-system combination is stabilized for emission testing under high-altitude conditions.

(C) Exhaust and evaporative emissions tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (i), (ii), (iii), (iv), or (vii)(B) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.090–24(b)(1) (i) through (iv) to be tested under high-altitude conditions or provide a statement in accordance with § 86.090–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(ii) *Diesel.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1)(v) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under high-altitude conditions.

(C) Exhaust and evaporative emissions tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (i) through (iv) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.090–24(b)(1) (i) through (iv) to be tested under high-altitude conditions or provide a statement in accordance with § 86.090–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(4) *Durability-data vehicles.* Unless as otherwise provided for in § 86.088–23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.090–24(c)(1) shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.090–24(c) at test point mileage intervals that the manufacturer determines. At a minimum, complete exhaust emission tests shall be made at 5,000 miles, and at 50,000 miles. The mileage interval between test points must be of equal length for the interval between zero miles and 5,000 miles, the final interval, and any interval before or after testing conducted in conjunction with vehicle maintenance as specified in § 86.088–25(a)(10). The Administrator may determine under § 86.090–24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at test point mileage intervals that the manufacturer determines. At a mininum complete exhaust emission tests shall be made at 5,000 miles and at 50,000 miles. The mileage interval between test points must be of equal length for the interval between zero miles and 5,000 miles, the final interval, and any interval before or after testing conducted in conjunction with vehicle maintenance as specified in § 86.088–25(a)(10).

(iii) The manufacturer may, at its option, alter the durability-data vehicle at the selected test point to represent emission-data vehicle(s) within the same engine/system combination and perform emission tests on the altered vehicle. Upon completion of emission testing, the manufacturer may return the test vehicle to the durability-data vehicle configuration and continue mileage accumulation.

(5) (i) All tests required by this subpart on emission-data vehicles shall be conducted at a mileage equal to or greater than the mileage the manufacturer determines under paragraph (a)(3) of this section.

(ii) All tests required by this subpart on durability-data vehicles shall be conducted within 250 miles of each of the test points.

(6)(i) (A) The manufacturer may conduct multiple tests at any test point at which the data are intended to be used in the deterioration factor. At each test point where multiple tests are conducted, the test results from all valid tests shall be averaged to determine the data point to be used in the deterioration factor calculation, except under paragraph (a)(6)(i)(B) of this section. The test results from emission tests performed before maintenance affecting emissions shall not be averaged with test results after the maintenance.

(B) The manufacturer is not required to average multiple tests if the manufacturer conducts no more than three tests at each test point and if the number of tests at each test point is equal. All test points must be treated the same for all exhaust pollutants.

(ii) The results of all emission testing shall be supplied to the Administrator. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) may be submitted weekly to the Administrator, but shall be air posted or delivered to the Administrator within 7 days after completion of the test. In addition, all test data shall be compiled and provided to the Administrator in accordance with

§ 86.088–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(iii) The results of all emission tests shall be rounded, using the "Rounding Off Method" specified in ASTM E 29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(7) Whenever a manufacturer intends to operate and test a vehicle which may be used for emission or durability data, the manufacturer shall retain in its records all information concerning all emissions tests and maintenance, including vehicle alterations to represent other vehicle selections. For emission-data vehicles, this information shall be submitted, including the vehicle description and specification information required by the Administrator, to the Administrator following the emission-data test. For durability-data vehicles, this information shall be submitted following the 50,000-mile test.

(8) Once a manufacturer submits the information required in paragraph (a)(7) of this section for a durability-data vehicle, the manufacturer shall continue to run the vehicle to 50,000 miles, and the data from the vehicle will be used in the calculations under § 86.088–28. Discontinuation of a durability-data vehicle shall be allowed only with the consent of the Administrator.

(9)(i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.088–23(b)(2).

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) There are three types of mileage or service accumulation applicable to light-duty trucks:

(i) Mileage or service accumulation on vehicles, engines, subsystems, or components selected by the manufacturer under § 86.090–24(c)(2)(i). The manufacturer determines the form and extent of this mileage or service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Mileage accumulation of the duration selected by the manufacturer on emission-data vehicles selected under § 86.090–24(b)(1). The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at the test weight corresponding to the higher loaded vehicle weight.

(iii) Service or mileage accumulation which may be part of the test procedures used by the manufacturer to establish evaporative emission deterioration factors.

(3) Exhaust emission deterioration factors will be determined on the basis of the mileage or service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) Each emission-data vehicle shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b)(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24 (b)(1)(v) or (b)(1)(viii) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) Exhaust and evaporative emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (ii), (iii), (iv)(A), or (vii)(B) shall be conducted at the mileage (2,000 mile minimum) at which the engine system combination is stabilized for emission testing or at 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(D) For each new engine family, the manufacturer will select one vehicle previously selected under § 86.090–24 (b)(1)(ii) through (b)(1)(iv) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(ii) *Diesel.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219

kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.090–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.090–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.090–24(b(1). The Administrator may determine under § 86.090–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1)(v) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(C) Exhaust and evaporative emission tests for emission-data vehicle(s) selected for testing under § 86.090–24(b)(1) (ii), (iii), and (iv) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(D) For each engine family, the manufacturer will select one vehicle previously selected under § 86.090–24 (b)(1)(ii) through (b)(1)(iv) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high-altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(iii) [Reserved]

(iv) All tests required by this subpart on emission-data vehicles shall be conducted at a mileage equal to or greater than the mileage the manufacturer determines under paragraph (b)(4) of this section.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) There are two types of service accumulation applicable to heavy-duty engines:

(i) Service accumulation on engines, subsystems, or components selected by the manufacturer under § 86.090–24(c)(3)(i). The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Dynamometer service accumulation on emission-data engines selected under § 86.090–24(b)(2) or § 86.090–24(b)(3). The manufacturer determines the engine operating schedule to be used for dynamometer service accumulation, consistent with good engineering practice. A single engine operating schedule shall be used for all engines in an engine family-control system combination. Operating schedules may be different for different combinations.

(3) Exhaust emission deterioration factors will be determined on the basis of the service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) The manufacturer shall determine, for each engine family, the number of hours at which the engine system combination is stabilized (no less than 62 hours for catalyst equipped) for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested a record of the rationale used in making this determination. The manufacturer may elect to accumulate 125 hours on each test engine within an engine family without making a determination. Any engine used to represent emission-data engine under selections § 86.090–24(b)(2) shall be equipped with an engine system combination that has accumulated at least the number of hours determined under this paragraph. Complete exhaust emission tests shall be conducted for each emission-data engine selection under § 86.090–24(b)(2). Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system. The Administrator may determine under § 86.090–24(f) that no testing is required.

(d)(1) Paragraph (d) of this section applies to both light-duty trucks and heavy-duty engines.

(2)(i) The results of all emission testing shall be supplied to the Administrator. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) may be submitted weekly to the Administrator but shall be air posted or delivered to the Administrator within 7 days after completion of the test. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.088–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator. These test results shall be rounded, in accordance with ASTM E 29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(3) Whenever a manufacturer intends to operate and test a vehicle (or engine) which may be used for emission data, the manufacturer shall retain in its records all information concerning all emissions tests and maintenance, including vehicle (or engine) alterations to represent other vehicle (or engine) selections. This information shall be submitted, including the vehicle (or engine) description and specification information required by the Administrator, to the Administrator following the emission-data test.

(4)—(5) [Reserved]

(6) Emission testing of any type with respect to any certification vehicle or engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

8. A new § 86.090–35, which is identical to § 86.088–35, except for the addition of paragraphs (a)(1)(iii)(I), (a)(1)(iii)(J), (a)(2)(iii)(L), (a)(2)(iii)(M), (a)(3)(iii)(L), and (a)(4)(iii)(F) to read as follows:

§ 86.090–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards and family particulate emission limits and family NO_x emission limits, as appropriate of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.088–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tuneup specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate emission limit, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.087–8(h):

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only;

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at high altitude; and

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.087–8(i):

(*1*) A highlighted statement (e.g., underscore or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only; and

(*2*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at low altitude.

(I) The vacuum hose routing diagram applicable to the vehicles.

(J) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(2) *Light-duty trucks.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate limit, as appropriate, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards (or family particulate limit, or family NO_x emission limit, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude, or both;

(E) The prominent statement: "This vehicle conforms to U.S. EPA regulations applicable to 19__ Model Year New Light-Duty Trucks."

(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of _____ years or ____ miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified.

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser.

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.089–9(g)(2).

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only.

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart I do not apply when the vehicle is tested at high altitude:

(J) For vehicles which are included in the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified.

(K) For vehicles which are included in the light-duty truck NO_x averaging program, the family NO_x— emission limit to which the vehicle is certified.

(L) The vacuum hose routing diagram applicable to the vehicles.

(M) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information.

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request.

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash.

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm3/stroke, valve lash, initial injection timing, and idle speed.

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19 __ Model Year New Heavy-Duty Engines."

(I) If the manufacturer is provided with an alternate useful life period under the provisions of § 86.088–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period _____ of miles or _____ hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (e.g., years, or hours only).

(J) *For diesel* engines. The prominent statement: "This engine has a primary intended service application as a _____ heavy-duty diesel engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.085–2.)

(K) For gasoline-fueled engines one of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.088–10 (a)(1)(i), the statement: "This engine is certified for use in all heavyduty vehicles."

(*2*) For engines certified under the provisions of § 86.088–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.088–10(a)(3)(i)."

(*3*) For engines certified to the emission standards under § 86.088–10 (a)(1)(ii), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(L) Engines granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(iv) The label may be made up of one or more pieces; *Provided,* that all pieces are permanently attached to the same engine or vehicle part as applicable.

(4) (i) *Gasoline-fueled heavy-duty vehicles.* A permanent legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer ohas been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numericals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and,

(E) An unconditioned statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline/fueled heavy-duty vehicles.

(F) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family particulate emission limits, or family NO_x emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrast with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii) (A) *For light-duty vehicles,* the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19__ Model Year New Motor Vehicles."

(B) *For light-duty trucks: (1)* The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19 __ Model Year New Light-Duty Trucks."

