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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 88-003]

Sharwil Avocados to Alaska

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Hawaiian Fruits and Vegetables" regulations to allow movement of Sharwil avocados, under a limited permit, from Hawaii to Alaska. Our amendment:

a. Deletes the "at least 0.5 centimeter" length requirement for attached stems.

b. Deletes the requirement that there be "no Trifly host material within 100 feet of the packing facility."

The interstate movement of avocados from Hawaii must be regulated to prevent spread of the Mediterranean fruit fly, the melon fly, and the oriental fruit fly. However, the Sharwil variety of avocado will not be a host to these fruit flies when harvested and handled in compliance with the amended "limited movement to Alaska" requirements in the regulations.

EFFECTIVE DATE: May 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. L.H. Tengan, Staff Officer, Program Planning Staff, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The "Hawaiian Fruits and Vegetables" regulations (contained in 7 CFR 318.13 *et seq.*, and referred to below as the regulations), among other things, regulate the movement of Sharwil avocados from Hawaii to Alaska. Regulation is necessary to prevent spread of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)); the melon fly (*Dacus cucurbitae* (Coq.)); and the oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies, commonly referred to as "Trifly," infest Hawaii, but do not occur in the other 49 states.

In a document published in the Federal Register on December 21, 1987 (52 FR 48272-48273, Docket Number 87-150), we proposed to amend the interstate movement of Sharwil avocados from Hawaii to Alaska provisions in the regulations by removing the following requirements:

a. Stems attached to Sharwil avocados must be at least 0.5 centimeter in length; and

b. No Trifly host material may be located within 100 feet of a packing facility.

We received one comment during the public comment period that ended January 5, 1988. The commenter objected to discontinuance of the 100-foot buffer zone, arguing that it "ensures no Trifly or host material presence in the immediate vicinity of the packaging of Hawaiian Sharwils."

We disagree. The regulations contain other provisions that ensure that Triflies and Trifly host materials will be kept out of packing facilities—even when a Trifly infestation exists within 100 feet of the facility. These provisions, which are effective and enforceable, are:

a. Paragraph (d)(1) of § 318.13-4g requires that packing facilities be maintained free of all Trifly host material.

b. Paragraph (d)(2) of § 318.13-4g requires that packing facilities be maintained free of Trifly.

c. Paragraph (d)(3) of § 318.13-4g requires that all doors and other openings to the packing facility be maintained under conditions determined by an inspector as adequate to prevent the entry of Trifly.

The commenter also expressed concern that Triflies, undetected in Sharwil avocados shipped from Hawaii to Alaska, might spread to the other 48 states.

We disagree. In a three-year study, Department entomologists conducted prepacking inspections of 114,122 Hawaiian Sharwil avocados harvested and packed in accordance with the requirements in the regulations. No Trifly eggs or larvae were found—even when severely damaged avocados were exposed to Trifly after the fruit had been moved to a laboratory. We are satisfied that this study establishes that Sharwil avocados are not a host to Trifly, and will not spread this pest from Hawaii, when harvested and handled in compliance with the regulations.

Based on the rationale set forth in the proposal and in this document, we are amending the regulations as proposed.

Executive Order 12291 and Regulatory Flexibility Act

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 cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We do not believe that the changes we have proposed will affect the marketing of Hawaiian Sharwil avocados moved for sale in Alaska. There is no reason to believe that, because of this rule, the number of avocados that will be moved from Hawaii to Alaska will increase or decrease.

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.

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 7 CFR Part 318

Agricultural commodities, Avocados, Fruit, Guam, Hawaii, Plant diseases, Plant pests, Plants (agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Accordingly, 7 CFR Part 318 is amended as follows:

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 318.13–4g, paragraph (a) is amended by removing "which is at least 0.5 centimeter in length".

3. In § 318.13–4g, paragraph (c) is amended by removing "at least 0.5 centimeter in length".

4. In § 318.13–4g, paragraph (d)(1) is revised and a new footnote 2 is added as follows:

§ 318.13–4g Administrative instructions specifying conditions for limited permits for Sharwil avocados for movement to Alaska based on certain harvesting and handling provisions.

* * * * *

(d) * * *

(1) The packing facility is maintained free of all Trifly host material,[2] other than Sharwil avocados packed in accordance with the provisions of paragraph (e) of this section.

* * * * *

§ 318.13–13 [Amended]

5. In § 318.13–13, footnotes "2" and "3", and the references to the footnotes, are redesignated as "4" and "5", respectively.

§ 318.13–5 [Amended]

6. In § 318.13–5, footnote "1", and the reference to the footnote, is redesignated as "3".

[2] A list of Trifly host material will be attached to each compliance agreement with a packer. This list may also be obtained from Plant Protection and Quarantine offices in Hawaii (listed in telephone directories) or by writing National Programs, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Done in Washington, DC, this 15th day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–8691 Filed 4–19–88; 8:45 am]

BILLING CODE 3410–34–M

7 CFR Part 340

[Docket No. 88–019]

Genetically Engineered Organisms and Products; Exemption for Interstate Movement of Certain Microorganisms Under Specified Conditions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations pertaining to the introduction of certain genetically engineered organisms and products by exempting from regulation certain genetically engineered microorganisms which are moved interstate under specified conditions. This amendment removes unnecessary restrictions on the interstate movement of those microorganisms which do not present a risk of plant pest introduction or dissemination.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: John Payne, Staff Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7908.

SUPPLEMENTARY INFORMATION: On September 24, 1987, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (52 FR 35921–35923) to amend the regulations in 7 CFR Part 340, pertaining to the introduction of certain genetically engineered organisms and products. The proposed rule set forth provisions which would exempt a person from having to obtain a permit for the interstate movement of certain genetically engineered microorganisms if the microorganisms were moved in accordance with certain specified conditions. APHIS indicated that the proposed exemption would remove unnecessary restrictions on the interstate movement of those microorganisms which do not present a risk of plant pest introduction or dissemination. Specifically, it was proposed that a limited permit for interstate movement would not be required for genetic material from any plant pest contained in *E. coli* strain K–12, sterile strains of *Saccharomyces cerevisiae*, or asporogenic (nonspore forming) strains of *Bacillus subtilis*, provided all of the following conditions are met:

(i) The microorganisms are shipped in a container that meets the requirements of § 340.6(b)(3) of this part;

(ii) The cloned genetic material is maintained on a nonconjugation proficient plasmid and the host does not contain other conjugation proficient plasmids or generalized transducing phages;

(iii) The cloned material does not include the complete infectious genome of a known plant pest;

(iv) The cloned genes are not carried on an expression vector if the cloned genes code for:

(a) A toxin to plants or plant products, or a toxin to organisms beneficial to plants; or

(b) Other factors directly involved in eliciting plant disease (i.e., cell wall degrading enzymes); or

(c) Substances acting as, or inhibitory to, plant growth regulators.

APHIS received 15 comments on the proposed rule. Commenters included academic researchers; companies engaged in genetic engineering; professional societies and trade associations; and a State department of agriculture. The majority of the commenters expressed general support for the proposed rule without suggesting specific wording changes. Seven commenters suggested specific wording changes either for purposes of clarification, or for purposes of broading the scope of the proposed exemption. Based on the rationale set forth in the proposed rule and in this document, APHIS has adopted the provisions of the proposed rule as a final rule with certain changes which clarify the provisions of the exemption.

Two commenters suggested specific wording changes which would have the effect of clarifying the language of the exemption. Both of these commenters noted that the wording of the exemption, as proposed, appeared to limit it solely to *E. coli* strain K–12 and not to its derivatives. One commenter suggested that the organism be identified as "*Escherichia coli* strain K–12 and its derivatives" noting that derivatives of the original strain K–12 have been developed that do not colonize in the human intestinal tract and which will not survive in the environment. The other commenter questioned whether it was the intention of APHIS to include genotypes of *E. coli* strain K–12, rather than limit the exemption solely to the

original K–12 strain. The commenter noted that almost all recombinant DNA research using K–12 host-vector systems is conducted with K–12 derived strains rather than the original strain. APHIS believes both commenters have provided wording changes which more specifically identify the *E. coli* organism. It was APHIS' intention to include the derivatives of the original *E. coli* strain K–12 with the original strain as organisms to be used for the interstate movement of plant pest genetic material under the specified conditions. As both the commenters noted, the derivatives are, like the original strain K–12, also inherently safe. The suggestions offered from both commenters have been accepted and incorporated into the final rule. As revised, the language in the final rule referencing *E. coli* now reads, "*Escherichia coli* genotype K–12 (strain K–12 and its derivatives)." It should be noted that another way of referring to the original strain K–12 and its derivatives is to use the term "genotype K–12." This revision in wording does not constitute a substantive change, but merely clarifies APHIS' original intent which was implicit in the preamble to the proposed rule. In the preamble, APHIS cited biosafety data on strain K–12 that in the context of that citation could only refer to derivatives of strain K–12 as well as the original K–12 strain.

One commenter noted that it is often advantageous to make and use gene libraries in expression vectors. The commenter indicated that it is very difficult to guarantee that a toxin gene is not present somewhere in the library. The commenter questioned whether the presence of a toxin gene somewhere in the library would mean that the person seeking to ship the genetic material would not meet the conditions for the exemption and would have to obtain a limited permit prior to interstate movement.

It appears that the commenter has misconstrued how APHIS would apply the provisions of the exemption. The presence of a toxin gene somewhere in a gene library would not be of significance in determining whether or not the provisions of the exemption had been complied with. What would be of significance is whether the toxin gene had been engineered to be expressed on the expression vector and not whether a single toxin gene incidentally appears somewhere in a gene library.

One commenter stated that the expression of a single gene coding for a factor directly or indirectly involved in eliciting plant disease should not be a matter or concern with respect to the risk of causing plant disease. The commenter further questioned why APHIS had included "cell wall degrading enzymes" as an example of a factor directly involved in eliciting plant disease.

APHIS agrees that most single genes from a plant pest are unlikely to confer plant pest characteristics on a previously benign recipient, but APHIS does not agree that all single genes carry no risk of conferring plant pest characteristics on an organism.

For example, the classes of genes that are referenced in § 340.2(b)(1)(iv) of the final rule, which code for toxins to plants or plant products, factors directly involved in eliciting plant disease, or substances acting as, or inhibitory to plant growth regulators, if expressed at high levels, would be capable of conferring plant pest characteristics on the three host microorganisms specified in the exemption (*E. coli*, sterile strains of *Saccharomyces cerevisiae*, and asporogenic strains of *Bacillus subtilis*).

APHIS agrees with the commenter that cell wall degrading enzymes cannot cause plant disease by themselves, but cell wall degrading enzymes are important in the disease inducing mileau of many microorganisms (See: Cell Wall Composition and Metabolism, Chap. 5 in: Goodman, R.N., Kiraly, Z., and Wood, K.R., The Biochemistry and Physiology of Plant Disease, University of Missouri Press, 1986). Experimental evidence has been published in at least two reports to support the position that a highly expressed enzyme that contributes to the degradation of plant cell walls can confer on derivatives of *E. coli* strain K–12 the ability to damage plants or plant parts (Keen and Tamaki, Journal of Bacteriology 168:595–606, 1986; and, Payne et al., Applied and Environmental Microbiology 53:2315–2320, 1987). Each of these studies showed that pectate lyase genes cloned from *Erwinia chrysanthemi* (a bacterium that incites the soft rot disease of potatoes), when expressed at high levels on an expression vector in *E. coli*, could confer on the *E. coli* the ability to cause rot symptoms in potato tubers. APHIS cannot, therefore, accept the commenter's suggestion to remove the phrase "cell wall degrading enzymes" as an example of a factor directly involved in plant disease, and of concern for its potential to confer plant pest characteristics on the host microorganisms. One commenter suggested that APHIS add another condition as an additional requirement for moving plant pest genetic material in the three host microorganisms. The commenter suggested that APHIS require that the cloned genetic material not code for a gene which extends the host range of a plant pest. This commenter further suggested that APHIS amend the exclusion so as not to require a permit for the interstate movement of *Agrobacterium* strains containing Ti plasmids. APHIS has not amended the rule to include this additional condition because the Agency is unaware of and has been unable to identify any gene that extends the host range of a plant pest, which if expressed in the three host microorganisms would have the potential to confer plant pest characteristics on these three microorganisms. APHIS rejects the commenter's suggestion that a person should be allowed to move strains of *Agrobacterium* containing Ti plasmids without a permit. Unlike the three host microorganisms specified in the exemption, *Agrobacterium tumefaciens* is a plant pest as defined by the Federal Plant Pest Act (FPPA: 21 U.S.C 150aa–jj), and in implementing regulations in 7 CFR Parts 330 and 340. *A. tumefaciens* incites diseases that cause substantial crop losses in vineyard and orchard crops. Ti plasmids are essential to the disease causing mechanism of *A. tumefaciens*. As such, under the FPPA and implementing regulations, a permit is required for the interstate movement of this microorganism or its plasmids. It has been shown in laboratory settings that the Ti plasmids of *A. tumefaciens* can be effectively disarmed, that is, can be made nonpathogenic.

APHIS is reviewing permit applications for the introduction of an organism containing a disarmed Ti plasmid examines the effectiveness of the disarming techniques as well as biosafety data on the organism.

One commenter requested that *Pseudomonas fluorescens*, biotype A, *Pseudomonas chloraphis* (*P. fluorescens*, biotype D) and *Pseudomonas aureofaciens* (*P. fluorescens*, biotype E) be treated like the three host microorganisms for purposes of allowing the interstate movement of plant pest genetic material without a permit. The commenter further requested that the nonplant pest status be established for: (1) Native forms of the pseudomonads referenced above selected for their inherent resistance to antibiotics; (2) Genetically recombinant forms of the pseudomonads referenced above which meet the conditions specified in the exemption, and (3) Pseudomonads referenced above which have been genetically modified to contain *E. coli* K–12 genes which have been permanently inserted. APHIS disagrees with the commenter that the

three subgroups of the pseudomonads referenced above would be suitable organisms for the movement of plant pest genetic material. While the strains of *Pseudomonas* that make up the subgroups referenced by the commenter are not generally considered plant pests in and of themselves, APHIS believes that because they can persist in the environment much more readily than the three host microorganisms and because there is not sufficient biosafety data on these strains of *Pseudomonas* when used as cloning hosts, it would be ill advised to allow such strains to be used for the movement of plant pest genetic material, as set forth in the exemption. Accordingly, APHIS has not included these three subgroups of the pseudomonads in the final rule.

With respect to the commenter's request that the nonplant pest status be established for the pseudomonads referenced above, the proper way to make such a request would be to submit a petition under § 340.4 of the regulations.

Section 340.4 is entitled, "Petition to amend the list of organisms" and is intended to be used for petitioning APHIS to add or delete any genus, species, or subspecies of organisms on the list of plant pest organisms in § 340.2 of the regulations. The information submitted in the comment does not meet the requirements set forth in § 340.4 and as such does not serve as an adequate petition. APHIS will be able to consider the commenter's request for non plant pest status of these pseudomonads if the request is submitted in the form of a 340.4 petition.