(2) If the manufacturer is provided an alternate useful life period under the provisions of § 86.088–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of _____ years or _____ miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: NON-CATALYST"

(B) For all vehicles certified as catalyst-equipped which are included in

a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST"

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19__ Model Year New Light-Duty Trucks when completed at a maximum curb weight of _____ pounds or at a maximum gross vehicle weight rating of _____ pounds or with a maximum frontal area of _____ square feet."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19__ Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck sha11 notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

(g)(1) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19__ Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed _____ gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.090–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{T.\ Vol.}{Max.\ Vol.} \right)$$

Where:

Cap_f = final amount of fuel tank vapor storage material, grams.

Cap_i = initial amount of fuel tank vapor storage material, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximums fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same absorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

9. Section 86.091–35 is amended by adding paragraph (a)(1)(iii)(I), (a)(1)(iii)(J), (a)(2)(iii)(L), (a)(2)(iii)(M), (a)(3)(iii)(N), and (a)(4)(iii)(F) to read as follows:

§ 86.091–35 Labeling.

(a) * * *

(1) * * *

(iii) * * *

(I) The vacuum hose routing diagram applicable to the vehicles.

(J) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(2) * * *

(iii) * * *

(L) The vacuum hose routing diagram applicable to the vehicles.

(M) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(3) * * *

(iii) * * *

(N) Engines granted final admission under § 85.1509 must comply with the labeling requirements contained in § 85.1510.

* * * * *

(4) * * *

(iii) * * *

(F) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

* * * * *

[FR Doc. 88–4734 Filed 3–8–88; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
March 9, 1988

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Proposed 1988-89 Migratory Game Bird Hunting Regulations (Preliminary); Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Proposed 1988–89 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting seasons, daily bag and possession limits, and shooting hours for designated groups or species of migratory game birds in the conterminous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1988–89. The Service annually prescribes migratory game bird hunting regulations. These regulations provide hunting opportunities, a popular form of outdoor recreation, to the public and aid Federal and State governments in the management of migratory game birds.

DATES: The comment period for proposed regulations frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands will end on June 22, 1988; for other early-season proposals (seasons opening before October 1) on July 18, 1988; and for late-season proposals (seasons opening on or about October 1 or later) on August 29, 1988. Public Hearings: Early-Season Regulations, including those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 22, 1988, at 9 a.m.; Late-Season Regulations—August 3, 1988, at 9 a.m.

ADDRESS: Comments and requests to testify may be mailed to Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. The public hearings will be held in the Auditorium, Interior Department Building, 18th and C Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service proposes to establish hunting seasons, bag and possession limits, and shooting hours for migratory game birds during 1988–89 under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K of 50 CFR Part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1988–89 hunting season, regulations will be proposed for certain designated members of the avian families *Anatidae* (ducks, geese, brant, and swans); *Columbidae* (doves and pigeons); *Gruidae* (cranes); *Rallidae* (rails, coots, and moorhens and gallinules); and *Scolopacidae* (woodcock and snipe). These proposals are described under *Proposed 1988–89 Migratory Game Bird Hunting Regulations (Preliminary)* in this document.

Notice of Intention to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1988–89 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed shooting hours and season frameworks, including daily bag and possession limits, are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) Regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii; (2) seasons in the remainder of the United States opening prior to October 1 (early seasons); (3) seasons opening in the remainder of the United States about October 1 and later (late seasons) and (4) regulations for migratory game birds on certain Indian reservations and ceded lands. Regulations development for each of the four categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late-July of current data on the status of most waterfowl.

Publication of Regulatory Documents

The establishment of migratory game bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. Proposed rulemaking—proposals to amend Subpart K (and other subparts when necessary) of 50 CFR Part 20, including supplementary proposed migratory game bird hunting regulations, and/or regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

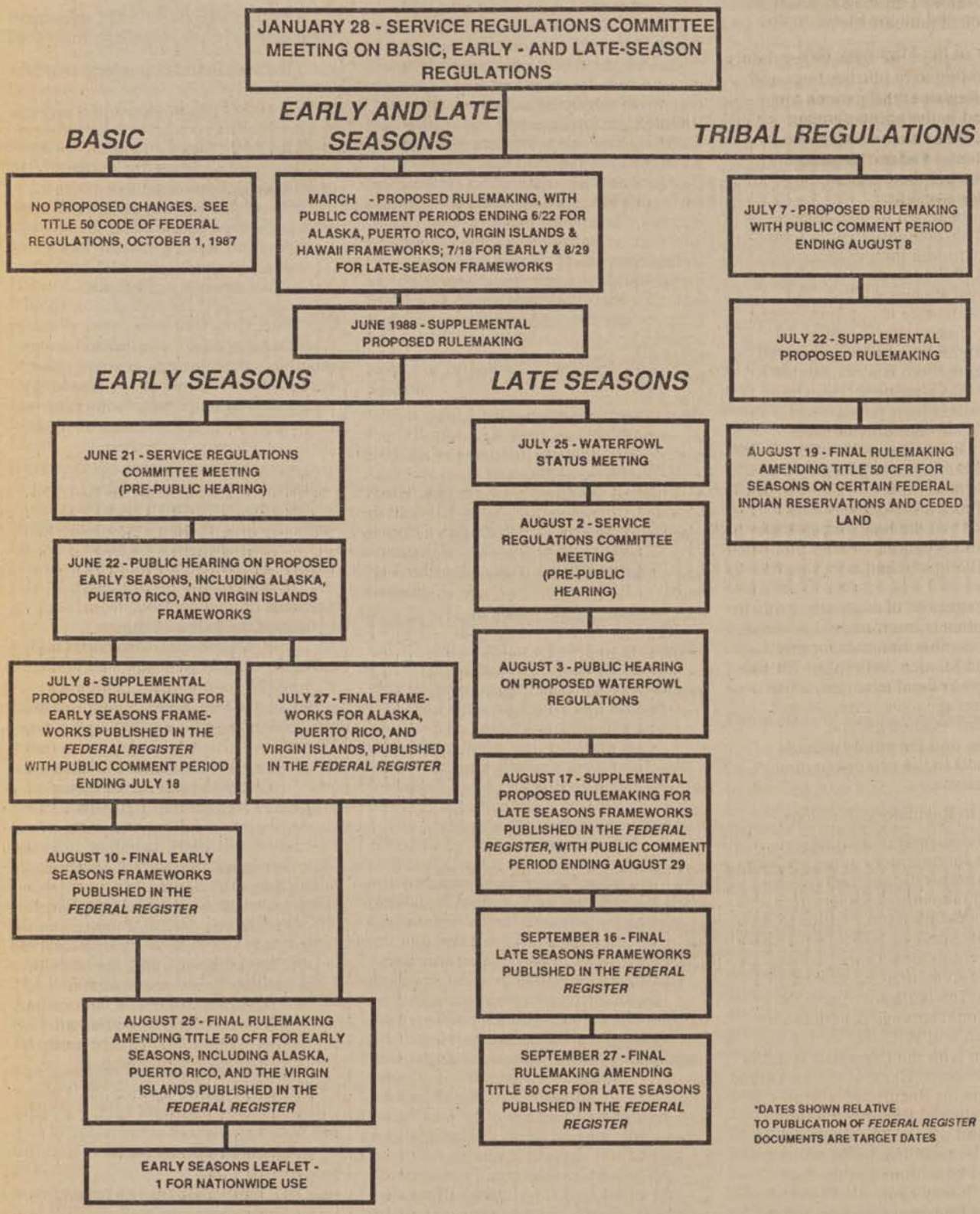
2. Final rulemakings—frameworks. Final regulatory game bird regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

Final rulemakings—season selections. Amendments to the various specific sections of Subpart K (and other subparts when necessary) of 50 CFR Part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1988–89 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

BILLING CODE 4310-55-M

1988 SCHEDULE OF REGULATIONS MEETINGS AND *FEDERAL REGISTER* PUBLICATIONS*



*DATES SHOWN RELATIVE TO PUBLICATION OF *FEDERAL REGISTER* DOCUMENTS ARE TARGET DATES

BILLING CODE 4310-55-C

All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of Subpart C and § 20.108 of Subpart K.

Objectives of the Migratory Bird Hunting Regulations

The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.
2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations.
3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.
4. To limit taking of other protected species where there is a reasonable possibility that hunting is likely to adversely affect their populations.
5. To provide equitable hunting opportunity in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.
6. To assist, at times and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Data Used in Regulatory Decisions

The establishment of hunting regulations for migratory game birds in the United States during the 1988–89 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data are operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General Conservation Ecologica de los Recursos Naturales of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include annual surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and types of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulations changes.

Many of the surveys conducted primarily for ducks also provided information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of geese in the fall and winter also provide information on the production success of the past breeding season. Special population surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into production success is obtained from wing-collection surveys of woodcock hunters in the United States and Canada; data from these surveys indicate the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in central Nebraska. The Service also solicits information on these and other species from knowledgeable individuals.

Definitions of Flyways

Flyways are administrative units with broad biological-ecological similarities frequently used for reference in setting hunting regulations on many migratory game birds. They are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascase, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly oriented to this flyway than to the other flyways.

Definitions of Mourning Dove Management Units

Mourning Dove Management Units are administrative units based upon a reasonable delineation of independent

mourning dove population segments encompassing the principal breeding, migration, and United States wintering areas for each population. They are used for reference in setting mourning dove hunting regulations and are defined as follows:

Eastern Management Unit: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Migratory Bird Hunting on Indian Reservations

In the September 3, 1985, **Federal Register** (50 FR 35762), the Service implemented interim guidelines for establishing special migratory bird hunting regulations on Federal Indian reservations and ceded lands, and amended § 20.110 of 50 CFR Part 20 by prescribing final hunting regulations for certain tribes in the 1985–86 and 1986–87 hunting seasons. The guidelines provide appropriate flexibility for tribal members to exercise their reserved hunting rights while ensuring that the migratory bird resource receives necessary protection. On January 21, 1988 (at 53 FR 1645), the Service gave notice of its intent to continue to employ the interim guidelines and establish special migratory bird hunting regulations for interested Indian tribes in the 1988–89 hunting season. The Service recognizes that some changes in the guidelines may be necessary and has kept the comment period on them open indefinitely. Use of the guidelines is not necessary of a tribe wishes to observe the hunting regulations established in the State(s) in which the reservation is located.

Hearings

Two public hearings pertaining to 1988–89 migratory game bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 22 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, DC. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, gallinules and moorhens, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 3 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 22 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, or telephone (202) 254–3207. Those wishing to make statements should file copies of them with the Director before or during each hearing.

Public Comments Solicited

Based on the results of current migratory game bird studies and having due consideration of all data and views submitted by interested parties, the amendments resulting from these proposals will specify open seasons, shooting hours, and bag and possession limits for doves, pigeons, rails, gallinules and moorhens, woodcock, common snipe, coots, cranes, and waterfowl in the contiguous United States; coots, cranes, common snipe and watefowl in Alaska; certain migratory game birds in Puerto Rico and the Virgin Islands; and mourning doves in Hawaii.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Director. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption ADDRESS.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. The Service will consider but may not respond in detail to each comment. Specific comment periods will be established for each of the four series of proposed rulemakings. All relevant comments will be accepted through the closing date of the last comment period on the particular proposal under consideration. As in the past, the Service will summarize all comments received during the comment period and respond to them.

Flyway Council Meetings

The Service published a final rule in the **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of the annual migratory game bird hunting regulations. This rule took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department of Interior officials will be in attendance. In this regard, Departmental representatives will be present at the following winter meetings of the various flyway councils:

Date: March 20, 1988:

—Atlantic Flyway Council, 8:30 a.m.
—Mississippi Flyway Council, 9:00 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 12:00 noon
—National Waterfowl Council, 3:00 p.m.

The Council meetings will be held at The Galt House, Louisville, Kentucky.

NEPA Consideration

In 1975 the Service determined that the annual migratory bird hunting regulations constituted a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. Consequently, the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was prepared and filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement (FES). These have addressed regulations for various species of migratory game birds

and hunting strategies. In 1986 the Service initiated preparation of a supplemental environmental impact statement (SEIS) on the FES. A draft SEIS was released on September 1, 1987, and public hearings were held in several locations across the country in mid-November. Preparation of the final SEIS in early 1988 is anticipated.

Endangered Species Act Consideration

Prior to issuance of the 1988–89 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

In complying with these requirements during the 1981–82 regulatory development cycle, and with Office of Management and Budget concurrence, the Service prepared a Determination of Effects, a Preliminary Regulatory Impact Analysis (PRIA), a Final Regulatory Impact Analysis (FRIA), and a Memorandum of Law. For further information see the **Federal Register**, March 25, 1981, at 46 FR 18669; August 17, 1981, at 46 FR 41739; August 21, 1981, at 46 FR 42643; and September 18, 1981, at 46 FR 46543. The rules for the 1981–82 hunting season were determined to be "major," because the expenditures arising from these regulations exceed $100 million annually and represent a major Federal action.

An updated FRIA, focusing on waterfowl hunting, was completed by the Service on March 3, 1983. New economic information was utilized from the *1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* which indicated that hunters expended $638 million for migratory bird hunting in 1980.

A Determination of Effects approved by the Assistant Secretary, Fish and Wildlife and Parks, on January 29, 1988 concluded that the hunting frameworks being proposed for 1988–89 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, the Service recently prepared an update of the 1981 Final Regulatory Impact Analysis for use in the development of the 1988–89 migratory bird hunting regulations to incorporate new economic information and waterfowl hunter and harvest information from the 1986–87 season. The summary of the 1988 update of the 1981 FRIA follows:

New information which can be compared to that appearing in the 1987 update of the 1981 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1986 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1986–87 hunting season. The data indicate that the total 1986 fall flight of ducks and the fall flights in each flyway were predicted to be more than those of 1985. Because of the continued poor status of ducks, restrictive hunting regulations that were initiated in 1985 were continued in 1986. Hunter numbers decreased slightly from the previous year while hunter days and seasonal trips per hunter both shared modest increases. Continuation of the restrictive regulations that were established in 1985 was no doubt partly responsible for the reduced number of hunters. The fact that hunter days and seasonal trips per hunter increased even though the hunting regulations remained the same in 1986 as in 1985 reinforces conclusions of the 1981 FRIA that many nonregulatory factors also influence hunter participation and effort.

Copies of the updated FRIA are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, 18th and C Streets NW., Washington, DC 20240.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory game bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief, (202) 254–3207.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

Proposed 1988–89 Migratory Game Bird Hunting Regulations (Preliminary)

The following general frameworks and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, white-tipped doves, Zenaida doves, scaly-naped pigeons, band-tailed pigeons, moorhens and gallinules, rails, coots, common snipe, and woodcock during the 1988–89 season are proposed. Changes or possible changes, when noted, are in relation to 1986–87 final frameworks. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive. Where applicable information is provided about proposals for change already submitted to the Service or expected to be submitted in the near future. These and the Service's responses or comments follow the frameworks being proposed. Service views on the items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later.

The proposed frameworks and guidelines, as compared to the 1987–88 final frameworks, are described below:

1. *Shooting hours.* (No change.) Basic shooting hours beginning one-half hour before sunrise and ending at sunset are proposed with the option that more restrictive shooting hours within this framework may be selected by the States or may be established for special seasons.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* In 1987, survey information indicated little change compared to 1986 in duck breeding populations and breeding habitat, although the latter was highly variable in quality and availability. The Service forecasted a 1987 fall flight of ducks similar to that of 1986. As a result, the Service esablished regulatory frameworks that continued the conservative harvest posture of the previous 2 years. Pending the availability of current duck population, habitat an harvest information, and the receipt of recommendations from the four flyway councils, specific duck framework proposals for opening and closing dates, season lengths and bag limits are deferred. Exceptions to the regular duck-season frameworks are

given in various numbered items that follow.

3. *American black ducks.* (Possible change.) Winter survey data indicate that black ducks have declined steadily in abundance since the 1950s. Restrictive regulations have been employed periodically since the 1960s to reduce harvest of black ducks and to determine whether such a reduced harvest would be associated with an increase in black duck numbers. The most recent effort to reduce black duck harvest in the Atlantic and Mississippi Flyways was a 5-year program beginning with the 1983–84 season. Winter population information is now available for each year of the program; however, the harvest information from the 1987–88 season will not be available until July 1988. Therefore, an evaluation of this 5-year harvest reduction effort is not yet available but, will be included in a report to be distributed prior to the 1988 late-season regulations meetings.

There exists the need to consider regulatory alternatives for the 1988–89 season. An Environmental Assessment (EA) on Porposed Hunting Regulations on Black Ducks, 1988, will be distributed prior to the late-season meetings. The EA will consider 4 regulatory options for harvest management of black ducks. These are:

1. *Continue with current regulations.* Bag limits would remain 1 per day with additional State restrictions to achieve a 25 percent reduction from 1977–81 levels. Restrictive regulations during the 1983–84 through 1986–87 seasons reduced black duck harvests in the Atlantic Flyway by 41 percent in the Mississippi Flyway by 35 percent compared to the average harvest during the 1977–81 period.

2. *Further restrict harvest regulations.* Bag limits would be 1 black duck per day (100 points) and the season length for hunting black ducks would be shorter (opening later and closing earlier) then the regular duck season permitted in 1987–88. This alternative would simplify the complex regulations used in recent years.

3. *Closed season on black ducks.* Under this alternative, no hunting season for black ducks would be permitted in the Atlantic or Mississippi Flyways. Although there would be some illegal kill, the harvest of black ducks should be at a minimum under this option.

4. *Experimental harvest program to determine the influence of different rates of harvest on black duck survival.* This alternative is an attempt to resolve questions about the effect of harvest on the black duck. This action would evaluate the effects of hunting on annual survival of black ducks during open and closed seasons. The program would require an 8 to 10 year commitment and include 2 to 3 non-consecutive years of periodic closed seasons.

The Service recognizes that the cooperation of the eastern Provinces of Canada and the Canadian Wildlife Service is desired in any black duck management effort. Their review and consideration of these four harvest options will be solicited.

4. *Wood ducks:* (Possible change.) In 1977 regulations for this species were changed to permit southeastern States the option of an early-October hunting season which no special wood duck bag and possession limits applied under conventional regulations; under point system regulations, the species was placed in the mid-point category. The criteria for such seasons were described in the **Federal Register** dated May 25, 1977 (42 FR 26669), and are summarized and updated for informational purposes:

The southeastern United States is defined as Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. The Service proposes to again consider regulations aimed at additional wood duck harvest in the southeastern States only within the following guidelines:

A. In 1988 States in the southeastern United States may split their regular duck hunting season in such a way that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15.

B. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway in 1988 shall apply to wood ducks, and under the point system, the point value for wood ducks shall be reduced from the high to the mid-point category. For other species of ducks daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations.

C. In addition, the extra teal option available to States in the Atlantic and Mississippi Flyways that select conventional regulations and do not have a September teal season may be applied during the period.

D. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

E. This special provision for wood ducks shall be regarded as experimental, and subject to annual and final evaluations by participating States of population, harvest, banding, and other available information.

F. The experiment shall be conducted for a specified time period to be agreed upon between the Service and participating States.

Additional information. The question of special wood duck seasons and bag limits is currently under review. The Service now assembling available information and will be proposing an overall strategy for wood duck management during the 1988 regulatory cycle.

5. *Sea ducks.* (No change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed during the period between September 15, 1988, and January 20, 1989, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season, the States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Any State desiring its sea duck season to open in September must make its selection no later than August 10, 1988. Those States desiring their sea duck season to open after September may make their selection at the time they select their regular waterfowl seasons.

6. *September teal season.* (Possible change.) An open season on all species of teal may be selected by Alabama,

Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Shooting hours are from sunrise to sunset daily. The reason may not exceed 9 consecutive days between September 1 and September 30, 1988, with a bag limit of 4 teal daily and 8 in possession. States must advise the Service of season dates and special provisions to protect non-target species by August 10, 1988.

Additional information. The Service notes that the breeding population of blue-winged teal has been generally depressed during the 1980s. In light of this, the Service believes liberalizations of the current regulations specific to bluewings are not appropriate and that current harvest management strategies (i.e., September teal seasons and extra teal option) should be examined for blue-winged teal. If populations decline further special seasons such as this may not be advisable.

7. *Extra teal option.* (Possible change.)

A. States in the Atlantic Flyway selecting neither an early duck season in September nor the point system may select an extra teal limit of no more than 2 blue-winged or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

B. States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consective days designated during the regular duck season.

These extra teal limits are in addition to the regular duck season bag and possession limits.