One commenter suggested that § 340.2(b)(1)(iii) of the exemption be amended so as to prohibit the cloned genetic material from containing any portion of the genome of a plant pest rather than prohibiting the genetic material from containing the complete genome from a plant pest. The commenter did not present any examples where genetic material from a portion of the genome of a plant pest had been able to incite disease nor did the commenter present citations to the scientific literature where it had been documented that a portion of the genome from a plant pest when carried by any of the three host microorganisms would present a potential risk. APHIS has been unable to identify any situation where a risk plant pest introduction or dissemination would occur by allowing less than the complete infectious genome from a known plant pest to be carried by one of three host microorganisms under the conditions specified in the exemption. It should also be noted that this exemption is limited to the movement of certain microorganisms under specified conditions. One commenter suggested that the conditions of the exemption be made more inclusive. Specifically, the commenter suggested that APHIS add working to the exemption that would prohibit a person from shipping cloned genetic material on an expression vector in one of the three host microorganisms if the cloned genes code for a substance that is beneficial to an organism that indirectly causes damage to plants. The commenter failed to provide a specific example of the type or category of substance which the commenter was referring to and which the commenter thought APHIS should protect against. In the absence of a specific example of the type of substance which the commenter is referring to, APHIS finds this comment too hypothetical and not appropriate for consideration at this time. Further, APHIS believes that the specific conditions that are included in the rule cover those cases where a specific plant pest risk could be identified. Therefore, no change has been made to the rule based on this comment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effect of this rule is to exempt a person from having to obtain a limited permit when certain genetic material from a plant pest is moved interstate in certain microorganisms in accordance with specified conditions. A limited permit requires the submission of data about the nature of the organism, how it was produced, and a description of the contained facility at destination. Such data should already be available to the researcher. The rule relieves a person from having to submit an application to APHIS for a limited permit, which results in a savings of the time which would ordinarily be associated with the preparation of such a permit application. Therefore, the deletion of the requirement to submit the data to obtain a limited permit will not have a significant economic impact on a substantial number of small entities.

The conditions that have to be complied with under the exemption are those that a researcher would normally employ when using these microorganisms as gene libraries, except that a person cannot slip genes that code for substances harmful to plants or organisms beneficial to plants, when such genes are carried on an expression vector. If such types of genetic material are expressed on an expression vector, the exemption does not apply, and a limited permit would have to be obtained. It is expected that this exemption will affect at least several thousand research scientists, some of whom may be operating small businesses which would be deemed "small entities" under the Regulatory Flexibility Act. The rule exempts them from the requirement of having to obtain a limited permit under the circumstances described above.

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

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Acting Administrator of the Animal and Plant Health Inspection Service finds good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The Acting Administrator has determined that this rule should become effective upon publication because it has been determined that this rule relieves unnecessary restrictions. The rule exempts persons from having to obtain a limited permit when certain genetic material from a plant pest is moved interstate in specified microorganisms under conditions which do not present a risk of plant pest introduction or dissemination.

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, Part V).

List of Subjects in 7 CFR Part 340

Agricultural commodities, Biotechnology, Genetic engineering, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

Accordingly, 7 CFR Part 340 is amended as follows:

1. The authority citation for Part 340 continues to read as follows:

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 340.1 is amended by adding the following definition of *"Expression vector"* in alphabetical order to the list of existing terms:

§ 340.1 Definitions.

* * * * *

Expression vector. A cloning vector designed so that a coding sequence inserted at a particular site will be transcribed and translated into protein.

* * * * *

3. The heading for § 340.2 "Groups of organism which are or contain plant pests" is revised to read "Groups of organisms which are or contain plant pests and exemptions."

4. In § 340.2, at the beginning of the introductory text, a new paragraph heading is added to read "(a) *Groups of organisms which are or contain plant pests.*"

5. In § 340.2 at the end of the text, a new paragraph (b) is added as follows:

§ 340.2 Groups of organisms which are or contain plant pests and exemptions.

* * * * *

(b) *Exemptions.* (1) A limited permit for interstate movement shall not be required for genetic material from any plant pest contained in *Escherichia coli* genotype K–12 (strain K–12 and its derivatives), sterile strains of *Saccharomyces cerevisiae*, or asporogenic strains of *Bacillus subtilis*, provided that all the following conditions are met:

(i) The microorganisms are shipped in a container that meets the requirements of § 340.6(b)(3) of this part;

(ii) The cloned genetic material is maintained on a nonconjugation proficient plasmid and the host does not contain other conjugation proficient plasmids or generalized transducing phages;

(iii) The cloned material does not include the complete infectious genome of a known plant pest;

(iv) The cloned genes are not carried on an expression vector if the cloned genes code for:

(A) A toxin to plants or plant products, or a toxin to organisms beneficial to plants; or

(B) Other factors directly involved in eliciting plant disease (i.e., cell wall degrading enzymes); or

(C) Substances acting as, or inhibitory to, plant growth regulators.

Done in Washington, DC, this 15th day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–8690 Filed 4–19–88; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 77

[Docket No. 88–037]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designations of the states of Virginia and Washington from modified accredited states to accredited-free states.

EFFECTIVE DATE: May 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8438.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis.

In an interim rule published in the **Federal Register** and effective January 15, 1988 (53 FR 1002–1003, Docket 87–184), we amended the regulations by removing Virginia and Washington from the list of modified accredited states in § 77.1 and adding them to the list of accredited-free states in that section. Comments on the interim rule were required to be postmarked or received on or before March 15, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

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 cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the states of Virginia and Washington may affect the marketability of cattle and bison from these states since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

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.

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 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 77 and that was published at 53 FR 1002–1003 on January 15, 1988.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 15th day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–8689 Filed 4–19–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 86–ANE–27; Amdt. 39–5850]

Airworthiness Directives; Teledyne Continental Motors IO–360, TSIO–360, O–470, IO–470, TSIO–470, IO–520, TSIO–520, and IO–550 Series Engines Equipped With Oil Filters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error contained in Amendment No. 39–5850, which appeared in the **Federal Register** of February 12, 1988 at 53 FR 4115.

FOR FURTHER INFORMATION CONTACT: Jerry C. Robinette, aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3810.

Correction

In consideration of the foregoing, Amendment 39–5850 published in the **Federal Register** of February 12, 1988 at 53 FR 4116, is hereby corrected by removing the words "paragraph 6" in paragraph (a)(1)(ii) of the Amendment appearing on page 4116, second column, and adding "paragraph 7" in lieu thereof.

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

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

Issued in Burlington, Massachusetts on April 8, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88–8615 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–ASW–64; Amdt. 39–5874]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214ST Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a periodic visual inspection and retorque of the tail rotor intermediate gearbox assembly, a one-time removal of the intermediate gearbox assembly for a complete visual inspection, and removal of barrier tape which may have caused a loss of torque on the intermediate gearbox attachment bolts on Bell Model 214ST helicopters. The AD is prompted by two reports of cracks in intermediate gearbox mounting lugs. Cracking in the mounting lugs could result in failure of the intermediate gearbox and subsequent loss of helicopter directional control.

DATES: *Effective Date:* April 22, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1988.

Compliance: As indicated in the body of AD.

ADDRESSES: The applicable alert service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Attention: Customer Support, or may be examined in the Rules Docket, Office of the Regional Counsel, FAA Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, FAA, Helicopter Certification Branch, ASW–170, 76193–0170, telephone (817) 624–5177.

SUPPLEMENTARY INFORMATION: There have been two reports of cracking in the tail rotor intermediate gearbox mounting lugs on 214ST helicopters. Cracking could occur due to vibration between the intermediate gearbox and gearbox support area. The vibration may be attributed to incorrect torque on the intermediate gearbox attachment bolts or to the use of barrier tape installed between the intermediate gearbox and gearbox support area, which could cause the loss of bolt torque. Cracking in the mounting lugs could result in separation of the intermediate gearbox from the tailboom and a subsequent loss of helicopter directional control. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires visual inspections, retorquing of the attachment bolts, and if necessary, a dye penetrant inspection to determine if cracks are present in the intermediate gearbox mounting lugs on Bell Model 214ST helicopters.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Bell Helicopter Textron, Inc.: Applies to Bell Helicopter Textron, Inc., Model 214ST helicopters certificated in any category. (Airworthiness Docket No. 87-ASW-64.)

Compliance is required as indicated, unless already accomplished.

(a) Within the next 25 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 25 hours' time in service, perform an inspection of the tail rotor intermediate gearbox, P/N 214-040-009-001, as follows:

(1) Remove the fairings and covers as required to gain access to the intermediate gearbox.

(2) Visually inspect the three gearbox mounting lugs for cracks. If a crack indication is found, inspect using a fluorescent or dye penetrant method. If a crack is found, remove and replace the intermediate gearbox case with a serviceable part before further flight and accomplish the requirements of paragraphs (b)(3), (b)(5), and (b)(6) of this AD.

(3) If no cracks are found, verify that the washer stack-up is in accordance with figure 4, page 16, Section 65-20-00 of the Bell 214ST Maintenance Manual, Rev. 22, dated May 14, 1987, and determine that the torque on the three attachment bolts, P/N AN5H15A, is 100-140 in-lbs. Resecure the attachment bolts with MS20995C32 safety wire or equivalent.

(b) Within the next 250 hours' time in service after the effective date of this AD, remove and inspect the tail rotor intermediate gearbox, P/N 214-040-009-001, as follows:

(1) Remove the fairings and covers as required to gain access to the intermediate gearbox.

(2) Remove the intermediate gearbox and visually inspect the three gearbox mounting lugs for cracks. If a crack indication is found, inspect using a fluorescent or dye penetrant method. If a crack is found, remove and replace the intermediate gearbox with a serviceable part before further flight.

(3) Inspect the intermediate gearbox and intermediate gearbox support area of the tailboom for evidence of barrier tape. If barrier tape is present, it must be removed before further flight.

(4) Inspect the intermediate gearbox mounting lugs for evidence of excessive wear and bolt hole elongation. If wear or bolt hole elongation is beyond the limits specified on pages 35 and 36 in Section 65-20-07 or figure 26, page 48, Section 65-20-08, of the Bell 214ST Component Repair and Overhaul Manual, Rev. 12, dated April 15, 1986, remove and replace the intermediate gearbox case with a serviceable part before further flight.

(5) Inspect the intermediate gearbox tailboom attachment points for excessive wear or damage. If the wear or damage is beyond the limits specified in figure 16, page 40B, Section 53-11-00 of the Bell 214ST Maintenance Manual, Rev. 22, dated May 14, 1987, remove and replace the worn or damaged parts with serviceable parts before further flight.

(6) Clean the mounting surfaces of the intermediate gearbox and tailboom using methyl-ethyl-ketone (MEK), or equivalent safety solvent. Apply epoxy polyamide primer or zinc chromate primer to the mounting surfaces. Do not use barrier tape during reassembly. Install the gearbox while the primer is wet. The washer stack-up must comply with Figure 4, page 16, Section 65-20-00 of the Bell 214ST Maintenance Manual, Rev. 22, dated May 14, 1987. Torque the three attachment bolts, P/N AN5H15A, to 100-140 in-lbs. Secure the bolts with MS20995C32 safety wire or equivalent.

(c) Upon complying with paragraph (b) of this AD, the requirements in paragraph (a) of this AD no longer apply.

(d) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the requirements of this AD can be accomplished.

(e) An alternate method of compliance which provides an equivalent level of safety, may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

Note: Compliance with Parts I and II of Bell Helicopter Textron Alert Service Bulletin No. 214ST-87-40, dated 9/17/87, constitutes compliance with this AD.

The procedure shall be done in accordance with page 16, Section 65-20-00 and page 40b, Section 53-11-00 of the Bell 214ST Maintenance Manual, Rev. 22, dated May 14, 1987; and pages 35 and 36, Section 65-20-07 and page 48, Section 65-20-08 of the Bell 214ST Component Repair and Overhaul Manual, Rev. 12, dated April 15, 1986.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective April 22, 1988.

Issued in Fort Worth, Texas, on March 4, 1988.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88-8614 Filed 4-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-62; Amdt. 39-5883]

Airworthiness Directives; Teledyne Continental Motors TSIO-520BE and CE Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Teledyne Continental Motors TSIO-520 series engines by individual priority letter. The AD requires inspection to ensure proper fit or crush of the crankshaft bearing surfaces in the crankcase, replacement of piston pins, and imposes interim limitations on engine operation. The AD is needed to prevent possible failure of the crankshaft or the piston pins which could result in loss of engine power.

DATES: *Effective*—April 29, 1988, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD 87-26-08, issued December 23, 1987, which contained this amendment.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of April 29, 1988.

ADDRESSES: The applicable Service Bulletin may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. A copy of the service bulletin is contained in the Rules Docket, Docket Number 87-ANE-62, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: On December 23, 1987, priority letter AD 87-26-08, was issued and made effective immediately as to all known U.S. owners and operators of certain Teledyne Continental TSIO-520 series engines. The AD requires inspection to ensure proper fit or crush of the crankshaft bearing surfaces in the crankcase, replacement of piston pins, and imposes interim limitations on engine operation. There have been seven crankshaft failures and six piston pin failures, all of which resulted in forced landings of aircraft equipped with TSIO-520BE engines. The TSIO-520CE has parts in common with the TSIO-520BE and operates in a similar environment. AD action was necessary

to prevent possible failure of the crankshaft or the piston pins with resultant loss of engine power.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter, issued December 23, 1987, as to all known U.S. owners and operators of certain TSIO-520 engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Conclusion

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

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Teledyne Continental Motors (TCM): Applies to TSIO-520BE and CE engines.

Compliance is required as indicated, unless already accomplished.

To prevent possible failure of the crankshaft and piston pins, accomplish the following:

(a) Thru-bolt torque check:

(1) For TSIO-520BE engines, before further flight, accomplish in accordance with paragraph I of TCM Service Bulletin (SB) M87-25, dated December 15, 1987.

(2) For TSIO-520CE engines, within the next 25 hours of operation, accomplish in accordance with paragraph I of TCM SB M87-26, dated December 21, 1987.

(3) If the force required to rotate the propeller per paragraph IA of either SB is not within the normal 10 to 20 pounds, or the crankshaft has no end play, the engine must be removed from service.

(4) If after torqueing the thru-bolts per paragraph IC of either SB, the force required to rotate the propeller has increased above the previously recorded value by more than 3 pounds, or the crankshaft has no end play, the engine must be removed from service.

(b) Piston pin replacement and crankshaft bearing inspection:

(1) For TSIO-520BE engines, before further flight, accomplish in accordance with paragraph II of TCM SB M87-25, dated December 15, 1987.

(2) For TSIO-520CE engines, within the next 25 hours operation, accomplish in accordance with paragraph II of TCM SB M87-26, dated December 21, 1987.

(3) If there is evidence that the bearing has shifted per figure B of either SB, the engine must be removed from service.

(c) Final thru-bolt torque check and reassembly of engine:

(1) For TSIO-520BE engines, before further flight, accomplish in accordance with paragraph III of TCM SB M87-25, dated December 15, 1987.

(2) For TSIO-520CE engines, within the next 25 hours of operation, accomplish in accordance with paragraph III of TCM SB M87-26, dated December 21, 1987.

(3) If the force required to rotate the propeller per paragraph IIIA of either SB has increased above the value recorded in paragraph (a)(4) of this AD, or the crankshaft has no end play, the engine must be removed from service.

(d) For TSIO-520CE engines only, before further flight, fabricate and install on the aircraft instrument panel, as near as possible to the manifold pressure gauge and in clear view of the pilot, the following placard using letters at least 0.10 inch high: "Take-off—No change in Manifold Absolute Pressure (MAP) Climb—MAP 31 inches mercury or less Cruise—MAP 25 inches mercury or less".

(1) Place a copy of this AD in the pilot's operating handbook.

(2) Operate the aircraft in accordance with these power limitations.