Additonal information. See the additional information given under item 6.

8. *Experimental September Duck Seasons.* Kentucky, Tennessee and Florida have conducted experimental 5-day September duck hunting seasons since 1981. In 1987 the Mississippi Flyway Council's Lower Region Regulations Committee recommended continuation of the experimental duck hunting seasons in Kentucky and Tennessee, and the Atlantic Flyway Council reiterated its 1986 recommendation that the experimental duck hunting season in Florida be granted operational status. In response to similar recommendations in 1986, the Service noted its concern about the decrease in the survival rate of wood ducks measured by the studies in Kentucky and Tennessee, and the lack of adequate banding information needed to appraise the impacts stemming from the increased harvest of wood ducks measured by Florida's study. Several problems with regard to September duck hunting seasons were identified by the Service in the July 3, 1986, **Federal Register** (51 FR 24420). The Service stated that while September duck hunting seasons are in principle a feasible harvest management strategy, the current situation with regard to their evaluation, including the flyway-wide aspects of the management of target species, and their suitability for widespread application is under review. These concerns were repeated by the Service in 1987 (52 FR 7907, March 13, 1987). In the intervening period the Service continued the experimental seasons in Kentucky, Tennessee and Florida under the same regulatory provisions as provided during the study periods with the exception that in Kentucky and Tennessee the daily bag limit was restricted such that no more than 2 wood ducks could be included in the 4-duck daily bag. In addition, the Service is cooperating with Florida to provide an adquate sample of banded wood ducks

The Service reaffirms the need for cooperative studies that are flyway oriented in scope to better understood and manage wood ducks. The Service will propose a harvest management strategy to the Councils, with guidelines for banding and other data requirements prior to any final decisions on operational status of existing experimental seasons or initiation of new studies.

Iowa has conducted an experimental 5-day September duck hunting season since 1979.

In light of the Service's concerns regarding September duck hunting seasons, as noted above, the Service continued the experimental season in Iowa in 1986–87 and 1987–88 under the same regulatory provisions as provided during the study period.

The Service's review of September duck hunting seasons continues. In the interim, barring further declines in duck populations, the Service proposes to continue the experimental September duck hunting season in Kentucky, Tennessee, Florida and Iowa in 1988 under the regulatory provisions provided each in 1987.

9. *Special scaup season.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

A. The season must occur between October 1, 1988, and January 31, 1989, all dates inclusive.

B. The season must occur outside the open season for any other ducks except sea ducks.

C. The season is limited to areas mutually agreed upon between the State and the Service prior to August 31, 1988, and

D. These areas must be described and delineated in State hunting regulations.

E. In lieu of a special scaup-only season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to special scaup seasons elsewhere.

10. *Extra scaup option.* (No change.) As an alternative to a special scaup-only season, States in the Atlantic, Mississippi, and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions C and D listed for special scaup seasons. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* (No change) Proposed seasons and bag limits for canvasbacks and redheads are unchanged from those in effect in 1987–88. The 1987–88 hunting season was the second consecutive season that the Atlantic, Mississippi and Central Flyways were closed to canvasback hunting. In both years the Eastern Population of canvasbacks was below the 3-year average breeding population level identified in the environmental assessment *Proposed Hunting Regulations on Canvasback Duck, 1983* at which closure of the hunting season on the population should be considered. The 1988 breeding population survey

data and harvest information from 1987–88 will be available in July. At that time the Service, in coordination with the four flyway councils, will review the data and consider the hunting frameworks for canvasbacks and redheads.

13. *Duck Zones.* In the March 21, 1986, **Federal Register** (51 FR 9862) the Service gave notice that it believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated until some better informed judgments regarding their cumulative effect on the resource can be made.

States in all Flyways may split their waterfowl season into two segments. Previously, States in the Atlantic and Central Flyways, in lieu of zoning could split their seasons for ducks or geese into three segments. Since it is proposed that new duck zones not be authorized, a 3-way split is also not offered to States not presently utilizing that option for ducks.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.* The Canadian Wildlife Service, the four waterfowl flyway councils, State conservation agencies, and others traditionally provide population and harvest information useful in setting annual regulations for geese and brant. The midwinter survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1988 will provide additional information.

Atlantic Flyway. (No change.) Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1987–88 are anticipated at this time.

Mississippi Flyway. (No change.) Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1987–88 are anticipated at this time.

Central Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1987–88 are anticipated at this time.

Pacific Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1987–88 are anticipated at this time.

15. *Tundra Swan.* (No change.) The following frameworks for tundra swans are proposed. In Utah, Nevada, Montana (Central and Pacific Flyways), North Dakota and South Dakota, an open season for taking a limited number of tundra swans may be selected subject to the following conditions:

A. Except in the Central Flyway portion of Montana, the season must run concurrently with the duck season; in the Central Flyway portion of Montana, the season must run concurrent with the goose season.

B. In Utah, no more than 2,500 permits may be issued authorizing each permittee to take 1 tundra swan.

C. In Nevada, no more than 650 permits may be issued authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties.

D. In Montana (Pacific Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

E. In Montana (Central Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan.

F. In North Dakota, no more than 1000 permits may be issued authorizing each permittee to take 1 tundra swan.

G. In South Dakota, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan.

H. In North Carolina an experimental season for taking a limited number of tundra swans may be selected subject to the following conditions:

i. The season may be 90 days and must run concurrently with the snow goose season.

ii. The State must issue permits and obtain harvest and hunter participation data.

iii. No more than 6000 permits may be issued authorizing each permittee to take 1 tundra swan.

Additional information. A tundra swan hunt plan that addresses allowable harvest and allocation of harvest of Eastern Population tundra swans will be available prior to the late-season regulations meetings.

16. *Sandhill cranes.*

Central Flyway—Regular seasons (No change). Pending evaluation of harvest data from the 1987–88 seasons, sandhill crane hunting seasons may be selected within specified areas in Colorado, Kansas, Montana, North Dakota, South Dakota, Wyoming, New Mexico, Oklahoma and Texas with no substantial changes in dates from the 1987–88 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes. The provision for a Federal sandhill crane hunting permit is continued in all of the above areas.

Central and Pacific Flyways—Special seasons (No change). Pending evaluation of harvest data from the 1987–88 seasons, sandhill crane hunting seasons within the range of the Rocky Mountain Population may be selected by Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming subject to the following conditions:

A. Outside dates are September 1–November 30, 1988.

B. Season(s) in any State may not exceed 30 days.

C. Daily bag limits may not exceed 3, and season limits may not exceed 9.

D. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

E. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

17. *Coots.* (No change.) Within the regular duck season, States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots; States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

Additional information. In the **Federal Register** dated June 3, 1987 (at 52 FR 20762), the Service noted the Central Flyway Council recommendation that the hunting season for coots coincide with all duck seasons. The Service observed the frameworks for coots were of longstanding but solicited additional comments. Subsequently information was received that none of the other flyway councils were interested in a change in the frameworks to permit the taking of coots in all duck seasons. The Service has limited coot hunting to the regular duck season and has traditionally limited special seasons to selected or similar appearing species. These have been "single species" seasons, e.g., teal or scaup, and other migratory birds have been deliberately excluded. The Service intends to continue to limit the taking of coots to only the regular duck seasons.

18. *Common Moorhens and Purple Gallinules.* (No change.) States in the Atlantic and Mississippi Flyways may select hunting seasons between September 1, 1988, and January 20, 1989, of not more than 70 days. Central Flyway States may select hunting seasons between September 1, 1988, and January 22, 1989, of not more than 70 days. Any state may split its moorhen/gallinule season without penalty. The daily bag and possession limits may not exceed 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively. States may select moorhen/gallinule seasons at the time they select their waterfowl seasons. In

this case, daily bag and possession limits will remain the same.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons within the waterfowl seasons. A moorhen/gallinule season selected by any State or portion thereof in the Pacific Flyway may be the same as but not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may select seasons between September 1, 1988, and January 20, 1989, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and king rails.

A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia rails.

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons between September 1, 1988, and February 28, 1989, not to exceed 107 days, except that in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end no later than January 31. Seasons between September 1, 1988, and February 28, 1989, not exceeding 93 days, may be selected in the Pacific Flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific Flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, must select their snipe season to run concurrently with their regular duck season. In these Pacific Flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments.

States or portions thereof in the Atlantic, Mississippi, and Central Flyways may defer selection of snipe seasons until they choose their waterfowl seasons in August. In that event, the daily bag and possession limits will remain the same but shooting hours must conform with those for waterfowl.

21. *Woodcock.*

A. Central and Mississippi Flyways. (No change.)

States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between September 1, 1988 and February 28, 1989. States may split their woodcock season without penalty.

B. Atlantic Flyway. (No Change.)

The number of woodcock in the Atlantic Flyway has significantly declined since the 1960s. In 1985 the Service initiated a program whereby the hunting regulations for woodcock in the Atlantic Flyway were adjusted to bring harvest opportunities to a level commensurate with the current population status. No changes in seasons and bag limits from those in effect in 1987–88 are anticipated at this time pending an evaluation of the changes implemented. For the 1988–89 hunting season in the Atlantic Flyway the Service proposes the following:

States in the Atlantic Flyway may select hunting seasons of not more than 45 days with daily bag and possession limits of 3 and 6, respectively, to occur between October 1, 1988 and January 31, 1989. States may split their woodcock season without penalty.

New Jersey may select woodcock hunting seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

22. *Band-tailed pigeons.* (No change.)

Pacific Coast States California, Oregon, and Washington and the *Nevada* counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey. These States may select hunting seasons not to exceed 16 consecutive days between September 7, 1988, and the Sunday closest to January 1, 1989. The daily bag and possession limits may not exceed 4 band-tailed pigeons. These frameworks are to continue through the 1989–90 season (3 years).

California may zone by selecting hunting seasons of 16 consecutive days for each of the following two zones:

A. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

B. The remainder of the State.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1988. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North Zone and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1988, in the North Zone, and Ocotber 1 and November 30, 1988, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* (No change.) Outside framework dates—September 1, 1988 and January 15, 1989, except as otherwise provided. States in the Eastern (EMU) and Central (CMU) Management Units were offered an option of a season length of 70 half or full days with daily bag and possession limits of 12 and 24, respectively, *or* a season length of 60 half or full days with daily bag and possession limits of 15 and 30, respectively. EMU and CMU States were allowed to select hunting zones without penalty and to split the season into not more than 3 time periods. In the Western Management Unit (WMU), States were offered an option of a split season of 45 half or full days, with the first segment between September 1–15 and the remaining days after October 31, *or* a 30-consecutive-day season between September 1 and January 15; bag and possession limits were 10 and 20, respectively, for either option. Frameworks in the WMU are to continue through the 1989–90 season (3 years).

The Service proposes to offer these options again during the 1988–89 hunting season, pending results of the call-count survey and receipt of additional information and recommendations.

24. *White-winged and white-tipped doves.* (No change.) Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1988, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with either the first period of a split mourning dove season or the full period of a consecutive-day mourning dove season (see mourning dove frameworks-WMU above). The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, singly or in the aggregate, and the season length must conform to the mourning dove season (either a 45-day split season or a 30-day consecutive season as stipulated under mourning dove frameworks-WMU above).

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, including no more than 2 mourning doves and 2 white-tipped doves; and the possession limit may not exceed 20 white-winged, mourning, and white-tipped doves in the aggregate including no more than 4 mourning doves and 4 white-tipped doves in possession.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1988 (September 20, 1988, in South Zone), and January 25, 1989, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning, and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1988, and January 15, 1989, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate may not exceed 24 (or 30 under the alternative) of which not more than 8 may be whitewings.

Additional information. In a letter to the Service dated January 22, 1988, Texas Parks and Wildlife Department requested a change in the frameworks that would permit an aggregate daily bag limit of 12 white-winged, mourning, and white-tipped doves to include no more than 2 white-tipped doves during the Special 4-day white-winged dove season in Texas. This proposal would liberalize the aggregate bag limit from 10 to 12 and allow up to 12 mourning doves (whereas the current limit restricts the number of mourning doves to 2). The Service will take this request under advisement and make a decision in June after further information is available and the Central Flyway Council has reviewed and considered the proposal through the regulatory process.

25. *Migratory bird hunting seasons in Alaska.* (No change.) The Service proposes to allow Alaska to continue their stabilized duck hunting frameworks during the 1987–88 season.

Proposed Frameworks for Selecting Open Season Dates

Outside Dates: Between September 1, 1988, and January 26, 1989, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations:

Shooting Hours: One-half hour before sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—107 consecutive days for ducks and geese but only 50 consecutive days for brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10-Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exceptions: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be Greater white-fronted (white-fronted) or Canada geese, singly or in the aggregate of these species. Throughout the State there is no open hunting season for Aleutian and Cackling Canada geese and emperor geese.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

26. *Migratory game birds in Puerto Rico and in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1988–89.

Shooting hours: Between one-half hour before sunrise and sunset daily.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between November 5, 1988, and February 28, 1989, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens (common gallinules), and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Common Moorhens—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, moorhens and gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1988, and January 15, 1989, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Framework for Selecting Open Season Dates For Hunting Migratory Birds in the Virgin Islands, 1988–89

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Ducks

Outside Dates: Between December 1, 1988, and January 31, 1989, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1988, and January 15, 1989, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary, dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note: Total season length for all hunting methods combined may not exceed 107 days for any species (or group of species) in a geographical area.

Additional information. As indicated above, current frameworks for special falconry seasons provide for seasons that must fall within the outside dates of regular season frameworks and, if offered and accepted, special season outside-dates frameworks. The North American Falconers Association has requested that the special falcontry frameworks be expanded such that States could select special falconry seasons within the outside dates of September 1 and March 10 (between August 15 and February 1 for woodcock and snipe in Atlantic Coast States wholly or in part north of Chesapeake Bay). Seven States have expressed support or no objection to the Association's request.

Response. The Service defers action pending receipt of additional information or comments on this request.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be

taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1988, and January 15, 1989, the length may not exceed 60 (or 70 under the alternative) days; and the daily bag and possession limits may not exceed 15 and 30 (or 12 and 24 under the alternative) doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

29. *Migratory Bird Hunting on Indian Reservations.* In the September 3, 1985, **Federal Register** (50 FR 35762) the Service implemented interim guidelines for migratory bird hunting regulations on Federal Indian reservations and ceded lands, and has annually established special hunting regulations for certain tribes since the 1985–86 hunting seasons. The Service intends to employ the guidelines and establish special migratory game bird hunting regulations for interested Indian tribes in 1988–89; however, the comment period on the guidelines remains open. In the January 21, 1988, **Federal Register** (53 FR 1645), the Service published a notice requesting proposals from Indian tribes that wish to establish special 1988–89 migratory game bird hunting regulations be submitted no later than June 10, 1988. In a later **Federal Register** document for the Service will publish for public review the pertinent details of proposals received from tribes.

Dated: February 23, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–5060 Filed 3–8–88; 8:45 am]

BILLING CODE 4310-55-M

federal register

Wednesday
March 9, 1988

Part V

Environmental Protection Agency

Endangered Species Protection; Notice of Proposed Program

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36154; FRL-3338-8]

Endangered Species Protection Program

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Notice of proposed program.

SUMMARY: This notice invites public comment on an Endangered Species Protection Program which is intended to ensure that pesticide use is not likely to jeopardize endangered species. EPA had envisioned a program which depended upon pesticide product labeling and endangered species habitat maps to achieve the goal of protecting jeopardized endangered species. That concept is described in this notice. However, EPA is willing to entertain comments on other approaches which could achieve the goal, as well as comments on the original conceptual design. Initially, EPA proposed that the program would apply to certain pesticide products registered for use on rangeland and/or pastureland; on crops of corn, cotton, soybeans, sorghum, wheat, oats, barley, or rye; in forests; or as mosquito larvicides. However, enforceable labeling to protect endangered species will not be in effect for the 1988 growing season. Until the program takes effect, the Agency encourages voluntary actions by pesticide users and the states to protect endangered species.

The Agency is requesting public comment on the program described in this notice, and on alternative approaches to protecting endangered species from jeopardy that may be presented by the use of pesticides. Comments will be used in revising the program.

DATES: Written comments in response to this notice should be submitted by June 7, 1988.

ADDRESS: Written comments identified with the document control number "OPP-36154", should be submitted in triplicate, by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to:

Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia.

Requests for lists of the counties, products and pesticide active ingredients potentially affected by the Endangered Species Protection Program, should be addressed to the Information Services Section at the address above.

FOR FURTHER INFORMATION CONTACT:

By mail: Larry Turner, Ecological Effects Branch, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 815, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703-557-1007).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Need to Preserve Endangered Species

An endangered species is a plant or animal which is in danger of extinction throughout all or a significant portion of its range. In addition to their value as unique forms of life, endangered species can provide esthetic, ecological, educational, historical, recreational and scientific benefits to society. Preserving biological diversity by protecting endangered species also may contribute to preserving the overall quality of life.

Certain pesticides may pose a threat to the survival of America's endangered species if used in their remaining habitat. For example, pesticides may directly kill endangered plants or animals, or harm their habitat. It also is possible that pesticide drift, runoff, or leachate may contaminate water, soil or vegetation use by endangered species.

EPA's responsibility is to preclude the potential jeopardy to endangered species from pesticide use. At the same time, EPA wants to avoid placing any unnecessary limitations on the use of many important pesticides. Balancing these responsibilities has led to the development of the Endangered Species Protection Program.

B. The Role of the U.S. Fish and Wildlife Service (FWS)

The purpose of the Endangered Species Act (ESA) is to conserve endangered species. The ESA is administered by the FWS, of the Department of the Interior, which determines whether any species is endangered after reviewing the following factors:

(a) The present or potential harm to its habitat.

(b) Overutilization for commercial, recreational, scientific, or educational purposes.

(c) Disease or predation.

(d) The inadequacy of existing regulatory mechanisms.

(e) Other natural or manmade factors affecting its continued existence.

Within the United States, about 300 animals and 160 plants have been listed as endangered or threatened. Once a species is listed as endangered, the FWS also may designate its critical habitat to be protected from destruction or adverse modification. Petitions to add or to remove a species from the list are reviewed and decided upon by the FWS. The ESA makes it unlawful to kill, harm or collect endangered fish or wildlife, or to remove endangered plants from areas under Federal jurisdiction. The ESA also requires that other Federal agencies ensure that any action they carry out or authorize is not likely to jeopardize the continued existence of any endangered species, or to destroy or adversely modify its critical habitat.

C. The Role of the EPA

EPA registers pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This is considered "authorization" under the ESA and, therefore, requires that EPA ensure that registered pesticide use is not likely to jeopardize endangered species.

To carry out this responsibility, the Agency reviews both new pesticides and existing registered pesticides, and estimates the maximum environmental concentration of each pesticide which could be expected under proper use. If this estimated concentration may affect an endangered species, then the pesticide is referred to the FWS for a consultation to determine whether specific pesticide uses are likely to jeopardize the continued existence of the endangered species.

If the FWS finds that the uses may cause jeopardy, then their findings will identify those reasonable and prudent alternatives which will preclude the jeopardy to endangered species. The alternatives recommended by the FWS usually prohibit or restrict use of the pesticide within the currently occupied habitat of the affected species. While risk-benefit analysis is not employed by the FWS in listing endangered species, EPA and other parties will use risk-benefit and other economic analysis techniques to help identify alternative measures to the FWS. Such alternatives would both preclude jeopardy to endangered species, and pose minimal economic impact on pesticide users.

Even if the FWS does not find jeopardy, it is required to establish an anticipated level of "incidental take" of the species from the permitted uses. It also may provide the Agency with reasonable and prudent measures to

ensure that the established level of incidental take is not exceeded. To date, the FWS has not prescribed such measures for EPA's program.

The Endangered Species Protection Program described here includes only those federally listed endangered species and pesticide uses for which biological opinions of jeopardy have been issued to EPA by the FWS. These opinions are available from the Information Services Section at the address listed above.