(3) Placard and restrictions may be removed when the requirements of paragraph a(2), b(2), and c(2) of this AD have been accomplished, or upon installation of a serviceable engine.

(e) Make appropriate log book entry showing compliance with this AD.

(f) Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FAR) 21.197 and 21.199 to a base where the AD can be accomplished.

(g) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

(h) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, Central Region, may adjust the compliance times specified in this AD.

TCM Mandatory Service Bulletin M87-25, dated December 15, 1987, and TCM Mandatory Service Bulletin M87-26, dated December 21, 1987, identified and described in this document are incorporated herein and made a part thereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601.

These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Docket No. 87-ANE-62, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective April 29, 1988 as to all persons except those persons to whom it was made immediately effective by individual priority letter, issued December 23, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on March 17, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88-8612 Filed 4-19-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-21]

Alteration to Control Zone, Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to reflect the name change of a navigational facility currently contained in the Portland, Oregon, control zone description. For operational reasons it is necessary to change the name and identifier of the Portland, Oregon,

VORTAC (PDX) to Battleground, Washington VORTAC (BTG).

EFFECTIVE DATE: 0901 U.T.C., May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 87–ANM–21, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

History

The Portland International Airport is located in Oregon. The Portland very high frequency, omni-directional radio range and tactical air navigational aid (VORTAC) is located in the State of Washington. According to Federal Aviation Regulations (FAR) guidelines, navigational aids not located within the confines of the airport boundaries should not retain that airport's name. Therefore, the Portland VORTAC has been renamed Battleground VORTAC (BTG). This action amends the current Portland Control Zone description.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the description of the Portland Control Zone to read "Battleground" where "Portland" appears. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988. Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the description of the Portland Control Zone by deleting the word "Portland" and substituting the word "Battleground" where it appears. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. In consideration of the immediate need to change the name in order to avoid any confusion, I find that good cause exists for making this rule effective in less than 30 days in order to promote the safe and efficient handling of air traffic in that area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact in a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Portland Oregon [Amended]

By removing the word "Portland VORTAC" and substituting the word "Battleground VORTAC."

Issued in Seattle, Washington, on March 31, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 88–8613 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWP–35]

Revision to the Kingman, AZ; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Kingman, AZ, transition area and enlarges the 700 foot transition area to provide additional controlled airspace for aircraft on the Very High Frequency Omni-directional Range/Distance Measuring Equipment (VOR/DME) Runway 21 instrument approach procedure to the Kingman Municipal Airport. This action also enlarges the 1,200 foot transition area west of the Kingman Municipal Airport to provide additional controlled airspace for instrument flight rules (IFR) departures.

EFFECTIVE DATE: 0901 U.t.c., June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

History

On January 14, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Kingman, AZ, transition area (53 FR 907). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Kingman, AZ, transition area. This revision provides additional controlled airspace for aircraft on the VOR/DME RWY 21 instrument approach procedure to the Kingman Municipal Airport and for IFR departures from the Kingman Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal

Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kingman, AZ [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Kingman Municipal Airport (lat. 35°15'34"N., long. 113°56'14"W.); and that airspace within 5 miles each side of the Kingman VOR 025° radial extending from the 5-mile radius area to 19 miles northeast of the VOR; that airspace extending upward from 1,200 feet above the surface within 5 miles southeast and 9 miles northwest of the Kingman VOR 025° and 205° radials, extending from 13 miles southwest to 38 miles northeast of the VOR; and that airspace bounded by a line beginning at lat. 35°24'46"N., long. 114°01'31"W.; to lat 35°08'44"N., long. 114°10'28"W.; to lat. 35°21'15"N., long. 114°13'25"W.;' to the point of beginning.

Issued in Los Angeles, California, on April 5, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88–8617 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWP–34]

Revision to the Parker, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Parker, CA, transition area. This provides controlled airspace for aircraft executing the Very High Frequency Omni-directional Range/Distance Measuring Equipment (VOR/DME–A) instrument approach procedure to the Avi Suquilla Airport, Parker, CA.

EFFECTIVE DATE: 0901 UTC, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

History

On January 14, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Parker, CA, transition area (53 FR 908). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Parker, CA, transition area. This action provides controlled airspace for aircraft executing the VOR/DME–A instrument approach procedure to the Avi Suquilla Airport, Parker, California.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. §71.181 is amended as follows:

Parker, CA. [Revised]

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of Avi Suquilla Airport (lat. 34°09'03" N., long. 114°16'14" W.); and that airspace extending upward from 1200 feet above the surface within 10 miles northwest and 7 miles southeast of the Parker VORTAC 071° and 251° radials extending from 9 miles southwest to 29 miles northeast of the VORTAC.

Issued in Los Angeles, California, on April 7, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88–8618 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230 and 239

[Release No. 33–6768; File No. S7–28–87]

Compensatory Benefit Plans and Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Final rules..

SUMMARY: The Commission announces the adoption of a new Rule 701, new temporary Rules 702 and 703, and the new Form 701 which provide an exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act") for offers and sales of securities pursuant to certain compensatory benefit plans or written contracts.

EFFECTIVE DATE: May 20, 1988.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or John D. Reynolds, (202) 272–2644, Office of Small Business Policy Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On January 16, 1987, the Commission published for comment [1] proposed Rule 701 which would be authorized by section 3(b) of the Securities Act, [2] to provide an exemption from the registration requirements of such Act for certain offers and sales of securities made pursuant to the terms of compensatory benefit plans or written compensation agreements by issuers that are not subject to the reporting requirements of section 13 or 15(d) of the

[1] Release No. 33–6663 (January 16, 1987) [52 FR 3015]. This proposal generated 26 comment letters.

[2] 15 U.S.C. 77a *et seq.*

Securities Exchange Act of 1934 (the "Exchange Act").[3] That notice of proposed rulemaking also published for comment a temporary Rule 702 which would establish a notification requirement to the Commission when a certain level of sales had been made pursuant to Rule 701. Form 701 was proposed to serve as the requisite notification. On July 30, 1987, the Commission published for comment [4] a reproposal consisting of Rules 701 and 702 and new temporary Rule 703, which would disqualify an issuer from the use of Rule 701 if it were found to have violated Rule 702.

Certain revisions to the proposals have been made and are addressed in this release.

I. Summary of the New Rules and Form

The concern which has been raised by many privately-held companies with regard to the regulatory and other costs involved in providing securities as compensatory measures or incentives is sought to be addressed by this regulatory series, designated Rules 701, 702, 703 and Form 701.

A. Rule 701

The substantive exemptive provision draws its authority from section 3(b) of the Securities Act and permits certain offers and sales of securities in connection with compensatory benefit plans and contracts to be effected without registration under the Securities Act.

(1) Preliminary Notes

Rule 701 is prefaced by six preliminary notes. The initial four notes are as initially proposed. The first note indicates that the antifraud provisions of the federal securities laws may require that disclosure be made to securities purchasers even though the rule dictates no specific disclosure requirements; furthermore, that the rule only relates to the Securities Act's registration requirements. The second note recognizes the applicability of state law to transactions such as the ones encompassed by Rule 701. The third note indicates that use of the rule does not constitute an exclusive election. The fourth note states that only issuers may use Rule 701, for it is not available for resales.

Two new notes have been added, which are designed to emphasize the extent of the exemption's coverage. The fifth preliminary note, included at the suggestion of commenters, makes clear that the purpose of the rule is to facilitate the use of securities for compensation. Rule 701 does not exempt offers and sales designed to raise capital. The final note, common to several of the Commission's exemptive rules, states that plans or schemes designed to evade the registration requirements of the Securities Act, while in technical compliance with Rule 701, are required to be registered.

(2) The Exemptive Provision

The exemption provided by Rule 701(a) and (b) permits the offer and sale of securities by a non-reporting company pursuant to the terms of compensatory benefit plans or written contracts between the issuer or its parents or majority-owned subsidiaries and their employees, directors, general partners, trustees (if a business trust), officers, consultants and advisers. Although the Commission originally believed that broadening the rule to include consultants could go beyond the compensatory purposes of the provision, commenters have repeatedly stated that this limitation is unnecessary because securities issuances to such parties also can be for compensatory and not capital raising purposes and thus there is no meaningful basis for distinguishing between issuances to them and to employees. The Commission has been persuaded by the commenters on this issue. In addition, the concern expressed by the Commission in the July release about use of the rule for noncompensatory purposes is addressed by new Preliminary Note 5 and the conditions in the exemption requiring a written plan or contract. Consequently, the rule has been modified to extend to consultants and advisers who provide bona fide services to a company, its parents or majority-owned subsidiaries.

Reproposed Rule 701 would have permitted offers up to $5 million and sales up to 15% of total assets in each of an issuer's fiscal years. In no event would sales in excess of $5 million have been permitted in any fiscal year. The Commission is concerned that a sales ceiling based solely on total assets would restrict the usefulness of the exemption to certain non-reporting companies, including new companies and service companies with low asset levels and start-up companies with research and development costs that may not have been capitalized. The final rule provides an alternative to the asset-based formula and permits in any event a minimum level of offers and sales. Under the rule, the amount of securities that may be subject to outstanding offers in reliance on Rule 701 plus the amount of securities sold in the preceding 12 months in reliance on Rule 701 may not exceed the greater of $500,000 or amounts determined under two different formulas. One formula limits this amount to 15% of the issuer's total assets measured at the end of the issuer's last fiscal year. The second formula restricts the amount to no more than 15% of the outstanding securities of the class being offered. In any case, the aggregate offering price of securities subject to outstanding offers and sold in the preceding 12 months may not exceed $5 million. The revisions to the levels of permissible offers and sales as well as the rolling 12-month period are intended to increase the flexibility and utility of the exemptive provision.

Under the rule, the aggregate amount of offers in any 12-month period may not exceed the permissible level of sales in such period. Therefore, the proposed provisions which would have permitted additional sales in the event of the effectiveness of a registration statement, the announcement of a business combination or the termination of employment as a result of the death or disability of a participant are unnecessary and have been deleted.

No change has been made in the provisions which make the exemption available for transactions within the description of the rule but commenced prior to its effectiveness, if the ultimate sales occur after the rule's adoption. As proposed, offers made by an issuer prior to its becoming subject to the Exchange Act reporting provisions may be consummated afterwards in reliance upon Rule 701. Issuers registered or required to be registered under the Investment Company Act of 1940 [5] may not use Rule 701.

In view of the compensatory nature of the transactions covered by the rule, aggregation principles only consider offerings under Rule 701 within the preceding 12-month period. The ceilings for other transactions made in reliance upon different rules promulgated pursuant to section 3(b) of the Securities Act are not affected by Rule 701 offers and sales. The addition of the formula permitting a number of shares to be offered and sold necessitates additional

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[3] 15 U.S.C. 78a *et seq.* Foreign issuers submitting home country reports pursuant to Rule 12g3-2 [17 CFR 240.12g3-2] are eligible to rely on Rule 701. This position will permit U.S. employees to participate in securities offerings made under compensatory arrangements of such foreign issuers.

[4] Release No. 33-6726 (July 30, 1987) [52 FR 29033]. The Commission received an additional 9 comment letters regarding these revised proposals. The comment letters and summaries of the comments for the initial proposals and the reproposals (File No. S7-28-87) are available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[5] 15 U.S.C. 80a-1 et seq.

wording to the aggregation principles, which now exclude numbers of shares from the respective calculations as well.

The possible integration of Rule 701 offerings with other offerings is a matter of concern and has been repeatedly raised by commenters and noted by the Commission. Rule 701 addresses this concern by specifically stating that all offers and sales pursuant to its rubric are deemed to be a part of a single, discrete offering; consequently, Rule 701 transactions need not be integrated into any other offering made by the issuer or vice versa. It should be noted, however, that as public offerings are permitted under Rule 701, a general solicitation issue may result where offering materials for a Rule 701 transaction are generally used and an issuer is relying upon some other exemption for a limited offering involving the same or a similar compensation plan or arrangement.

Rule 701 specifies that all cash, property, notes, cancellation of indebtedness and other consideration should be included in calculating the aggregate offering price of securities issued in reliance on the rule. Services rendered by an employee as part of his or her regular employment would not be considered additional consideration.[6] However, if securities are issued to consultants or advisers as payment for services, the value of such services should be included in the aggregate offering price.

A definition of "compensatory benefit plan" is contained in the rule, which is patterned on Rule 405.[7] In addition, the rule dictates that both plans and contracts relating to compensation be in writing and be delivered to participants. In this way, all parties involved in the transactions will have appropriate information in hand with respect to the governing terms of the transactions. As proposed, interests that would be separate securities in compensatory benefit plans [8] also are exempted by virtue of Rule 701.

The July reproposal required that the benefit plan be established by the issuer. As long as the issuance of the securities has been authorized by the issuer, there does not appear to be a need to require that the issuer also establish the plan; thus that requirement has been eliminated.

[6] It should be noted that generally accepted accounting principles require that compensation expense be recorded for any securities issued at less than fair market value.

[7] 17 CFR 230.405.

[8] *See* Release Nos. 33-6281 (January 15, 1981) [46 FR 8446], 33-6188 (February 1, 1990) [45 FR 8960].

(3) Limitations on Resales

As proposed, securities issued in a Rule 701 transaction were to have the status of securities acquired in a transaction under section 4(2) of the Securities Act, reflecting the Commission's concern that resales without an appropriate exemption or registration would permit Rule 701 to be used to carry out distributions beyond the employee-consultant group covered by the Rule. To obviate any confusion that might result from a reference to the "non-public" offering exemption in a rule which permits public offerings, Rule 701 securities have been defined to be "restricted securities" for purposes of Rule 144 [9] and be resold if the terms of that rule are fully complied with, including the holding period, notwithstanding that the offering may not be a private placement. The issuer's obligation to ensure that no improper distribution of these securities occurs without registration or appropriate exemption is now specified in the text of the Rule. When an issuer becomes subject to the reporting provisions of the Exchange Act, shares acquired in Rule 701 transactions may be resold 90 days thereafter without compliance with paragraphs (c), (d), (e) and (h) of Rule 144 if the person is not an affiliate of the issuer or under Rule 144 without compliance with paragraph (d), if an affiliate.

B. Temporary Rules 702 and 703

Rule 702 requires the filing of Form 701, a notification with the Commission no later than 30 days following the first sales which bring aggregate Rule 701 sales over $100,000, not $50,000 as proposed. Commenters suggested that a higher threshold for the filing requirement might cause more issuers to become aware of the responsibility before the notice became due thus resulting in broader compliance with the provision. To further broad compliance, the Commission has adopted the suggestion of the commenters. Annual amendments are required within 30 days after the close of the issuer's fiscal year. Failure to comply with the provisions of Rule 702 constitutes a violation of the Rule, for which the Commission can seek judicial relief. Rule 703 constitutes an issuer disqualifier from the use of Rule 701 where the issuer has been found to have violated Rule 702. The Commission has the authority to waive these disqualifications in appropriate cases for good cause shown by the issuer. In order to facilitate the processing of these waiver requests, the Commission is amending its delegation of authority rules to indicate that the Director of the Division of Corporation Finance may grant such applications.[10]

Both Rules 702 and 703 have been adopted on a temporary basis of five years. After that time, the Commission will review the need for these requirements.

C. Form 701

Form 701 is a one-page notification, requiring disclosure about the issuer and the compensatory arrangements pursuant to which the securities are being offered. It also requires information about the amounts of securities offered and sold, the issuer's total assets and outstanding securities of the class offered. Changes to Form 701 have been made to conform the information requested to the terms of the rule.