D. Development of the Endangered Species Protection Program

In the past, EPA consulted with the FWS on a case-by-case basis for specific registration actions on individual pesticides. Using this case-by-case approach, the Agency received over 50 biological opinions of jeopardy. A number of individual product labels then were modified to include specific limitations to protect endangered species. Unfortunately, this case-by-case review was very slow. Many older pesticides were not reviewed in a timely manner. On the other hand, new pesticides were being reviewed routinely as part of the registration process. Therefore, newer pesticides were more likely to receive biological opinions of jeopardy. The case-by-case approach created market inequities by requiring additional limitations only on a few pesticides, disproportionately restricting the newer ones. In addition, by not placing use limitations on many older pesticides that may pose a risk to endangered species, the case-by-case approach did not appear to provide adequate protection.

In response to these concerns the Agency adopted a new approach to managing the potential risks to endangered species from uses of pesticides. This was the "cluster approach," which entailed grouping together all pesticides registered for similar uses, and asking the FWS to review the clusters. The purpose of the cluster approach was to improve protection of endangered species by accelerating the review of a larger number of pesticides, and to eliminate market inequities by reviewing pesticides with similar uses as one group.

To date, four cluster reviews have been completed. They were selected on the basis of which pesticide uses present the greatest potential for exposure to endangered species. They include pesticides registered for use on forests, as mosquito larvicides, on rangeland or pastureland, or on the crops of barley, corn, cotton, oats, rye, sorghum, soybeans, or wheat. Subsequent clusters will include alfalfa, aquatic herbicides, non-cropland uses (such as rights-of-way, mosquito adulticides and vertebrate control), orchards, rice, and row crops.

E. Products Exempt From the Program

There are certain categories of pesticide use which will not be covered by the Endangered Species Protection Program. These categories have the concurrence of the FWS, and are:

1. Home and Garden Uses

These include products used directly on humans or pets; in, on, or around any structure, article, surface, or area associated with the household, including but not limited to areas such as outbuildings or noncommercial greenhouses; or in any preschool or day care facility, and which are labeled only for such uses.

2. Forest Uses

These include only those products which bear labeling specifying application only by the following methods or only on the following sites.

a. *Methods.* Direct individual plant spray and/or individual plant injection.

b. *Sites.* Seedbed orchards, nursery plantings, ornamental trees, and ornamental shrubs.

3. Uses on insect pests

Under the ESA, an insect determined by the Department of the Interior to constitute a pest, whose protection under the ESA would present an overwhelming and overriding risk to man, is not an endangered species.

II. Approaches to Implementation of the Endangered Species Protection Program

A. Labeling Approach

In 1986, EPA designed a program which responded to the jeopardy opinions which had been received from the FWS, and which attempted to minimize the impact on agricultural production. The program design relied on labeling of the affected pesticides to direct pesticide users to bulletins designating those specific areas within counties where the affected pesticides could not be used, in order to protect the endangered species. Approximately 110 active ingredients covering 250–300 species in 910 counties were affected in the initial four clusters named in Unit I.D. above. The following describes EPA's original concept of how the labeling approach would have worked.

In May of 1987, the Agency directed that registrants modify the labeling of their products to provide pesticide users with the information necessary to protect endangered species. The labeling would have listed the counties where pesticide use limitations applied, and would have required users to obtain additional information on where and what use limitations existed within those counties.

The Agency had intended that the labeling approach would take effect in the 1988 growing season. However, due to the difficulties in developing accurate bulletins, and in response to comments from other Federal agencies, the states and users, it is clear that this approach will not be ready for the 1988 growing season. Therefore, if EPA decides to pursue the labeling approach as originally envisioned, the earliest that bulletins containing pesticide use limitations would be available to users would be in the 1989 growing season.

Under this approach, labels would refer users to the Pesticide Use Bulletin for Protection of Endangered Species (county bulletin) for the county in which the product is to be used. It had been intended that users of products in the forest and mosquito larvicide clusters would be referred to a FWS field office for instructions, but the FWS has indicated that it would prefer for all information to be provided in some other manner. Any existing labeling for these two clusters would have to be amended accordingly.

The county bulletins would contain maps and/or habitat descriptions of the currently occupied habitat of the endangered species, and limitations on pesticide use to protect the species.

The FWS would determine the geographic areas where pesticide use limitations apply. Generally, limitations would apply only within the habitat that is currently occupied by the endangered species. EPA, the states, the FWS, and users would work together to make the maps and habitat descriptions clear and understandable for the user community.

County bulletins would be revised annually if acceptable information were provided to the FWS to indicate any inaccuracies in the maps, or if the FWS determined that changes had occurred in the habitat of a species. The bulletins also would be updated annually as endangered species were removed from or added to the Federal endangered species list, as changes were documented in the boundaries of currently occupied habitats, as any changes in the jeopardy opinions occurred for specific pesticides, or as additional pesticides were determined to jeopardize endangered species.

Under this labeling approach, future bulletins issued to add new pesticides or to address new use clusters would be published by EPA in draft form, for

public comment, prior to their final approval.

County bulletins would be readily available to pesticide users through a number of public and private sources, including the U.S. Department of Agriculture, the U.S. Fish and Wildlife Service, EPA regional offices, State pesticide agencies, county extension offices, pesticide dealers, and others as appropriate.

B. Public Involvement Procedures for the Program

1. Public comment is requested on any aspect of the program described in this notice, as well as on any of the specific issues mentioned. The comments received will be considered in revising the program.

2. Informal public meetings around the country may be held to discuss and to receive comments on the program. The locations and times of any such meetings will be announced separately.

3. Within 90 days of the close of the public comment period, EPA intends to publish a summary of the comments received, and a description of the amended program.

4. Should EPA determine, after comments are received on this notice, to continue to pursue the labeling/bulletin approach, the Agency would establish the following procedures to facilitate public involvement in the implementation of the Endangered Species Protection Program:

(a) The public at any time could suggest to EPA that a pesticide either may or may not affect an endangered species, and recommend that EPA formally consult with the FWS for a jeopardy opinion. Such recommendations would have to be accompanied by a statement of the basis for the recommendation, including a citation of relevant scientific information. After review, EPA might refer the pesticide to the FWS for a biological opinion.

(b) At least once each year EPA would publish a public notice of its schedule for reviewing new use clusters, including re-initiation of review of previously completed clusters, if any.

(c) EPA would publish a public notice of the referral of a pesticide or group of pesticides to FWS for a biological opinion.

(d) EPA would publish a public notice of the availability of every draft and final FWS biological opinion. Comments on the draft opinions would have to be submitted to the EPA within the response dates given in the drafts.

C. Factors Critical to Success of the Program

Development of a national program as described above to protect endangered species from the potential adverse effects of pesticide use depends upon several factors for its success.

First, the assessment that a pesticide may affect an endangered species has to be based upon the best available scientific information.

Second, the biological opinions which link the use of specific pesticides with jeopardy to specific endangered species need to be based upon the best available scientific information.

Third, the maps and habitat descriptions also have to be based upon the best available scientific information.

Fourth, bulletins and other program information have to be available to users in a timely manner, well in advance of program implementation.

Fifth, pesticide manufacturers need adequate time to change the labeling of their products. While a transition period from old to new labeling is inevitable, a high percentage of products with amended labeling when the program begins would minimize any user confusion.

Finally, EPA, USDA and other cooperating Federal and State agencies need to conduct a broad program of user education and training. The program should include technical assistance in identifying and using efficacious pest control alternatives. Such a program would promote the understanding and cooperation needed to ensure a high level of voluntary compliance. This is an important goal: while endangered species labeling would be enforceable, the effectiveness of the program will depend upon voluntary compliance by the user community.

D. Recent History of the Labeling/Bulletin Approach

As stated earlier, it was intended that limitations on four use clusters would be implemented beginning in February 1988, followed by additional clusters in February 1989 and thereafter, until all major clusters had been implemented. The four initial clusters were forestry, mosquito larvicides, rangeland and pastureland, and eight crops (barley, corn, cotton, oats, rye, sorghum, soybeans, and wheat).

In the Fall of 1986, a meeting was held to describe the program to a broad range of interested groups. Following this meeting, plans were established for an outreach effort to inform, educate and train users and groups in the program requirements.

In May 1987, all registrants of pesticide products affected by the initial four clusters were notified by Pesticide Registration (PR) Notices 87-4 and 87-5 of the necessary labeling amendments. These registrants were directed not to release any affected product for shipment after February 1, 1988, unless the product bore the amended labeling described in the notices. Similarly, any persons holding products subject to the notices were not to distribute, sell, offer for sale, hold for sale, ship, deliver, or receive any such product after February 1, 1989, unless the product bore the amended labeling.

Finally, by the Fall of 1987, the draft maps to be included in county bulletins were sent out for review and comment.

E. Public Response to the Recent Activities

In the Fall of 1987, public response to the draft maps, and to the overall program, indicated a number of significant concerns:

(1) Many maps were inaccurate or misleading.

(2) A greater opportunity for public review and comment on the program was necessary.

(3) More time was needed to inform, educate and train both users and Federal and State agency personnel.

(4) Local species conditions and pesticide use patterns often were complex, or not well-known, and required a more tailored approach than just prohibition-of-use.

(5) Objections were raised concerning the findings of some biological opinions, indicating the need for additional communication to establish greater credibility for the opinions.

(6) Alternatives to the prohibition-of-use approach were possible, and might protect endangered species while allowing some uses of affected pesticides to continue.

(7) State and local agencies had much to offer the Agency and/or the FWS in terms of local knowledge of user practices, and of species locations and behavior.

(8) Many people believed that the program would drastically curtail pesticide use without corresponding benefits.

F. State-Initiated Plans to Protect Endangered Species

As a result of these concerns, in October 1987 the Agency invited the states to develop alternative plans to protect endangered species. These state-initiated plans would provide EPA with recommendations to achieve compliance with the ESA, while also reducing the

potential adverse impact on the user community.

The initial round of state-initiated plan development is scheduled to begin during the winter of 1988. Work plans, describing how each state proposes to develop its plan, and approximate schedules of activities through implementation, were due to be submitted to the Agency in February 1988. The work plans would describe the general process the state will employ to design its recommendations. Such elements as the different agencies, public groups and organizations that will help design the plan, the time estimated to resolve specific problems, provisions and tentative schedules for public meetings, and the agency responsible for the overall development of the plan would be included in the work plans.

State plans may recommend any alternative measures which will result in protection of the endangered species. Such alternatives, for example, could include changes in pesticide application rates, methods, and timing, or the use of non-pesticidal alternatives. Any such state-initiated plans that are approved by both the Agency and the FWS will be used to modify the Agency's Endangered Species Protection Program for such states. It should be noted that some approved alternatives, such as changes in maximum application rates, may affect pesticide registrants by requiring amended registrations and labeling for implementation.

While the state develops a plan, EPA would allow the state a reasonable period of time, and would defer implementation of the labeling use limitations described here, for those pesticides, uses, and locations being reviewed by the state. For other states, however, labeling use limitations for those pesticides, uses, and locations in the four clusters (crop, rangeland/pastureland, forest and mosquito larvicides), which were not subject to state-initiated planning would be implemented according to the EPA program described here, when implementation of the entire program began. However, as new clusters were added to the program, the states again would be given the opportunity to develop state-initiated plans, prior to EPA implementation.

Approved state plan recommendations would be implemented by EPA through the labeling approach. Any changes in the programs would be implemented not more often than once each year. In addition, the effectiveness of the approved alternatives would be subject to periodic review by the Agency and the FWS after the plans are in place. During such reviews, it would be determined if the approved alternatives have adequately protected endangered species. It also would be determined if the alternatives created any unnecessary limitations on the use of important pesticides. Therefore, the state-initiated recommendations may be periodically reapproved or modified, with participation and comment by the states, as appropriate.

III. Deferral of Program Implementation

It has become clear that implementing the Endangered Species Protection Program will be far more complex and time-consuming than anticipated.

Developing the Agency's responses to the concerns described in Unit II.E. of this document, and supporting the effort to develop state-initiated plans, will require a high degree of participation, coordination and cooperation among all the involved parties.

Therefore, it no longer is possible for the Agency to meet its original implementation goals for 1988 (labeling for products released for distribution and sale) and 1989 (labeling for products in all channels of trade). Accordingly, on January 7, 1988, EPA announced that it was deferring implementation of the Endangered Species Protection Program for the 1988 growing season.

For users, enforceable labeling requirements to protect endangered species will not be in effect during the 1988 growing season. Other provisions of the label continue to be enforceable.

For registrants, PR Notices 87-4 and 87-5 were rescinded on January 26, 1988, in PR Notice 88-1. It is anticipated that no new labeling requirements to protect endangered species will be issued until September 1988 at the earliest. Future notice(s) will detail the requirements and schedules applicable to registrants.

It is important to note that deferring implementation of EPA's Endangered Species Protection Program does not affect the user's responsibilities under the ESA. The ESA still makes it unlawful to kill, harm, or collect endangered fish or wildlife, or to remove endangered plants from areas under Federal jurisdiction. The FWS will continue to enforce these provisions of the ESA.

This deferral is in keeping with recent Congressional action which effectively deferred enforcement of the program's requirements on users through September 15, 1988. If the labeling approach remains a key element of the program after the public comments have been considered, then after September 15, 1988, the Agency would be able to issue new labeling requirements to pesticide registrants. However, it has been the Agency's experience that registrants have needed up to a year's lead time to place amended labeling on products to be released for sale to the public. From a practical standpoint, therefore, it is not likely that enforceable labeling could begin to be implemented for most, if not all, of the 1989 growing season. During this time, the Agency encourages voluntary actions by pesticide users and the states to protect endangered species.

EPA remains committed to the effective implementation of a comprehensive program to protect endangered species from the potential adverse effects of pesticide use. At the same time, EPA intends to implement a program that is reasonable, achieves its goals, as stated earlier, and has the participation and support of the user community, and other interested groups. For the program to be effective, it is important that the impacts on users be carefully considered, while still protecting endangered species. If parts of the program need more time to achieve effective implementation, EPA intends to take the necessary time.

In the meantime, EPA will devote significant effort to the coordination and planning necessary to make the program work effectively. In particular, EPA will:

(1) Consider all comments on the proposed label/bulletin and state plan approach, and develop a definitive plan for the future of the program.

(2) Work with individual states involved in state-initiated planning.

(3) Work with the FWS, other Federal agencies, and State and local agencies to refine the accuracy of maps; of currently occupied habitats; and of habitat descriptions.

(4) Improve coordination with the U.S. Department of Agriculture (USDA) and the U.S. Department of the Interior (USDI) to promote effective cooperation in the program by these agencies; for example, a recent meeting of the senior managers of these agencies resulted in an agreement to form a joint staff work group to coordinate endangered species protection activities.

(5) Work with pesticide registrants as they amend their product labeling.

(6) Develop education and training materials for use by Federal, State and local agencies.

(7) Conduct a broad outreach effort to solicit public input into program improvement.

IV. Major Issues for Public Comment

Comments are invited on every aspect of EPA's implementation of its responsibilities under the ESA.

Comments should be submitted within 90 days from the date of publication of this notice.

In addition to responding to this notice, comments are invited at the public meetings which may be held, as noted in Unit II.B. of this document, through the state-initiated plan development process, and by any other informal means. The Agency intends to consider the comments received in revising the program.

The Agency hopes that providing for extensive public involvement in this manner will serve both to strengthen the program and to resolve a number of major issues. To this end, EPA is particularly interested in receiving comments on the following major issues:

1. Alternatives To Use Prohibition As The Principal Method To Preclude Jeopardy To Endangered Species

At present, the principal method for prevention of jeopardy to endangered species, as proposed in this notice, is to prohibit use of the pesticide in the areas occupied by the species. Concerns have been expressed to EPA that any number of methods of regulating pesticides may be effective in precluding jeopardy to endangered species. It may be that other methods, such as limiting acceptable application techniques (e.g., ground application and/or chemigation versus aerial application), reduction of maximum application rates, and limiting the types of formulations (e.g., liquids versus granules), may be effective.

Comments are requested on which alternatives to the use prohibitions, as a means to preclude jeopardy to endangered species, would be effective and implementable. A related question is whether any adverse impacts from pesticide use could be allowed to occur without causing jeopardy. Finally, information is requested on the potential economic impacts of the alternatives on users and other affected people.

2. Appropriateness of the Mapping Approach

Mapping the currently occupied habitats of endangered species is the principal method used in the currently proposed EPA program to identify where pesticide use should be limited to protect endangered species. This mapping approach has been criticized because of a lack of up-to-date information on the current habitats of all the listed endangered species, and a lack of information to determine the size of buffer zones needed to protect the endangered species. A concern also has been expressed that since EPA has extended the currently mapped areas to the nearest recognizable boundaries (such as a road or a river), the affected areas have been increased unnecessarily. In some of the states, where the nearest recognizable boundary might be miles from occupied habitat, EPA will use alternatives to limit the affected areas to reasonable sizes.

One suggested alternative or supplement to mapping endangered species habitats would be to give a detailed description of the characteristics of the habitat in which the endangered species is found, to guide pesticide users as to which areas should be avoided. For example, habitats might be described within mapped areas, to assist users in determining where limitations might apply. EPA already intends to implement this "habitat description" approach for a number of species, in the proposed program.

In either case, mapping or habitat description, concern has been expressed that describing the actual location of endangered species might place them in jeopardy from vandals and collectors.

It is EPA's view that mapping probably is the most effective and appropriate approach for the accurate location of many endangered species. The Agency recognizes that some species are not amenable to mapping, and that alternatives and combinations of maps, habitat descriptions and other methods may be desirable.

Comments are requested on the feasibility of alternatives to the mapping approach.

3. Appropriateness of the Labeling Approach

Concerns have been expressed to EPA regarding the appropriateness of using enforceable labeling as the principal method of implementing an Endangered Species Protection Program. It has been asserted that the program needs a very high degree of voluntary compliance to achieve its goals, and that the emphasis upon enforceable labeling could serve the undermine users' willingness to comply.

Alternatives to labeling could include a focus exclusively upon education and training, which already is a major intended component of the proposed program. On the other hand, eliminating the ability for EPA and the states to enforce the program also could serve to undermine compliance, since there would be no means to take action against violations of use limitations. It should be noted that the FWS has enforcement authority, under the ESA, against killing or harming fish and wildlife. Nevertheless, achieving the proper balance of enforcement and education in EPA's program activities remains an open question.

It is EPA's view that labeling probably is the most effective method to alert pesticide users to endangered species issues. In some cases, alternative methods or combinations of methods may be desirable. As noted earlier, new labeling requirements may not be issued to pesticide registrants prior to September 15, 1988. The practical implication is that new labeling probably could not begin to appear in stores until late in the 1989 growing season, at the earliest.

Comments are requested on what would be the best mix of enforceable and educational approaches, and their feasibility, timing, and desirability for implementation.

4. Appropriateness of the Cluster Approach

EPA has chosen to evaluate pesticides on the basis of "clusters" of their uses, such as all the pesticides used on corn. This provides equity by evaluating all pesticides with similar uses for their effects on endangered species at the same time. In this way, older and potentially more toxic pesticides would not have the advantage of escaping review for effects on endangered species, while newer and potentially less toxic pesticides were reviewed and limitations applied on a case-by-case basis. Different use clusters would be evaluated each year, until all major uses of all pesticides had been reviewed.

This cluster approach has been criticized, however, because it could result in limitations on one use of a specific pesticide for one crop in a state, but no limitations on another use in the same area, simply because EPA had not yet evaluated the second use. This situation could confuse the end-user, and fail to protect fully the endangered species until the entire cluster review process was complete.

As an alternative to the use cluster approach, it has been suggested that EPA consider a "species" approach, reviewing all the pesticides which could significantly affect a given endangered species at one time. By focusing on the species, a complete set of reasonable and prudent alternatives could be developed at one time to ensure protection of the species. In this approach, and after consultation with the FWS, EPA would schedule which species would be reviewed each year, until all endangered species had been covered. This approach could require significantly increased resources and time for both EPA and the FWS, in that every relevant pesticide and use would

have to be reviewed at the same time, for each species. If more time were needed, protection for the species involved could be delayed.

A second alternative to the use cluster approach would be to review one chemical at a time, as data allowed.

Comments are requested on the feasibility of alternatives to the cluster approach.

5. Assuring Consistency Between Chemical-specific Jeopardy Opinions and Use Cluster Jeopardy Opinions

During the past several years, and as a result of the registration, reregistration, and special review procedures used by EPA to evaluate pesticides, a number of pesticides were referred to the FWS for pesticide-specific jeopardy opinions. The result was a number of findings of jeopardy to endangered species, and the adoption of specific limitations on the use of some individual pesticides. These limitations already appear on the labeling of these products.