II. Availability of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding Rules 701, 702, 703 and Form 701 has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact John D. Reynolds in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

III. Cost-Benefit Analysis

No specific data was provided on the Commission's request for costs and benefits of the proposals. It does appear however that there may be significant savings especially to small issuers and considerable benefits to compensated persons who have in the past been deprived of the opportunity to receive securities as an incentive or in payment for their services. The Commission believes that the rules will not adversely affect investor protection.

IV. Statutory Basis and Text of the Rules

The new rules and Form are being adopted pursuant to sections 3(b) and 19(a) of the Securities Act.

[9] 17 CFR 230.144.

[10] In this regard, the Commission finds that in accordance with section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), this action relates solely to agency organization, procedure or practice and thus obviates the necessity for notice and prior publication.

List of Subjects in 17 CFR Parts 200, 230 and 239

Administrative practice and procedure, Freedom of information, Privacy, Reporting and recordkeeping requirements, Securities.

Text of Amendments

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

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

1. The authority citation for Part 200 continues to read, in part, as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 851; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted. * * *

2. Section 200.30–1 is amended by adding a new paragraph (j) as follows:

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

* * * * *

(j) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and Rule 701 thereunder (§ 230.701 of this chapter), to authorize the granting of applications under Rule 703(b) (§ 230.703(b) of this chapter) upon a showing of good cause that it is not necessary under the circumstances that an exemption under Rule 701 be denied.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

4. By revising § 230.144(a)(3) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(a) * * *

(3) The term "restricted securities" means securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of Regulation D or Rule 701(c) (§ 230.701(c) of this chapter) under the Act, or securities that are subject to the resale limitations of Regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

* * * * *

5. By adding a new § 230.701 to read as follows:

§ 230.701 Exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation.

Preliminary Notes: (1) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of the federal securities laws. The rule only provides an exemption from the registration requirements of the Securities Act of 1933 (the "Act") [15 U.S.C. 77a et seq.].

(2) Nothing in the rule obviates the need to comply with any applicable state law relating to the offer and sale of securities.

(3) Attempted compliance with the rule does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(4) The rule is only available to the issuer of the securities and not to any affiliate of the issuer or to any other person for reselling the securities. The rule provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(5) In view of the primary purpose of the rule, which is to provide an exemption from the registration requirements of the Act for securities issued in compensatory circumstances, the rule is not available for plans or schemes to circumvent this purpose, such as to raise capital. In such cases, registration or some other exemption from registration under the Act is required.

(6) The exemption provided by the rule is not available to any issuer for any transaction which, while in technical compliance with such rule, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

(a) *Exemption.* Offers and sales of securities that satisfy the provisions of paragraphs (b) and (c) of this § 230.701 by an issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.] and is not an investment company registered or required to be registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] shall be exempt from the provisions of section 5 of the Act by virtue of section 3(b) of the Act. Issuers may rely on this rule with respect to offers made prior to the adoption of this § 230.701 if in accordance with this section had it been in effect, or offers made pursuant to this § 230.701 prior to the issuer becoming subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, and sales consummating such offers may be made thereafter in reliance upon this provision.

(b) *Conditions to be met.* (1) An exemption under this § 230.701 applies only to offers and sales of an issuer's securities (i) pursuant to a written compensatory benefit plan and interests in such a plan established by that issuer, its parents or majority-owned subsidiaries for the participation of their employees, directors, general partners, trustees (where the issuer is a business trust), officers, or consultants or advisers, provided that bona fide services shall be rendered by consultants or advisers and such services must not be in connection with the offer and sale of securities in a capital-raising transaction, or (iii) pursuant to a written contract relating to the compensation of such persons.

(2) For purposes of § 230.701 and 702, a compensatory benefit plan means any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension or similar plan.

(3) The issuer, its parent or majority-owned subsidiary shall provide each participant in a compensatory benefit plan with a copy of such plan. A copy of a written contract relating to compensation shall be provided to the parties.

(4)(i) Aggregate offering price means the sum of all cash, property, notes, cancellation of debt or other consideration to be received by the issuer for the issuance of the securities. Non-cash consideration should be valued in reference to bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard.

(ii) No adjustment to the aggregate offering price in this section shall be made for other offerings made in reliance upon other rules or regulations adopted pursuant to section 3(b) of the Act. The aggregate offering price under other rules and regulations adopted pursuant to section 3(b) shall not be reduced by offerings made under this § 230.701.

(iii) The number of shares permitted to be offered and sold under § 230.701(b)(5)(ii) shall not be reduced by the number of shares offered or sold in reliance upon other rules or regulations adopted pursuant to section 3(b) of the Act, or vice versa.

(5) The amount of securities offered and sold in reliance on § 230.701 shall not exceed the greater of $500,000 or the amount determined by (b)(5)(i) or (ii) of this section; provided, however, that the

aggregate offering price of securities of the issuer subject to outstanding offers made in reliance on § 230.701 plus securities of the issuer sold in the preceding 12 months in reliance on § 230.701 shall in no event exceed $5,000,000.

(i) The aggregate offering price of securities of the issuer subject to outstanding offers in reliance on § 230.701 plus securities of the issuer sold in the preceding 12 months in reliance on § 230.701 shall not exceed 15% of the total assets of the issuer, measured at the end of its last fiscal year; or

(ii) The number of securities of the issuer subject to outstanding offers in reliance on § 230.701 plus securities of the issuer sold in the preceding 12 months in reliance on § 230.701 shall not exceed 15% of the outstanding securities of that class. The outstanding securities of a class shall include securities of that class issuable pursuant to the exercise of outstanding options, warrants, rights or conversion of convertible securities, unless such options, warrants, rights or convertible securities were issued under § 230.701. If the securities offered or sold under § 230.701 are convertible securities, the number of securities subject to outstanding offers and sold under this subsection shall be deemed to be the shares of the securities into which such securities may be converted.

(6) Offers and sales exempt pursuant to this § 230.701 are deemed to be a part of a single, discrete offering and are not subject to integration with any other offering or sale whether registered under the Act or otherwise exempt from the registration requirements of the Act.

(c) *Resale limitations.* (1) Securities issued pursuant to this § 230.701 are deemed to be "restricted securities" as defined in § 230.144.

(2) Resales of such securities must be in compliance with the registration requirements of the Act or an exemption therefrom.

(3) Ninety days after the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, securities issued in a § 230.701 transaction may be resold by persons other than affiliates in reliance on § 230.144 without compliance with paragraphs (c), (d), (e) and (h) thereof, and by affiliates without compliance with paragraph (d) thereof.

6. By adding a new temporary § 230.702(T) to read as follows:

§ 230.702(T) Notice of sales pursuant to an exemption under § 230.701.

(a) The issuer shall file with the Commission five copies of a notice on Form 701 [17 CFR 239.701] not later than 30 days after the first sale of securities which brings the aggregate sales pursuant to benefit plans and/or contracts relating to compensation exempt from the registration requirements of the Act by § 230.701 above $100,000 and thereafter annually within 30 days following the end of the issuer's fiscal year.

(b) One copy of every notice on Form 701 shall be manually signed by a person duly authorized by the issuer.

(c) New filings and annual amendments must contain all the information requested on Form 701. Corrected filings need only report the name of the issuer and plan and the information being corrected. A separate filing is not required for each plan or contract relating to compensation.

(d) A notice on Form 701 is considered filed with the Commission under paragraph (a) of this § 230.702 on the date of its receipt at the Commission's principal offices in Washington, DC.

(e) This section shall be effective until [5 years from the effective date of the final rule].

7. By adding a new temporary § 230.703(T) to read as follows:

§ 230.703(T) Disqualifying provision relating to an exemption under § 230.701.

(a) No exemption under § 230.701 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with § 230.702.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

(c) This section shall be effective until [5 years from the effective date of the final rule].

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et. seq.*

9. By adding § 239.701 (Form 701) to read as follows:

§ 239.701 Form 701, report of sales securities pursuant to a compensatory benefit plan or contract relating to compensation.

This form shall be used for the report of sales of securities pursuant to a compensatory benefit plan or contract relating to compensation under Rule 701 (§ 230.701 of this chapter).

By the Commission.

April 14, 1988.

Shirley E. Hollis,

Assistant Secretary.

Note: Form 701 does not appear in the Code of Federal Regulations.

BILLING CODE 8010-01-M

OMB APPROVAL	
OMB Number:	3235-0347
Expires:	March 31, 1990
Estimated average burden hour per form	1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 701

REPORT OF SALES OF SECURITIES PURSUANT TO A COMPENSATORY BENEFIT PLAN OR CONTRACT RELATING TO COMPENSATION

(Instructions on Reverse)

Please Type or Print

1. Name of Issuer:

2. Address of Principal Executive Offices: (Number, Street, City, State, Zip Code)

3. Telephone No. (Incl. Area Code):

4. Type of Business Organization:
a. ☐ Corporation b. ☐ Limited Partnership c. ☐ Business Trust d. ☐ Other (Please specify): _____

5. Type of Filing:
a. ☐ New Filing b. ☐ Annual Amendment c. ☐ Corrected Filing

6. Full Title of the Plan:

7. Description of Contract(s):

8. Type of Plan: (Check all applicable plans)
a. ☐ Profit Sharing b. ☐ Stock Appreciation c. ☐ Retirement d. ☐ Option e. ☐ Thrift
f. ☐ Incentive g. ☐ Savings h. ☐ Bonus i. ☐ Other (Please specify): _____
Or
9. ☐ Contract Relating to Compensation

10A. Issuer's Total Assets Last Fiscal Year:

10B. Outstanding Securities of the Class Being Offered:

11. Dollar Amount and Number of Securities Sold Pursuant to Rule 701 to Date:

	Dollar Amount	Number of Securities
a. Plans - $		
b. Contracts - $		

12. Dollar Amount and Number of Securities Sold Pursuant to Rule 701 in this 12-month Period:

	Dollar Amount	Number of Securities
a. Plans - $		
b. Contracts - $		

13. What is the aggregate offering price for all securities offered pursuant to Rule 701 during this 12-month period?

	Dollar Amount
a. Plans - $	
b. Contracts - $	

The Issuer has duly caused this Notice to be signed by the undersigned duly authorized person.

Issuer (Print or Type):	Signature:	Date:
Name of Signer (Print or Type):	Title of Signer (Print or Type):	

ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

SEC 701 (4-88)

BILLING CODE 8010-01-C

Instructions

All Responses Should Be Typed or Printed

Who Must File:

All issuers making an offering of securities pursuant to a compensatory benefit plan or contract relating to compensation in reliance upon the exemption provided by Rule 701, 17 CFR 230.701.

When To File:

A notice must be filed no later than 30 days after the first sale of securities pursuant to compensatory benefit plans or contracts relating to compensation which cause aggregate sales to exceed $100,000, and thereafter annually within 30 days after the issuer's fiscal year end. A notice is deemed filed with the U.S. Securities and Exchange Commission on the date it is received by the Commission at the address below.

Where To File:

U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies Required:

Five (5) copies of this notice must be filed with the Commission, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear printed signatures.

Information Required:

New filings and annual amendments must contain all information requested. Corrected filings need only report the name of the issuer and plan and the information being corrected. A separate filing is not required for each plan or contract relating to compensation.

Whole Dollar Amounts Are Requested; Cents Should Be Rounded to the Nearest Dollar Amount.

Filing Fee:

There is no filing fee.

[FR Doc. 88-8566 Filed 4-19-88; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 229, 240 and 249

[Rel. Nos. 33-6766; 34-25578; IC-16358; FR-31; File No. S7-24-87]

Disclosure Amendments to Regulation S-K, Form 8-K and Schedule 14A Regarding Changes in Accountants and Potential Opinion Shopping Situations

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today announced the adoption of amendments to Form 8-K, Regulation S-K and Schedule 14A related to disclosure concerning a change in a registrant's certifying accountant. These amendments clarify the circumstances in which registrants are deemed to have had disagreements with their former auditors; provide for more complete disclosures concerning the circumstances surrounding the change in accountants; and call for disclosure of certain issues discussed with the newly engaged auditor during the registrant's two most recent fiscal years and any subsequent interim period prior to the new accountant's engagement. The amendments also move the substance of the disclosure requirements for changes in accountants from Item 4 of Form 8-K to Item 304 of Regulation S-K and expand the time frame for disclosure concerning a change of accountants under Item 9(d) of Schedule 14A to parallel the time frame for such disclosure under Item 304(a) of Regulation S-K.

EFFECTIVE DATE: These amendments are effective May 20, 1988. All disclosures required by the rules as amended shall be made even though the underlying events occurred prior to the effective date, provided that the auditor change occurs after the effective date.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns or John M. Riley, (202) 272-2130, Office of the Chief Accountant, or William H. Carter, (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

In July 1985, the Commission issued a concept release soliciting comments on the practice of opinion shopping and suggestions on the most practical and cost-effective manner of obtaining better disclosure of opinion shopping situations.[1] The term "opinion shopping" is generally understood to involve the search for an auditor willing to support a proposed accounting treatment designed to help a company achieve its reporting objectives even though that treatment might frustrate reliable reporting. Commentators generally recommended that if the Commission engaged in rulemaking, disclosures remain linked to changes in accountants. In June 1987, after reviewing these comments and monitoring private sector developments [2] and recommendations,[3] the Commission proposed amendments to the disclosure items concerning changes in registrants' certifying accountants.[4] The Commission is now adopting these proposals, with certain modifications suggested by commentators. The Commission is also publishing for comment related proposals in a companion release, Securities Act Release No. 33-6767.

The amendments adopted today move the substance of the disclosure requirements for changes in accountants from Item 4 of Form 8-K [5] to Item 304 of Regulation S-K,[6] and clarify and expand those requirements. The new item continues to require disclosure of "disagreements" with the registrant's former auditors and indicates that the term "disagreements" should be interpreted broadly, to include any difference of opinion on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedures, which if not resolved to the former accountant's satisfaction would have caused it to refer to the subject matter of the disagreement in connection with its report. At the suggestion of commentators, however, the item has been modified to clarify that preliminary differences of opinion based on incomplete facts are not considered "disagreements" if those differences are later resolved by obtaining more complete factual information.

The amendments also identify certain "reportable events" that call for disclosure.

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[1] Securities Act Release No. 6594 (July 1, 1985) [50 FR 28219]. The concept release noted there could be increased disclosures: (1) without regard to whether a disagreement had occurred if in connection with a change of accountants (i) the registrant solicited opinions from other accountants on specific accounting issues concerning existing or contemplated transactions, or (ii) the registrant engaged an accountant expressing an opinion different from its former accountant's position, (2) of any accounting issue for which a registrant asked for an opinion from an accountant other than its current accountant, or (3) of consultations with other accountants preceding a change in accounting principles.

[2] In July 1986 the Auditing Standards Board ("ASB") adopted Statement on Auditing Standards 50, *Reports on the Application of Accounting Principles* ("SAS 50"), to establish performance and reporting standards to be used when accountants provide written reports (or oral advice under certain circumstances) to non-audit clients on the application of generally accepted accounting principles or the type of opinion that may be rendered on a specific entity's financial statements. SAS 50 is described in Securities Act Release No. 6719 (June 18, 1987) [52 FR 24018].

[3] At the time that the Commission issued its rule proposal the National Commission on Fraudulent Financial Reporting ("NCFFR") had issued the Exposure Draft of its recommendations. In October 1987, it published its final report. One of the NCFFR's final recommendations states, "When a public company changes independent public accountants, it should be required by SEC rule to disclose the nature of any material accounting or auditing issue discussed with both its old and new auditor during the three-year period preceding the change." This recommendation was consistent with that in the Exposure Draft.

[4] Securities Act Release No. 6719 (June 18, 1987) [52 FR 24018].

[5] 17 CFR 249.308.

[6] 17 CFR 229.304.

Expanded disclosures have been adopted as proposed concerning: whether the audit committee (or board of directors) and the former auditor discussed the subject matter of reportable disagreements and events, whether the registrant granted the former auditor authorization to respond fully to inquiries of the successor auditor concerning those disagreements and reportable events, if any, and whether the former auditor resigned, declined to stand for re-election or was dismissed.

The proposed disclosure requirements concerning potential opinion shopping situations have been adopted, but with some modification. Under the adopted disclosure item, disclosure is required of only those issues discussed with the newly engaged auditors prior to their engagement that either (i) trigger SAS 50 [7] performance and reporting standards or (ii) were the subject of a reportable event or disagreement with the former auditor. The proposed requirements to name other accountants consulted on the disclosed issues, and to state their views to the extent they disagreed with the views of the new auditor, have been deleted due to the questionable relevance of such disclosures to opinion shopping situations.

Finally, the amendment to Schedule 14A,[8] Item 9, is adopted as proposed. Previously, this item had required disclosure of changes in accountants occurring since the date of the proxy statement for the most recent annual meeting of shareholders. Item 304(a), however, requires disclosure of changes in accountants occurring within the registrants two most recent fiscal years and any subsequent interim period. This amendment will conform the periods in Schedule 14A with those set forth in Item 304(a).

Proposal to update the disclosure requirements on Form N–SAR concerning changes in accountants and require parallel disclosures in this area on Forms N–SAR and 8–K were previously adopted and announced in Securities Exchange Act Release No. 25158 (November 30, 1987) [52 FR 46350]

II. Clarification of the Term "Disagreements"

Disclosure of "disagreements" between the registrant and its former auditor over accounting, auditing or financial reporting issues acts as an "early warning" of potentially troublesome areas, provides the accountant with a forum to disclose its concerns on these issues, and triggers additional disclosures under Item 304(b) of Regulation S–K.[9]

The Commission has historically stated that the term "disagreements" should be interpreted broadly.[10] Despite this position, some maintain that confusion exists concerning the scope of the term. In order to reduce the potential for such confusion an instruction to Item 304 has been adopted specifically to state that "disagreements" include any differences of opinion concerning any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which if not resolved to the satisfaction of the former accountant would have caused it to make reference in connection with its report to the subject of the disagreement. Commentators, however, indicated that the definition, as proposed, may have required disclosure of preliminary disagreements or differences of opinion based on incomplete information. The Commission has responded to this concern by adding a sentence in the instruction to state that initial differences of opinion based on incomplete facts or preliminary information are not considered to be "disagreements" if those differences are later resolved by obtaining additional, relevant facts or information. If the auditor is dismissed or resigns before initial differences of opinion are resolved, they would be reportable as "disagreements". This modification uses the language in the Statement on Auditing Standards recently adopted by the Auditing Standards Board concerning the auditor's communications with audit committees or equivalent representatives of the board of directors.[11] The effect of using this language, therefore, is that if the difference of opinion does not have to be communicated by the auditor to the audit committee under this standard because it is based on preliminary information or incomplete facts (but there is no difference of opinion when the registrant and the auditor obtain the relevant factual information), then it is not required to be disclosed as a "disagreement" under Item 304 of Regulation S–K.

Reportable Events

In the proposing release the Commission identified certain events that may not be literal "disagreements" because management may not have expressed a difference of opinion with the auditor's concern, but nonetheless should be disclosed.[12] These reportable events involve situations where the accountant has advised the registrant that it questions the accuracy or reliability of the registrant's financial statements, management's representations, the registrant's internal controls, or prior audits.

"Disagreements" and "reportable events" are similar in that they involve situations where the position of management may be considered to be generally at odds with that of the auditor. With a reportable "disagreement" the differing positions of management and the auditor have been expressed, either orally or in writing. A reportable event, however, requires only that the accountant advise the registrant of its concerns. If, therefore, the auditor is dismissed, resigns or declines to stand for re-election before the registrant responds (to either agree or disagree) to the auditor's concern, the event must be reported. The auditor may not therefore merely advise the registrant of its concern and then resign (or be dismissed) prior to receiving a response from management and walk away without disclosure of its concerns.

In order to clarify the significance of these "reportable events," they have been moved from the instruction to the body of Item 304. The new paragraph addressing "reportable events" incorporates the detailed disclosure requirements for "disagreements". The disclosure required for a "reportable event" is therefore the same as that required for a "disagreement".

In response to commentators' concerns, the Commission has clarified the list of reportable events in several respects. These events are now listed in paragraphs (A) through (D) of Item 304(a)(1)(v).

Paragraphs (A) and (B) are a codification of existing Commission positions announced in Accounting

[7] See note 2 *supra*.

[8] 17 CFR 240.14a–101.

[9] 17 CFR 229.304(b). Item 304(b) requires disclosure of what the accounting for a particular transaction or event that was the subject of a disagreement would have been under the former accountant's opinion, if the former accountant's view was different than the accounting treatment being accepted by the newly engaged accountant.

[10] *See, e.g.*, Accounting Series Release No. ("ASR") 165 (December 20, 1974).

[11] Statement on Auditing Standards No. 61, *Communication with Audit Committees or Others with Equivalent Authority and Responsibility*. This document has been approved for issuance as a final statement on auditing standards and will be available from the Auditing Standards Board, May 1, 1988.

[12] If management and the auditor had a difference of opinion regarding the auditor's concern, that difference of opinion would have been reportable as a disagreement. For example, a difference of opinion over whether an allegation regarding management's integrity should be investigated would constitute a disagreement regarding audit scope.

Series Release No. 165 (December 20, 1974). In that release, the Commission stated that a reportable disagreement exists if the accountant has advised the registrant that (1) the registrant did not have the internal controls necessary to develop reliable financial statements, (2) the accountant has discovered information that has led it to no longer be able to rely on management's representations, or (3) the accountant has discovered information that has made it unwilling to be associated with the financial statements prepared by management. Paragraph (B) has been amended to change the phrase, "the accountant has discovered information" to "information has come to the accountant's attention," to clarify the Commission's position that the manner in which the information was acquired by the accountant is irrelevant. A similar change has been made in paragraphs (C) and (D).

An additional clarification to paragraph (C) has been made from the proposal. This paragraph now requires disclosure where (1) the former accountant has advised the registrant that it must either significantly expand the scope of its audit or have an investigation conducted that may result in the auditor (A) determining that there are issues that materially impact current or past financial statements or audit reports or (B) being unwilling to rely on management's representations or be associated with the registrant's financial statements, and (2) the auditor resigns, declines to stand for re-election, or is dismissed before the expanded audit steps have been performed or the investigation has been completed. If, therefore, prior to the auditor leaving the engagement, the expanded audit procedures have been performed or the investigation has been completed to the former accountant's satisfaction, no disclosure is required under paragraph (C). It should be noted, however, that disclosure will be required pursuant to the reportable events listed in paragraphs (A), (B) or (D) if as a result of the expanded audit steps or investigation the former accountant advises the registrant that: the registrant lacks necessary internal controls, the accountant is no longer able to rely on management or be associated with its financial statements, or there are issues that materially impact current or past financial statements or audit reports that were not resolved to the former accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election. The change was made to avoid the implication that disclosures under paragraph (C) would be required only when the information that came to the accountant's attention may impact current or future financial statements and that information which may impact previously issued financial statements for either annual or interim periods would not have to be disclosed.

Paragraph (D) has been significantly revised in response to commentators' concerns. As proposed, paragraph (D) would have required disclosure of each time during approximately the past two years the accountant advised the registrant that the accountant had discovered information that may impact the fairness or reliability of audit reports or the underlying financial statements. Commentators were concerned with the breadth of this disclosure. The Commission has amended this paragraph to narrow the required disclosures. First, rather than disclosing information that "may impact" the fairness or reliability of financial statements or reports, disclosure will be required only if the former accountant has concluded that the information that has come to its attention does materially impact the financial statements or audit reports. Second, disclosure will not be required of those issues that have been resolved to the former accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election. Accordingly, paragraph (D) requires disclosure of those situations where information had come to the former accountant's attention, the former accountant concluded that the information materially impacts financial statements or audit reports (either previously issued or to be issued), and the matter was not resolved to the former accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election. In order not to be disclosed, however, the matter must be completely resolved to the auditor's satisfaction. If the matter is unresolved or not resolved to the auditor's satisfaction at the time it resigns, declines to stand for re-election or is dismissed, it must be disclosed notwithstanding management's concurrence with the auditor's concern. Further, if management addresses the auditor's concern by expressing a difference of opinion over the issue, then the matter would be disclosed as a "disagreement" (rather than as a "reportable event") whether or not eventually resolved to the auditor's satisfaction.

Paragraph (D) also has been clarified in several respects. First, the proposed paragraph (D) contained parenthetical language stating that disclosure would be required "(whether or not * * * [an] audit has been completed)." The purpose of this language was to indicate that the scope of the required disclosures would include not only prior audits and previously issued financial statements, but also information concerning audits currently in progress or contemplated, and the underlying annual and quarterly financial statements. In order to further clarify this position, the proposed parenthetical has been deleted and the paragraph has been revised to state that disclosure would be required if the information materially impacts, "(i) a previously issued audit report or the underlying financial statements, or (ii) the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report." Second, several commentators noted that paragraph (D) would require disclosure of situations that would prevent, or should be have prevented, the auditor from rendering an unqualified report on the registrant's current or prior financial statements. Parenthetical language therefore has been added to paragraph (D) to emphasize this point. Finally, the Commission believes that the revision changing the proposed requirement to disclose information that "may impact" the fairness or reliability of financial statements or reports to a requirement to disclose information that the former accountant concluded "materially impacts" those items clarifies the distinction between paragraphs (C) and (D). Paragraph (C) is meant to encompass those situations where information came to the former accountant's attention that it was unable to thoroughly explore and thus reach a conclusion as to its implications prior to its resignation, dismissal or declination to stand for re-election. Paragraph (D) is meant to encompass those situations where the accountant has reached the conclusion that the information does have a material impact.

Letter From the American Institute of Certified Public Accountants ("AICPA")

By letter dated August 20, 1986, the AICPA proposed that the Commission amend the disclosure requirements concerning changes in accountants to include, among other things, disclosure of: whether the audit or similar committee of the board of directors and the former accountant discussed the subject matter of reportable

disagreements and events;[13] whether the registrant authorized the former accountant to respond fully to the inquiries of the successor auditor concerning such issues; and whether the former accountant resigned, declined to stand for re-election or was dismissed. Commentators were generally supportive of these proposals, and they have been adopted as proposed.

III. Disclosure of Potential Opinion Shopping Situations

SEC registrants may, of course, change auditors at their discretion. It is imperative, however, that when a new auditor is engaged that auditor possess the integrity, objectivity and independence required by professional and Commission standards.[14] The auditor must, at all times, maintain a "healthy skepticism" to ensure that a review of a client's accounting treatment is fair and impartial.[15] The willingness of an auditor to support a proposed accounting treatment that is intended to accomplish the registrant's reporting objectives even though that treatment might frustrate reliable reporting, indicates that there may be a lack of such skepticism and independence on the part of the auditor.[16] The search for such an auditor by management may indicate an effort by management to avoid the requirement for an independent examination of the registrant's financial statements. Engaging an accountant under such circumstances is generally referred to as "opinion shopping." Should this practice result in false or misleading financial disclosures the registrant and the accountant would be subject to enforcement and/or disciplinary action by the Commission.[17]

The National Commission on Fraudulent Financial Reporting,[18] the heads of seven major accounting firms,[19] and others have recommended expanded disclosures in this area.[20]

In order to provide increased public disclosure of possible opinion shopping situations, the Commission has adopted new disclosure requirements concerning consultations between the registrant and the newly engaged auditor that occurred within approximately two years prior to the engagement, if those discussions (1) were or should have been subject to SAS 50 [21] or (2) concerned the subject matter of a disagreement or reportable event with the former auditor. The information to be disclosed includes: (1) an identification of the issues that were the subject of those consultations; (2) a brief description of the newly engaged accountant's oral or written views on those issues as expressed to the registrant, with any written views received by the registrant filed as an exhibit to the document containing this disclosure; and (3) a statement by the registrant whether it consulted the former accountant on those issues, and if so, a summary of the former accountant's views. The new accountant will have the opportunity to review the registrant's summary of its views and furnish a letter (to be filed as an exhibit to the filing or report containing this disclosure) to provide additional information on clarify the registrant's summary of its views and comment on other disclosures under this item. The registrant also must request that the former accountant review the disclosure and provide a statement as to whether it agrees with the registrant's summary of its views, and if not, the respects in which it does not agree.

The adopted disclosure item is narrower than the proposal in two respects. First, the proposal would have required disclosure of any issue material to or expected in the future to be material to the registrant's financial statements that the registrant discussed with the newly engaged auditor during approximately two years prior to its engagement. The adopted disclosure item narrows the range of discloseable issues to those that were the subject of SAS 50 requirements or those that were the subject of reportable events or disagreements with the former auditors. Commentators were concerned with the breadth of the proposed disclosure requirement. These commentators indicated that the proposal could result in voluminous disclosures that would

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[13] The AICPA's letter suggested that disclosure be provided when the former auditor provides a written communication to the audit committee or the board of directors that "specifically communicated concerns or conclusions regarding the integrity of management or the presence or materiality of possible irregularities or illegal acts that were not resolved to the former accountant's satisfaction." As discussed in the proposing release, such a letter would be encompassed by the broad term "disagreements," and the Commission's proposal, therefore, substituted language referring to the written communication with the term "disagreements." *See* Securities Act Release No. 6719 (June 18, 1987) [52 FR 24018].

[14] See, e.g., Rule 2-01(c), Regulation S-X, 17 CFR 210.2-01(c); Statement on Auditing Standards No. 1, AU Section 220. As recognized by the Commission and the courts, not only the fact but also the appearance of independence by the auditor is essential to the integrity of the securities markets. *U.S. v. Arthur Young*, 465 U.S. 805, 819 n. 15 (1984); Securities Act Release No. 33-6594 [July 1, 1985] [50 FR 28219]. Opinion shopping has an obvious and negative impact on the general public's perception of the professionalism exhibited by accountants and their firms.

[15] See, *In the Matter of Touche Ross & Co.*, Accounting and Auditing Enforcement Release ("AAER") No. 16 (November 13, 1983].

[16] As previously discussed, a disclosure requirement is being adopted as part of Item 304(a)(1)(iv) that pertains to limitations on discussions between successor and predecessor auditors concerning matters that were the subject of reportable events or disagreements. It should be noted, however, that Statement of Auditing Standards No. 7 states, "Inquiry of the predecessor is a necessary procedure . . . ," and stresses that such inquiries or consultations should include all matters that may "assist him in determining whether to accept the engagement." While this standard does not directly prohibit the accountant from accepting an engagement where limitations have been imposed on discussions between the new and former accountants; the new accountant should inquire as to the reasons and consider the implications of such limitations in deciding whether to accept the engagement. In the Commission's view, the imposition of limitations on such communication may materially impact the conduct of audits. Therefore, accountants accepting such engagements should ensure appropriate work paper documentation as to the nature of, and the reasons for, any such limitations and their responses thereto.