It has been noted that, as the Endangered Species Protection Program proceeds, these individual pesticides might be treated differently from others registered for the same uses. For example, the label restriction may differ from those arising from the cluster approach. In another example, the full cluster might not be scheduled for review for several years, thus putting a reviewed pesticide at a competitive disadvantage. To promote consistency among comparable products, registrants might request changes in pesticide-specific labeling. It should be noted that any such requests would require both EPA and FWS approval.

Comments are requested on the feasibility and means of assuring that similar pesticides are subject to comparable restrictions at the same time to achieve marketplace equity.

6. Assuring Consistency With Other Federal Programs Which Establish Requirements for Pesticide Use

It has been observed that a number of other Federal and state programs encourage or require the use of pesticides to accomplish public goals. These other programs include, but are not limited to: Noxious weed control; soil conservation; mosquito abatement; research and demonstration; and boll-weevil control. EPA's Endangered Species Protection Program could result in pesticide use limitations which may conflict with these other programs.

Comments are requested to further identify on-going programs which encourage or require the use of pesticides, and on the feasibility of alternatives for reconciling the potential conflicts among these programs, FIFRA, and the ESA.

7. Providing Education, Training, and Technical Assistance to Non-traditional User Groups in Endangered Species Protection Measures

State/EPA training programs currently are designed principally for certified pesticide applicators only. Given the broader group of users potentially subject to limitations to protect endangered species, there is a need to provide education, training, and technical assistance to this larger audience.

Comments are requested on options and their feasibility for implementation (including the resources needed) for providing such endangered species information to those affected by the program.

8. Guidelines or Minimum Requirements For State Plans Recommending Alternative Measures To Protect Endangered Species

As noted earlier, EPA is providing the opportunity for the states to develop plans recommending alternative protective measures to those which might be used by EPA.

One concern which has been expressed is that the state plans might be inconsistent, both in approach and in quality. It has been suggested that EPA issue guidelines or minimum requirements for state planning efforts, to ensure some consistency in review and approval. On the other hand, it has been suggested that EPA guidelines or minimum requirements would stifle state innovation and reduce most states to the minimum effort.

Comments are requested on the need for appropriateness of guidelines. If deemed appropriate, comments also are requested on options and their feasibility for implementation for providing guidelines or minimum Federal requirements for state planning efforts. Suggestions for the criteria for such guidelines or requirements also are requested.

V. Conclusion

EPA began to implement its approach to protecting endangered species from the potential adverse effects of pesticide use a number of years ago. As the program has evolved, however, it has become increasingly complex. EPA has recognized the desirability of state involvement and leadership, the need for a high level of coordination among several Federal agencies, the need for broad public involvement, and a requirement for user education and training efforts.

The currently proposed Endangered Species Protection Program has aroused substantial public interest, and many suggestions for improvement. Given this constructive participation, the program will achieve its goals in the coming years.

EPA remains committed to implementing a program based upon accurate and credible information, developed by cooperative efforts, and supported by the understanding and willingness to comply of those involved.

Deferral of program implementation for the 1988 growing season provides the time to develop a stronger program. The ESA requires that EPA's registration of pesticides will not lead to jeopardy for endangered species. While enforcement is both possible and necessary to curb abuses, a truly effective Endangered Species Protection Program will depend upon user cooperation and voluntary compliance. The user community is closest to the environment and to endangered species. The health of both depends upon the wise use of pesticides.

Dated: February 29, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-5154 Filed 3-8-88; 8:45 am]

BILLING CODE 6560-50-M

Reader Aids

Federal Register

Vol. 53, No. 46

Wednesday, March 9, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

6115-6552 1
6553-6782 2
6783-6964 3
6965-7176 4
7177-7324 7
7325-7488 8
7489-7722 9

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5774 7323
Executive Orders:
12607 (Amended by EO 12627) 6553
12627 6553

5 CFR

630 7325
831 6555

7 CFR

1 7177
2 6783
272 6556
273 6556
301 ..... 6783, 6965
354 7489
401 ..... 6559, 6561, 6965
421 6563
422 6115
424 6564
428 6565
438 6565
448 6566
452 6567
455 ..... 6115, 6568
719 6119
907 ..... 6968, 7328
908 7328
910 ..... 6969, 7490
917 6128
925 6572
959 7329
985 6129
1139 6916
1421 6131
1610 6969
1823 7330
1900 7330
1940 7330
1942 6784
1944 ..... 7178, 7491
1951 7330
1955 7330
1962 7330
1965 ..... 7330, 7491
1980 7330
Proposed Rules:
51 7531
52 7532
252 7188
401 6652-6654
449 6655
933 7194
946 7369
1032 7210
1106 6158
1425 7370
1924 7532

9 CFR

97 7492
317 7493
318 7493
381 7493
Proposed Rules:
92 ..... 6656, 6791

10 CFR

4 6137
15 6137
19 6137
20 6137
21 6137
50 6137
53 6137
55 6137
73 6137
75 6137
81 6137
140 6137
150 6137
170 6137
Proposed Rules:
Ch. 1 7534
2 6666
50 ..... 6159, 7534
73 7534
430 7110

11 CFR

Proposed Rules:
102 6916
106 6916

12 CFR

4 6573
310 7339
545 6792
561 6792
563 6792
563c 6792
570 6792
620 7340
621 7340
1101 7340

13 CFR

120 7343

14 CFR

21 6793
36 6793
39 ..... 6793, 6794, 7074, 7346-7348
71 ..... 6140-6142, 6219, 6795, 6796, 6918, 7349-7352
73 ..... 6796, 7352, 7353
95 6573
97 6592
Proposed Rules:
Ch. 1 6830

27 ... 7479
29 ... 7479
39 ... 7371-7373
71 ... 6160-36162, 6666, 6830, 6832, 7374-7377, 7468
73 ... 7377, 7378
91 ... 7096
135 ... 7096

15 CFR

4 ... 6972
18 ... 6797
370 ... 6143
372 ... 6143

16 CFR

1016 ... 6593
Proposed Rules:
Ch. II ... 6833
13 ... 6667

17 CFR

1 ... 7178, 7179
5 ... 7179
31 ... 7179

18 CFR

154 ... 7495
157 ... 7503
389 ... 7354

19 CFR

4 ... 6143
Proposed Rules:
146 ... 6996

21 CFR

60 ... 7298
81 ... 6983
172 ... 6595
349 ... 7076
369 ... 7076
524 ... 7504
Proposed Rules:
349 ... 6997
357 ... 7073

24 CFR

115 ... 6964
200 ... 6600
201 ... 6922
203 ... 6922
215 ... 6600
221 ... 6600
234 ... 6922
235 ... 6600
236 ... 6600
247 ... 6600
300 ... 6601
812 ... 6600
880 ... 6600
881 ... 6600
882 ... 6600
883 ... 6600
884 ... 6600
886 ... 6600
904 ... 6600
905 ... 6600
912 ... 6600
960 ... 6600
3280 ... 6600

25 CFR

176 ... 6145

26 CFR

1 ... 6602, 6603, 6614, 6670, 6800, 7504
5h ... 6146
41 ... 6625
48 ... 6518
51 ... 6626
55 ... 6146
602 ... 6146, 6518, 6603, 6614, 6770, 6800, 7504
Proposed Rules:
1 ... 6670, 6681
48 ... 6524

29 CFR

1910 ... 6628

30 CFR

946 ... 7180
Proposed Rules:
75 ... 6162, 6512
906 ... 7211
917 ... 7212

31 CFR

500 ... 7354
535 ... 7355
540 ... 7355
545 ... 7355
550 ... 7355

32 CFR

295 ... 7358

33 CFR

117 ... 6984
334 ... 6942

34 CFR

304 ... 6944
333 ... 6952
Proposed Rules:
350 ... 6958
357 ... 6958
612 ... 7312

36 CFR

1256 ... 6821
Proposed Rules:
7 ... 7466

37 CFR

Proposed Rules:
201 ... 7073

38 CFR

2 ... 7183
17 ... 7185
21 ... 7183

39 CFR

111 ... 6985
946 ... 6986
Proposed Rules:
111 ... 6837

40 CFR

60 ... 7514
228 ... 6987
261 ... 6822
266 ... 7516
Proposed Rules:
52 ... 6842, 6845
81 ... 6845, 7113
86 ... 7676
116 ... 6762
117 ... 6762
122 ... 7642
123 ... 7642
124 ... 7642
180 ... 6671, 7539-7543
302 ... 6762, 7073
501 ... 7642

42 CFR

405 ... 6525, 6629
406 ... 6629
409 ... 6629
410 ... 6629
413 ... 6525, 6629
416 ... 6629
421 ... 6629
424 ... 6629
441 ... 6525
482 ... 6525
485 ... 6525
489 ... 6629
498 ... 6525, 6629
Proposed Rules:
413 ... 6672

43 CFR

Public Land Orders:
6664 ... 7186
6665 ... 7187
6666 ... 7520

44 CFR

64 ... 6148, 6150
Proposed Rules:
67 ... 6676

45 CFR

96 ... 6824
1602 ... 6151

46 CFR

572 ... 7520
586 ... 7361
Proposed Rules:
588 ... 7379

47 CFR

0 ... 6916
73 ... 6828
Proposed Rules:
69 ... 7214
73 ... 6163-6165, 6677, 7216-7218
74 ... 6677

48 CFR

26 ... 6219
52 ... 6219
222 ... 6155
501 ... 7365
532 ... 7365
552 ... 7365
701 ... 6828
750 ... 6828
752 ... 6828
2401 ... 7187
2402 ... 7187
Proposed Rules:
970 ... 7318

49 CFR

1001 ... 6155
1320 ... 6990
Proposed Rules:
571 ... 6998, 7074

50 CFR

10 ... 6649
301 ... 7528
653 ... 7368
655 ... 6991
672 ... 6649
Proposed Rules:
20 ... 6853, 7702
91 ... 6938

LIST OF PUBLIC LAWS

Last List March 3, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641 The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3923/Pub. L. 100-255

To make a technical correction to section 8103 of title 46, United States Code. (Mar. 4, 1988; 102 Stat. 23; 1 page) Price: $1.00