[17] For example, if the registrant's financial statements are materially misleading, the registrant may be in violation of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 ("the Exchange Act"), 15 U.S.C. 78a et seq. If fraudulent activity has occurred, the registrant may have violated Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77a et seq., or Section 10(b) of the Exchange Act. Among other areas of potential liability, the accountant may directly violate several sections of the federal securities laws, including Section 10(b) above, and may be subject to disciplinary action under Rule 2(e) of the Commission's Rules of Practice and Investigations, 17 CFR 201.2(e). *See, e.g., In the Matter of Frantz, Warrick, Strack & Associates*, AAER No. 86 (February 10, 1986); *In the Matter of Broadview Financial Corporation*, AAER No. 54 (April 17, 1985); *In the Matter of Stephen O. Wade; Ralph H. Newton, Jr.; Clark C. Burritt, Jr.*, AAER No. 32 (June 25, 1984); *In the Matter of Accounting for Gains and Losses Incurred in Connection With Certain Securities Transactions*, AAER No. 14 (October 6, 1983).

[18] See note 3 *supra*.

[19] See the April 1986 paper entitled "Recommendations to the AICPA Board of Directors: The Future Relevance, Reliability and Credibility of Financial Information" signed by the managing partners of seven major accounting firms.

[20] For a discussion of these recommendations, see the proposing release, Securities Act Release No. 6719, *supra*.

[21] See note 2 *supra*. Paragraph 2 of SAS 50 states: 2. This statement provides guidance that an accountant in public practice ("reporting accountant"), either in connection with a proposal to obtain a new client or otherwise, should apply—

a. When preparing a written report on the application of accounting principles to specified transactions, either completed or proposed ("specific transactions").

b. When requested to provide a written report on the type of opinion that may be rendered on a specific entity's financial statements.

c. When preparing a written report to intermediaries on the application of accounting principles not involving facts or circumstances of a particular principal ("hypothetical transactions").

This statement also applies to oral advice on the application of accounting principles to a specific transaction, or the type of opinion that may be rendered on an entity's financial statements, when the reporting accountant concludes the advice is intended to be used by a principal to the transaction as an important factor considered in reaching a decision.

not highlight the areas most important to investors, shareholders and the public. The Commission has therefore narrowed the disclosure requirement to those consultations that would be most likely to be relied on by registrants due to the auditor's compliance with the SAS 50 reporting, performance and documentation standards,[22] and those areas that have been the subject of contention between the registrant and the former auditor.

Second, the Commission has determined not to adopt the proposed disclosure requirement calling for the names of other accountants consulted on the listed issues and an indication of the extent the views of such other accountants materially differed from the views of the new accountant. After a review of the comments, it has been determined that effective disclosure would necessitate disclosing each consulted accountant's individual views on each issue. Further, commentators argued that the views of other accountants not subsequently engaged as the registrant's auditor may not be relevant. The Commission has therefore determined to adopt, at this time, only those disclosure requirements focusing on the registrant's relationship with its new and former auditors. The Commission staff monitors changes in accountants disclosures closely, however, and if necessary will readdress this area.

IV. Revision of Item 4, Form 8–K, and Item 9 of Schedule 14A

Previously, Item 304 of Regulation S–K referred to Item 4 of Form 8–K for the substantive disclosure requirements concerning changes in accountants. Each time Item 304 was incorporated into a disclosure form,[23] the preparer of the form had to consult not only Item 304, but also Form 8–K. The Commission has therefore moved the location of the substance of these requirements to Item 304 of Regulation S–K, and amended Item 4 of Form 8–K to refer to Item 304. This revision, however, is only a change in the location of the substantive disclosure requirements for changes in accountants and does not affect the use of Form 8–K as the most common vehicle for reporting changes in accountants.

The Commission has also amended Item 9(d) of Schedule 14A to conform the time frame in a proxy statement for disclosure concerning a change of accountants with that found in Item 304(a). The period for change in accountants disclosure under Item 304(a), the registrant's two most recent fiscal years and any subsequent interim period, was selected because the information requested under this item generally appears in reports or registration statements containing two years audited balance sheets and three years audited income statements. The disclosure concerning changes in accountants remains relevant for the periods that the financial statements audited by the former accountant continue to be presented. As proxy statements are preceded or accompanied by an annual report to shareholders meeting the same financial statement requirements, the Commission has determined that disclosure of change in accountants information should be presented for the same period as that required under Item 304(a).

V. Cost/Benefits Analysis

The Commission stated in the proposing release that the additional instruction to clarify the term "disagreements" and the requirement to disclose certain reportable events are a codification of existing Commission and staff interpretations; therefore, these proposals should not impose new costs or obligations on registrants. In adopting these disclosure requirements, the Commission has reduced the costs associated with this disclosure by not requiring disclosure of differences of opinion based on incomplete facts or preliminary information and requiring disclosure of certain "reportable events" that impact the fairness or reliability of financial statements or audit reports only if those events have not been resolved to the accountant's satisfaction. There should be negligible costs related to the disclosure of whether the former accountant resigned, declined to stand for re-election, or was dismissed; whether the audit committee or board of directors discussed the disagreement or reportable event with the former accountant; and whether the registrant authorized the former accountant to discuss the disagreement or reportable event with the new accountant, and any limitations on such discussions. This information should be readily available to the registrant and result in brief factual statements.

The proposal to require disclosure of potential opinion shopping situations would require the presentation of new information. The cost of obtaining this information, however, should be reduced to: (1) The availability of SAS 50 reports furnished by the new accountant prior to its engagement on the issues that are to be disclosed and (2) the existing requirement for the registrant to request a letter addressed to the Commission from the former accountant. There is no requirement in the proposals for a new evaluation of these issues by the new or former accountants. There would be only a description of previous positions expressed by the new and former accountant to the registrant. The Commission, in adopting the proposal, has reduced the potential costs of the disclosure from those that may have resulted from disclosures included in the original proposal by (1) Limiting disclosure to those issues either subject to SAS 50 or concerning a reportable event or disagreement between the former auditor and the registrant, and (2) not requiring disclosure of the names of other accountants consulted on the disclosed issues and the extent to which their views materially differed from the views of the newly engaged accountant. The benefits of this disclosure including exposing situations where opinion shopping may have occurred and providing information to shareholders and investors on various views regarding the accounting, auditing or financial disclosure issues that are, or may become, material to the registrant's financial statements.

Conforming the time frame in Item 9(d) of Schedule 14A with the time frame of Item 304(a) of Regulation S–K will not impose a significant cost on registrants because this information, except in rare cases, will simply consolidate information that has been previously disclosed.

VI. Certain Findings

Section 23(a)(2) of the Exchange Act [24] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the

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[22] The Commission is aware that there may be valid reasons for obtaining the views of an independent accountant other than the registrant's current accountant, and that some registrants have a practice of routinely using a separate accountant for additional advice on complex issues. The Commission does not wish to interfere with such practices. When a registrant changes auditors, however, it is important for investors to be aware of any pre-existing relationships or understandings between the registrant and the new auditor and how the engagement of the new auditor may impact the registrant's accounting and reporting policies.

[23] Item 304 information is required by Forms S–1, S–2, S–4, S–11 and S–18 under the Securities Act of 1933, 17 CFR 239.11, 239.12, 239.25, 239.18 and 239.28 respectively, and Forms 10 and 10–K and Schedule 14A under the Securities Exchange Act of 1934, 17 CFR 249.210, 249.310 and 249.14a–101, respectively.

[24] 15 U.S.C. 78w(a)(2).

amendments and additions to Form 8–K, Regulation S–K and Schedule 14A in light of the standard cited in section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

VII. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis in accordance with 5 U.S.C. 604 has been prepared regarding the amendments to Item 4 of Form 8–K, Item 304 of Regulation S–K and Item 9 of Schedule 14A. Members of the public who wish to obtain a copy of either the Final Regulatory Flexibility Analysis or the Initial Regulatory Flexibility Analysis should contact Robert E. Burns or John M. Riley, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

VIII. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated to:

1. Include a new paragraph 603.06 to include the text in topic II of this release, "Clarification of the Term Disagreements".

2. Include a new paragraph 603.07 to include the text in topic III of this release, "Disclosure of Potential Opinion Shopping Situations".

List of Subjects in 17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements and securities.

IX. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K.

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 78o(d), 78w(a).

2. By revising § 229.304 to read as follows:

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a)(1) If during the registrant's two most recent fiscal years or any subsequent interim period, an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant who was previously engaged to audit a significant subsidiary and on whom the principal accountant expressed reliance in its report, has resigned (or indicated it has declined to stand for re-election after the completion of the current audit) or was dismissed, then the registrant shall:

(i) State whether the former accountant resigned, declined to stand for re-election or was dismissed and the date thereof.

(ii) State whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; and also describe the nature of each such adverse opinion, disclaimer of opinion, modification, or qualification.

(iii) State whether the decision to change accountants was recommended or approved by:

(A) Any audit or similar committee of the board of directors, if the issuer has such a committee; or

(B) The board of directors, if the issuer has no such committee.

(iv) State whether during the registrant's two most recent fiscal years and any subsequent interim period preceding such resignation, declination or dismissal there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of the former accountant, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report. Also, (A) describe each such disagreement; (B) state whether any audit or similar committee of the board of directors, or the board of directors, discussed the subject matter of each of such disagreements with the former accountant; and (C) state whether the registrant has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements and, if not, describe the nature of any limitation thereon and the reason therefore. The disagreements required to be reported in response to this Item include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Item are those that occur at the decision-making level, i.e., between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(v) Provide the information required by paragraph (a)(1)(iv) of this Item for each of the kinds of events (even though the registrant and the former accountant did not express a difference of opinion regarding the event) listed in paragraphs (a)(1)(v) (A) through (D) of this section, that occurred within the registrant's two most recent fiscal years and any subsequent interim period preceding the former accountant's resignation, declination to stand for re-election, or dismissal ("reportable events"). If the event led to a disagreement or difference of opinion, then the event should be reported as a disagreement under paragraph (a)(1)(iv) and need not be repeated under this paragraph.

(A) The accountant's having advised the registrant that the internal controls necessary for the registrant to develop reliable financial statements do not exist;

(B) The accountant's having advised the registrant that information has come to the accountant's attention that has led it to no longer be able to rely on management's representations, or that has made it unwilling to be associated with the financial statements prepared by management;

(C) (*1*) The accountant's having advised the registrant of the need to expand significantly the scope of its audit, or that information has come to the accountant's attention during the time period covered by Item 304(a)(1)(iv), that if further investigated may:

(*i*) Materially impact the fairness or reliability of either: a previously issued audit report or the underlying financial statements; or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that may prevent it from rendering an unqualified audit report on those financial statements), or

(*ii*) Cause it to be unwilling to rely on management's representations or be associated with the registrant's financial statements, and

(*2*) Due to the accountant's resignation (due to audit scope limitations or otherwise) or dismissal, or for any other reason, the accountant did not so expand the scope of its audit or conduct such further investigation; or

(D) (*1*) The accountant's having advised the registrant that information has come to the accountant's attention that it has concluded materially impacts the fairness or reliability of either (*i*) a previously issued audit report or the underlying financial statements, or (*ii*) the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that, unless resolved to the accountant's satisfaction, would prevent it from rendering an unqualified audit report on those financial statements), and

(*2*) Due to the accountant's resignation, dismissal or declination to stand for re-election, or for any other reason, the issue has not been resolved to the accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election.

(2) If during the registrant's two most recent fiscal years or any subsequent interim period, a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements, or as an independent accountant to audit a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, then the registrant shall identify the newly engaged accountant and indicate the date of such accountant's engagement. In addition, if during the registrant's two most recent fiscal years, and any subsequent interim period prior to engaging that accountant, the registrant (or someone on its behalf) consulted the newly engaged accountant regarding:

(i) Either: the application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the registrant's financial statements, and either a written report was provided to the registrant or oral advice was provided that the new accountant concluded was an important factor considered by the registrant in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was either the subject of a disagreement (as defined in paragraph 304(a)(1)(iv) and the related instructions to this item) or a reportable event (as described in paragraph 304(a)(1)(v)), then the registrant shall:

(A) So state and identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the newly engaged accountant as expressed orally or in writing to the registrant on each such issue and, if written views were received by the registrant, file them as an exhibit to the report or registration statement requiring compliance with this Item 304(a);

(C) State whether the former accountant was consulted by the registrant regarding any such issues, and if so, provide a summary of the former accountant's views; and

(D) Request the newly engaged accountant to review the disclosure required by this Item 304(a) before it is filed with the Commission and provide the new accountant the opportunity to furnish the registrant with a letter addressed to the Commission containing any new information, clarification of the registrant's expression of its views, or the respects in which it does not agree with the statements made by the registrant in response to Item 304(a). The registrant shall file any such letter as an exhibit to the report or registration statement containing the disclosure required by this Item.

(3) The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the report or registration statement containing this disclosure. If the former accountant's letter is unavailable at the time of filing, it shall be filed by amendment within thirty days thereafter.

(b) If:

(1) In connection with a change in accountants subject to paragraph (a) of this Item 304, there was any disagreement of the type described in paragraph (a)(1)(iv) or any reportable event as described in paragraph (a)(1)(v) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved such disagreement or reportable event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, the registrant shall state the existence and nature of the disagreement or reportable event and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required.

These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

Instructions to Item 304: 1. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported as that term is defined in Rule 12b–2 under the Exchange Act (§ 240.12b–2 of this chapter); the disclosure called for by paragraph (a) must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§ 240.14a–101 of this chapter). The disclosure called for by paragraph (b) of this section must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this section in an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3 of this chapter) or Rule 14c–3 (§ 240.14c–3 of this chapter), or in a proxy or information statement filed pursuant to the requirements of Schedule 14A or 14C (§ 240.14a–101 or § 240.14c–101 of this chapter), in lieu of a letter pursuant to paragraph (a)(2)(D) or (a)(3), prior to filing such materials with or furnishing such materials to the Commission, the registrant shall furnish the disclosure required by paragraph (a) of this section to any former accountant engaged by the registrant during the period set forth in paragraph (a) of this section and to the newly engaged accountant. If any such accountant believes that the statements made in response to paragraph (a) of this section are incorrect or incomplete, it may present its views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the registrant within ten business days of the date the accountant receives the registrant's disclosure. Further, unless the written views of the newly engaged accountant required to be filed as an exhibit by paragraph (a)(2)(B) of this Item 304 have been previously filed with the Commission the registrant shall file a Form 8–K concurrently with the annual report or proxy or information statement for the purpose of filing the written views as exhibits thereto.

3. The information required by Item 304(a) need not be provided for a company being acquired by the registrant that is not subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 for its latest fiscal year.

4. The term "disagreements" as used in this Item shall be interpreted broadly, to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion. For purposes of this Item, however, the term disagreements does not include initial differences of opinion based on incomplete facts or preliminary information that were later resolved to the former accountant's satisfaction by, and providing the registrant and the accountant do not continue to have a difference of opinion upon, obtaining additional relevant facts or information.

5. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or their designee) will generally suffice as the accountant advising the registrant of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part as follows:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. * * *

4. By revising Item 9(d) of Schedule 14A (§ 240.14a–101) of this chapter to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 9. * * *

(d) If during the registrant's two most recent fiscal years or any subsequent interim period, (1) an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant on whom the principal accountant expressed reliance in its report regarding a significant subsidiary, has resigned (or indicated it has declined to stand for re-election after the completion of the current audit) or was dismissed, or (2) a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements or as an independent accountant on whom the principal accountant has expressed or is expected to express reliance in its report regarding a significant subsidiary, then, notwithstanding any previous disclosure, provide the information required by Item 304(a) of Regulation S–K (§ 229.304 of this chapter).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

6. By amending Item 4 of Form 8–K (§ 249.308 of this chapter) to read as follows:

Editorial Note: Form 8–K does not appear in the Code of Federal Regulations.

Form 8–K.

* * * * *

Item 4. Changes in Registrant's Certifying Accountant.

(a) If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates it declines to stand for re-election after the completion of the current audit) or is dismissed, then provide the information required by Item 304(a)(1), including compliance with Item 304(a)(3), of Regulation S–K, § 229.304(a)(1) and (a)(3) of this chapter, and the related instructions to Item 304.

(b) If a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements or as an independent accountant on whom the principal accountant has expressed, or is expected to express, reliance in its report regarding a significant subsidiary, then provide the information required by Item 304(a)(2), of Regulation S–K, § 229.304(a)(2) of this chapter.

Instruction. The resignation or dismissal of an independent accountant, or its declination to stand for re-election, is a reportable event separate from the engagement of a new independent accountant. On some occasions two reports on Form 8–K will be required for a single change in accountants, the first on the resignation (or declination to stand for re-election) or dismissal of the former accountant and the second when the new accountant is engaged. Information required in the second Form 8–K in such situations need not be provided to the extent it has been previously reported in the first such Form 8–K.

* * * * *

April 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–8571 Filed 4–19–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87–35–000]

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

April 15, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee the Director, Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period May through July 1988. This rate is set at 12.51 percent.

EFFECTIVE DATE: May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8283.

SUPPLEMENTARY INFORMATION:

Issued: April 15, 1988.

On January 27, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this procedure, the Commission, by its designee, the Director of the Office of Economic Policy, determines that the benchmark rate of return on common equity applicable to rate filings made during the period May 1 through July 31, 1988, is 12.51 percent.

According to § 37.9 of the Commission's regulations,[2] each quarterly benchmark rate of return is set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 100

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 489, 53 FR 3342 (Feb. 5, 1988), III FERC Stats. & Regs. ¶ 30,795 (Jan. 29, 1988).

[2] 18 CFR 37.9 (1987).

utilities. The average yield is used in the following formula with fixed adjustment factors (determined in the annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.36$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The median dividend yields for the sample of utilities for the fourth quarter of 1987 and the first quarter of 1988 are 8.21 and 7.76 percent, respectively. The average is 7.99 percent. Using the latter yield produces an average cost of common equity of 12.51 percent. The attached appendix provides the supporting data for the latest quarter used in this update.

Specifically, this notice is intended to supplement the generic rate of return rule announced in Order No. 489, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective May 1, 1988.

Douglas R. Bohi

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
2/1/86–4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86–7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86–10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86–1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87–4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87–7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87–10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87–1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88–4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88–7/31/88	1.02	4.36	7.99	12.51	12.51

Note: The Appendix will not be published in Code of Federal Regulations.

Appendix

Exhibit No. and title

1—Initial sample of utilities

2—Utilities excluded from the sample for the indicated quarter due to either zero dividends or a cut in dividends for this quarter or the prior three quarters

3—Annualized dividend yields for the indicated quarter for utilities retained in the sample.

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

Exhibit 1.

Exhibit 2.

Exhibit 3.

BILLING CODE 6717-01-M

EXHIBIT 1

SAMPLE OF UTILITIES

UTILITY	TICKER SYMBOL	INDUSTRY CODE	UTILITY	TICKER SYMBOL	INDUSTRY CODE
ALLEGHENY POWER SYSTEM	AYP	4911	MIDDLE SOUTH UTILITIES	MSU	4911
AMERICAN ELECTRIC POWER	AEP	4911	MIDWEST ENERGY CO	MWE	4931
ATLANTIC ENERGY INC	ATE	4911	MINNESOTA POWER & LIGHT	MPL	4911
BALTIMORE GAS & ELECTRIC	BGE	4931	MONTANA POWER CO	MTP	4931
BLACK HILLS CORP	BKH	4911	NECO ENTERPRISES INC	NPT	4911
BOSTON EDISON CO	BSE	4911	NEVADA POWER CO	NVP	4911
CAROLINA POWER & LIGHT	CPL	4911	NEW ENGLAND ELECTRIC SYSTEM	NES	4911
CENTERIOR ENERGY CORP	CX	4911	NEW YORK STATE ELEC & GAS	NGE	4931
CENTRAL & SOUTH WEST CORP	CSR	4911	NIAGARA MOHAWK POWER	NMK	4931
CENTRAL HUDSON GAS & ELEC	CNH	4931	NIPSCO INDUSTRIES INC	NI	4931
CENTRAL ILL PUBLIC SERVICE	CIP	4931	NORTHEAST UTILITIES	NU	4931
CENTRAL LOUISIANA ELECTRIC	CNL	4911	NORTHERN STATES POWER-MN	NSP	4931
CENTRAL MAINE POWER CO	CTP	4911	OHIO EDISON CO	OEC	4911
CENTRAL VERMONT PUB SERV	CV	4911	OKLAHOMA GAS & ELECTRIC	OGE	4911
CILCORP INC	CER	4931	ORANGE & ROCKLAND UTILITIES	ORU	4931
CINCINNATI GAS & ELECTRIC	CIN	4931	PACIFIC GAS & ELECTRIC	PCG	4931
CMS ENERGY CORP	CMS	4931	PACIFICORP	PPW	4931
COMMONWEALTH EDISON	CWE	4911	PENNSYLVANIA POWER & LIGHT	PPL	4911
COMMONWEALTH ENERGY SYSTEM	CES	4931	PHILADELPHIA ELECTRIC CO	PE	4931
CONSOLIDATED EDISON OF NY	ED	4931	PINNACLE WEST CAPITAL CORP	PNW	4911
DELMARVA POWER & LIGHT	DEW	4931	PORTLAND GENERAL CORP	PGN	4911
DETROIT EDISON CO	DTE	4911	POTOMAC ELECTRIC POWER	POM	4911
DOMINION RESOURCES INC-VA	D	4931	PUBLIC SERVICE CO OF COLO	PSR	4931
DPL INC	DPL	4931	PUBLIC SERVICE CO OF IND	PIN	4911
DUKE POWER CO	DUK	4911	PUBLIC SERVICE CO OF N H	PNH	4911
DUQUESNE LIGHT CO	DQU	4911	PUBLIC SERVICE CO OF N MEX	PNM	4931
EASTERN UTILITIES ASSOC	EUA	4911	PUBLIC SERVICE ENTERPRISE GP	PEG	4931
EMPIRE DISTRICT ELECTRIC CO	EDE	4911	PUGET SOUND POWER & LIGHT	PSD	4911
FITCHBURG GAS & ELEC LIGHT	FGE	4931	ROCHESTER GAS & ELECTRIC	RGS	4931
FLORIDA PROGRESS CORP	FPC	4911	SAN DIEGO GAS & ELECTRIC	SDO	4931
FPL GROUP INC	FPL	4911	SAVANNAH ELEC & POWER	SAV	4911
GENERAL PUBLIC UTILITIES	GPU	4911	SCANA CORP	SCG	4931
GREEN MOUNTAIN POWER CORP	GMP	4911	SIERRA PACIFIC RESOURCES	SRP	4931
GULF STATES UTILITIES CO	GSU	4911	SOUTHERN CALIF EDISON CO	SCE	4911
HAWAIIAN ELECTRIC INDS	HE	4911	SOUTHERN CO	SO	4911
HOUSTON INDUSTRIES INC	HOU	4911	SOUTHERN INDIANA GAS & ELEC	SIG	4931
I E INDUSTRIES INC	IEL	4931	ST JOSEPH LIGHT & POWER	SAJ	4931
IDAHO POWER CO	IDA	4911	TECO ENERGY INC	TE	4911
ILLINOIS POWER CO	IPC	4931	TEXAS UTILITIES CO	TXU	4911
INTERSTATE POWER CO	IPW	4931	TNP ENTERPRISES INC	TNP	4911
IOWA RESOURCES INC	IOR	4911	TUCSON ELECTRIC POWER CO	TEP	4911
IOWA-ILLINOIS GAS & ELEC	IWG	4931	UNION ELECTRIC CO	UEP	4911
IPALCO ENTERPRISES INC	IPL	4911	UNITED ILLUMINATING CO	UIL	4911
KANSAS CITY POWER & LIGHT	KLT	4911	UNITIL CORP	UTL	4911
KANSAS GAS & ELECTRIC	KGE	4911	UTAH POWER & LIGHT	UTP	4911
KANSAS POWER & LIGHT	KAN	4931	UTILICORP UNITED INC	UCU	4931
KENTUCKY UTILITIES CO	KU	4911	WASHINGTON WATER POWER	WWP	4931
LONG ISLAND LIGHTING	LIL	4931	WISCONSIN ENERGY CORP	WEC	4931
LOUISVILLE GAS & ELECTRIC	LOU	4931	WISCONSIN POWER & LIGHT	WPL	4931
MAINE PUBLIC SERVICE	MAP	4911	WISCONSIN PUBLIC SERVICE	WPS	4931

N = 100

EXHIBIT 2

UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER
DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR
THIS QUARTER OR THE PRIOR THREE QUARTERS

---------- YEAR=88 QUARTER=1 ----------

TICKER SYMBOL	UTILITY	REASON FOR EXCLUSION
CMS	CMS ENERGY CORP	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 03/31/88
CNH	CENTRAL HUDSON GAS & ELEC	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 03/31/88
GSU	GULF STATES UTILITIES CO	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 03/31/88
LIL	LONG ISLAND LIGHTING	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 03/31/88
MSU	MIDDLE SOUTH UTILITIES	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 03/31/88
NGE	NEW YORK STATE ELEC & GAS	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 03/31/88
NI	NIPSCO INDUSTRIES INC	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 09/30/87
NMK	NIAGARA MOHAWK POWER	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 09/30/87
PIN	PUBLIC SERVICE CO OF IND	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 03/31/88
PNH	PUBLIC SERVICE CO OF N H	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 03/31/88
RGS	ROCHESTER GAS & ELECTRIC	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 09/30/87

N= 11

EXHIBIT 3

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

YEAR=88 QUARTER=1

TICKER SYMBOL	PRICE, 1ST MONTH OF QRTR-HIGH	PRICE, 1ST MONTH OF QRTR-LOW	PRICE, 2ND MONTH OF QRTR-HIGH	PRICE, 2ND MONTH OF QRTR-LOW	PRICE, 3RD MONTH OF QRTR-HIGH	PRICE, 3RD MONTH OF QRTR-LOW	AVERAGE PRICE	DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
AEP	29.750	26.000	29.750	28.000	28.875	26.625	28.167	2.260	8.024
ATE	33.750	30.750	34.000	32.750	34.250	31.750	32.875	2.680	8.152
AYP	40.625	37.375	41.500	38.625	39.750	37.250	39.188	3.000	7.656
BGE	33.250	29.375	33.375	31.375	32.375	29.500	31.542	1.900	6.024
BKH	24.250	22.500	25.000	23.750	26.250	24.500	24.375	1.400	5.744
BSE	18.750	17.875	18.500	16.250	17.250	16.000	17.438	1.820	10.437
CER	34.250	29.500	34.750	31.250	33.250	30.750	32.292	2.400	7.432
CES	30.250	27.875	28.750	27.000	29.000	27.500	28.396	2.800	9.861
CIN	26.875	24.375	27.000	25.500	27.125	25.250	26.021	2.200	8.455
CIP	23.000	19.875	23.500	21.375	22.750	20.750	21.875	1.720	7.863
CNL	33.375	30.750	33.750	32.125	33.500	32.125	32.604	2.200	6.748
CPL	35.875	32.875	36.000	34.000	36.000	33.750	34.750	2.760	7.942
CSR	34.625	29.500	34.750	31.625	32.500	30.000	32.167	2.440	7.585
CTP	17.625	15.500	17.750	16.625	17.500	16.375	16.896	1.480	8.760
CV	23.625	21.250	25.750	22.500	25.000	22.500	23.438	1.900	8.107
CWE	30.750	26.875	30.500	27.250	29.125	26.375	28.479	3.000	10.534
CX	18.000	15.625	17.250	15.750	16.375	15.125	16.354	2.560	15.653
D	47.250	41.125	47.000	42.875	44.125	41.500	43.979	3.080	7.003
DEW	18.500	17.125	19.250	18.000	18.875	17.500	18.208	1.460	8.018
DPL	26.875	23.250	27.000	25.750	26.625	24.500	25.667	2.160	8.416
DQU	13.000	11.750	13.875	12.750	14.750	13.250	13.229	1.200	9.071
DTE	15.250	13.500	15.375	13.875	14.625	12.500	14.188	1.680	11.841
DUK	49.000	43.000	49.000	45.625	47.000	44.000	46.271	2.800	6.051
ED	47.250	42.000	47.500	44.250	45.625	42.875	44.917	3.200	7.124
EDE	30.625	29.875	31.875	30.250	31.500	30.125	30.708	2.120	6.904
EUA	29.250	25.375	27.625	24.000	26.125	24.125	26.083	2.300	8.818
FGE	24.750	21.625	27.500	25.250	28.500	26.875	25.750	1.600	6.214
FPC	37.500	32.000	37.750	35.500	35.875	33.125	35.292	2.480	7.027
FPL	31.875	28.375	32.500	30.500	31.000	28.625	30.479	2.120	6.956
GMP	26.750	24.625	26.625	25.125	26.750	24.500	25.729	1.860	7.229
GPU	31.500	27.250	31.375	29.875	32.750	31.000	30.625	1.200	3.918
HE	29.750	25.875	30.375	29.125	33.000	29.500	29.604	1.920	6.486
HOU	33.625	30.000	33.875	31.250	32.000	29.875	31.771	2.880	9.065
IDA	24.750	22.000	25.375	24.000	25.000	23.000	24.021	1.800	7.493
IEL	24.000	22.500	24.875	23.875	25.000	22.625	23.813	2.020	8.483
IOR	21.250	18.875	22.000	20.250	21.750	20.125	20.708	1.660	8.016
IPC	25.125	23.125	24.500	22.750	23.000	22.250	23.458	2.640	11.254
IPL	24.375	21.250	24.375	23.125	24.250	21.875	23.208	1.640	7.066
IPW	23.000	20.000	23.750	22.375	23.500	21.625	22.375	1.960	8.760
IWG	41.000	37.500	41.500	39.000	41.500	39.250	39.958	3.180	7.958
KAN	27.000	22.500	26.500	25.000	25.125	23.500	24.938	1.720	6.897
KGE	20.500	18.625	21.500	20.000	20.750	19.000	20.063	1.480	7.377
KLT	28.125	24.875	29.250	27.500	28.000	26.250	27.333	2.240	8.195
KU	19.625	17.500	20.625	19.125	20.375	18.500	19.292	1.340	6.946
LOU	33.875	30.250	35.500	34.000	35.375	31.250	33.375	2.660	7.970
MAP	25.375	23.750	26.250	25.375	26.250	26.000	25.500	1.800	7.059
MPL	25.500	21.000	26.500	24.500	25.000	22.750	24.208	1.720	7.105
MTP	35.500	30.250	35.250	32.625	35.000	33.000	33.604	2.680	7.975
MWE	19.000	16.625	19.875	18.500	19.625	18.625	18.708	1.520	8.125
NES	24.500	22.000	24.125	22.750	24.250	21.250	23.146	2.040	8.814
NPT	21.750	20.250	21.375	19.750	21.375	19.625	20.688	1.500	7.251

EXHIBIT 3 Continued

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

YEAR=88 QUARTER=1

TICKER SYMBOL	PRICE, 1ST MONTH OF QRTR-HIGH	PRICE, 1ST MONTH OF QRTR-LOW	PRICE, 2ND MONTH OF QRTR-HIGH	PRICE, 2ND MONTH OF QRTR-LOW	PRICE, 3RD MONTH OF QRTR-HIGH	PRICE, 3RD MONTH OF QRTR-LOW	AVERAGE PRICE	DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
NSP	32.375	29.500	33.375	31.125	32.625	29.875	31.479	2.020	6.417
NU	23.125	20.250	22.375	20.125	20.625	19.250	20.958	1.760	8.398
NVP	20.000	18.375	22.250	19.625	21.375	20.000	20.271	1.480	7.301
OEC	21.000	19.375	20.875	19.125	19.250	18.375	19.667	1.960	9.966
OGE	33.000	28.500	33.375	31.375	32.500	30.625	31.563	2.280	7.224
ORU	31.000	27.875	33.500	30.750	31.000	29.250	30.563	2.220	7.264
PCG	17.875	15.875	18.000	17.000	17.500	15.125	16.896	1.920	11.364
PE	21.250	18.500	21.250	18.500	19.500	18.000	19.500	2.200	11.282
PEG	26.875	23.500	26.875	24.125	24.750	22.750	24.813	2.000	8.060
PGN	24.250	21.250	24.750	23.000	24.250	21.500	23.167	1.960	8.460
PNM	22.375	19.000	21.500	16.750	18.750	17.000	19.229	2.920	15.185
PNW	29.750	27.875	29.125	27.250	28.000	26.875	28.146	2.800	9.948
POM	23.875	21.750	24.000	21.875	22.875	21.250	22.604	1.380	6.105
PPL	37.000	33.125	37.875	36.500	36.875	34.250	35.938	2.760	7.680
PPW	34.625	32.250	35.125	33.500	34.500	33.375	33.896	2.520	7.435
PSD	20.125	18.625	20.250	19.125	19.500	18.500	19.354	1.760	9.094
PSR	21.625	19.875	22.125	21.375	21.875	20.500	21.229	2.000	9.421
SAJ	23.000	19.000	23.375	22.000	23.500	21.500	22.063	1.400	6.346
SAV	23.750	20.875	24.500	22.500	24.625	23.750	23.333	1.000	4.286
SCE	34.000	29.125	33.750	32.125	33.500	30.250	32.125	2.380	7.409
SCG	32.625	28.500	33.125	32.250	33.125	30.500	31.688	2.400	7.574
SDO	33.750	30.000	34.000	32.125	33.625	31.000	32.417	2.600	8.021
SIG	38.000	34.500	37.500	36.000	37.000	35.000	36.333	2.260	6.220
SO	24.250	22.500	24.125	22.500	23.625	21.625	23.104	2.140	9.262
SRP	23.125	21.125	23.750	22.500	23.750	21.875	22.688	1.760	7.758
TE	23.500	21.750	24.375	23.250	24.000	22.250	23.188	1.340	5.779
TEP	58.500	50.625	59.875	56.250	59.750	55.250	56.708	3.900	6.877
TNP	19.750	18.625	20.125	18.500	19.125	18.375	19.083	1.470	7.703
TXU	30.250	27.250	30.625	29.000	28.875	24.625	28.438	2.880	10.127
UCU	18.500	15.000	19.000	17.250	19.375	17.875	17.833	1.040	5.832
UEP	24.125	21.375	25.000	24.125	24.500	22.125	23.542	1.920	8.156
UIL	27.250	22.750	23.625	21.500	21.750	19.750	22.771	2.320	10.188
UTL	31.000	29.625	30.625	29.125	30.000	29.000	29.896	1.960	6.556
UTP	29.625	26.750	30.000	28.625	29.750	28.625	28.896	2.320	8.029
WEC	26.750	22.500	26.375	24.375	25.250	24.125	24.896	1.440	5.784
WPL	46.000	43.250	47.750	45.750	47.750	44.750	45.875	3.240	7.063
WPS	22.875	20.000	23.250	21.875	22.875	21.000	21.979	1.540	7.007
WWP	27.000	23.375	28.000	26.000	26.625	24.125	25.854	2.480	9.592

N= 89

[FR Doc. 88-8683 Filed 4-19-88; 8:45 am]
BILLING CODE 6717-01-C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 103

[T.D. 88-22]

Availability of Information Compiled for Law Enforcement Purposes

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to conform the regulations to certain changes made to the Freedom of Information Act (FOIA) by the Freedom of Information Reform Act of 1986. These changes altered the criteria used by Federal agencies to exempt records and information compiled for law enforcement purposes from disclosure. An agency may now exempt from disclosure investigatory records, the production of which "could reasonably be expected" to interfere with law enforcement proceedings. This standard ("could reasonably be expected") represents a lower threshold for withholding records. In addition, an agency can treat records as outside the scope of the FOIA if they pertain to a criminal proceeding or investigation, the subject is unaware of its pendency, and disclosure of the existence of such records could reasonably be expected to interfere with such proceedings.

The change finalizes regulations previously implemented on an interim basis.

EFFECTIVE DATE: May 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lee H. Kramer, Regulations and Disclosure Law Branch, (202-566-8681).

SUPPLEMENTARY INFORMATION:

Background

The Anti-Drug Abuse Act of 1986 (Pub. L. 99-570), provides for a wide range of programs and measures to enhance efforts to counteract the problem of drug abuse in the U.S. Sections 1801-1804 of Title 1, Subtitle N of Pub. L. 99-570, cited as the "Freedom of Information Reform Act of 1986", amended the Freedom of Information Act (FOIA) (5 U.S.C. 552), relative to the availability of information compiled for law enforcement purposes. As amended by section 1802, 5 U.S.C. 552 (b)(7) now provides that an agency may exempt investigatory records compiled for law enforcement purposes, the production of which "could reasonably be expected" to interfere with law enforcement proceedings from disclosure. This standard ("could reasonably be expected") represents a lower threshold for withholding records. As amended, the statute provides that law enforcement records or information may be withheld when disclosure: (1) Could reasonably be expected to interfere with enforcement proceedings; (2) would deprive a person of a right to a fair trial or an impartial adjudication; (3) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (4) could reasonably be expected to disclose the identify of a confidential source; (5) would disclose law enforcement techniques or investigation/prosecution guidelines; or (6) could reasonably be expected to endanger the life or physical safety of any individual. Changes were also made relative to an exemption for certain pending criminal investigations when the subject of the investigation or proceeding is not aware of its pendency and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings. These statutory changes required conforming changes to § 103.12, Customs Regulations (19 CFR 103.12), which sets forth the type of U.S. Customs Service records which are exempt from disclosure under 5 U.S.C. 552. Accordingly, Customs amended Part 103, Customs Regulations, on an interim basis by publication of T.D. 87-137 in the **Federal Register** on November 10, 1987 (52 FR 43192), to confrom the regulations to the changes made to the Freedom of Information Act by the Freedom of Information Reform Act of 1986.

The November 10, 1987, **Federal Register** notice solicited public comments on the changes. No comments were received. Accordingly, it has been determined to adopt the interim regulations as published.

Executive Order 12291

Because this document will not result in a "major rule" as defined in E.O. 12291, Customs has not prepared a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 103

Freedom of information.

Amendment to the Regulations

Part 103, Customs Regulations (19 CFR Part 103), is amended as set forth below:

PART 103—AVAILABILITY OF INFORMATION

1. The general authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 19 U.S.C. 66, 1624, 31 U.S.C. 483a.

2. Section 103.12 is amended by republishing the introductory text, revising paragraph (g) and adding new paragraphs (h) and (i), to read as follows:

§ 103.12 Exemptions.

Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552(a) are not applicable to U.S. Customs Service records which relate to the following:

* * * * *

(g) *Certain investigatory records.* Records or information compiled for law enforcement purposes, but only to the extent that the production of such enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) *Certain pending criminal investigations.* Whenever a request is made which involves access to records described in paragraph (g)(1) of this section and)—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Customs may, during only such times as that circumstance continues, treat the records as not subject to the requirements of this part.

(i) *Certain informant records.* Whenever informant records maintained by Customs under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, Customs may treat the records as not subject to the requirements of this part unless the informant's status as an informant has been officially confirmed.

William von Raab,

Commissioner of Customs.

Approved: March 30, 1988.

Francis A. Keating II,

Assistant Secretary of Treasury.

[FR Doc. 88-8636 Filed 4-19-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Medicaid Eligibility Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We have revised our rules on the agreements under which we make Medicaid eligibility determinations on behalf of States for individuals who receive Supplemental Security Income (SSI) benefits. The revision provides that we may enter into an agreement with a State even though the State's Medicaid eligibility requirements differ from the requirements for SSI or for State supplementary payments, or both, in ways mandated by Federal law.

We also have rewritten and reorganized our existing rules for making Medicaid eligibility determinations.

DATE: These final regulations are effective April 20, 1988.

FOR FURTHER INFORMATION CONTACT: C.H. Campbell, Legal Assistant, Room 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597-3408.

SUPPLEMENTARY INFORMATION: We published these regulations as a Notice of Proposed Rulemaking (NPRM) on May 9, 1986 (51 FR 17200), with a 60-day period for public comment. The comment received is discussed in this preamble.

Section 1634 of the Social Security Act authorizes us to enter into an agreement, with a State that wishes to do so, to make Medicaid eligibility determinations on behalf of the State for aged, blind, or disabled individuals. Our regulations for these agreements are in 20 CFR Part 416, Subpart U. Section 1634 is intended to give States the advantage of having us make Medicaid determinations on their behalf to prevent duplication of effort since we already considered many factors in making the SSI determinations that the State would consider in making the Medicaid determinations.

Our current regulations prohibit our entering into a section 1634 agreement with a State unless the Medicaid eligibility requirements the State asks us to apply are the same as either SSI requirements or State supplementary payment requirements, except that the State need not have us make Medicaid determinations for every category (aged people, blind people, and disabled people) of SSI beneficiary. We adopted the policy of making determinations only for States whose eligibility requirements for Medicaid are the same as those for the SSI program mainly to simplify the making of Medicaid eligibility determinations and keep down the cost to the States and to us.

Changes in Federal law, however, have mandated requirements for Medicaid eligibility that differ from the eligibility requirements for SSI and for State supplementary payments. As a result, a State's Medicaid eligibility requirements can no longer exactly correspond to the SSI eligibility requirements. Therefore, we are changing our regulations to provide that we may agree to make Medicaid determinations on behalf of a State *when its Medicaid eligibility requirements differ from the requirements for SSI or for State supplementary payments in ways mandated by Federal law.* These regulations address the legally mandated differences that involve Medicaid eligibility requirements for the applicant (1) to assign to the State certain rights to medical care payments by any third party and (2) to give the State information about any such rights that exist. These regulations, however, do not address integrating into the Medicaid determination process the Medicaid eligibility of individuals who have established Medicaid Qualifying Trusts. If our making Medicaid determinations in these trust situations requires exceptions to these regulations, we will address the problem in a separate rulemaking document.

The situations involving Medicaid and SSI program differences in which we will make Medicaid eligibility determinations for States under section 1634 of the Act are as follows:

1. Assignment of Third-Party Payment Rights

Section 2367 of Pub. L. 98-369, the Deficit Reduction Act of 1984, enacted July 18, 1984, amended sections 1902 and 1912 of the Act. Section 1902(a)(45), as added, requires that the State plan under title XIX include as a Medicaid eligibility requirement the assignment of rights to third-party medical payments. Section 1912(a)(1), as amended, mandates that States require, as a condition of Medicaid eligibility, that a person assign to the State his or her rights to any medical care support available under an order of a court or an administrative agency and any third-party payments for medical care (except Medicare). Section 1912(a)(1) (A) and (B) further requires as a condition of eligibility that the individual assign the rights of any other individual eligible under the State's Medicaid plan for whom he or she can legally make an assignment and cooperate in establishing paternity and obtaining medical care support and payments. Section 2367 of Pub. L. 98-369 was effective October 1, 1984, except that it grants additional time for compliance to States whose compliance requires State legislation.

Sections 1902(a)(45) and 1912(a)(1) are intended to give the States an efficient means of preventing or recovering Medicaid overpayments that result from payment by Medicaid of medical expenses for which someone else, such as an insurance company or an absent parent, is legally responsible.

We will apply the assignment requirement on behalf of States with section 1634 agreements when someone is applying for SSI benefits or State supplementary payments and is eligible for them. We do not plan to apply it in the SSI eligibility redetermination process.

We will explain the assignment of rights requirement to applicants and inform them that it is a condition of eligibility for Medicaid. We plan to have

applicants sign a form (in States where such rights are not automatically assigned by operation of State law) to provide for assignment of rights to payments by third-party payers. Such an assignment of rights would also be required on behalf of any other individual(s) eligible under the State Medicaid plan for whom the applicant can legally assign such rights. We also plan to provide the Medicaid agency with information on whether the assignment of rights requirement has been met with respect to an applicant.

2. Information About Third-Party Liability

To aid in accomplishing the purposes of sections 1902(a)(45) and 1912(a)(1), section 9503 of Pub. L. 99–272 (the Consolidated Omnibus Budget Reconciliation Act of 1985, enacted April 7, 1986) amended, among others, sections 1902(a)(25) and 1912(a)(1) of the Act. Section 1902(a)(25)(A), as amended, requires the State or local agency administering a State Medicaid plan to take all reasonable measures to ascertain the legal liability of third parties (including health insurers) to pay for care and services available under the plan, including the collection of sufficient information (as specified by the Secretary of Health and Human Services (HHS) in regulations) to enable the State to pursue claims against such third parties, with the information being collected at the time of any determination or redetermination of eligibility for Medicaid.

New subparagraph (C), added to section 1912(a)(1) by section 9503 of Pub. L. 99–272, mandates that a State Medicaid plan require as a condition of eligibility that a person cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless the person has good cause for refusing to cooperate.

Section 9503 of Pub. L. 99–272 makes these provisions effective July 1, 1986, except that it grants additional time for compliance to States whose compliance requires State legislation.

An NPRM published May 28, 1986 (51 FR 19227) by the Health Care Financing Administration (HCFA), describes an agreement between us (the Social Security Administration (SSA)) and HCFA for use to make available, to interested State Medicaid agencies with section 1634 agreements, a third-party liability information program. Under this agreement, we collect, for purposes of identifying legally liable third parties, certain health insurance information from SSI applicants and recipients during the SSI initial application and eligibility redetermination processes. We transmit that information to the State Medicaid agency. In order to implement section 1902(a)(25)(A)(i) of the Act as amended, that NPRM proposed to require all States with section 1634 agreements to participate in the joint SSA/HCFA third-party liability information program.

To implement requirements of new section 1912(a)(1)(C) on behalf of States with section 1634 agreements, we will explain to SSI applicants, and to SSI recipients in the SSI eligibility redetermination process, that providing the specified information about third-party liability is a condition of eligibility for Medicaid. We will determine whether this eligibility requirement is met and inform the State Medicaid agency.

As with the assignment requirement, we will apply this requirement (and collect the health insurance information) only if the person is eligible for SSI or State supplementary payments.

This requirement to collect third-party liability information was not developed in our NPRM although, in our discussion on the assignment of rights in the NPRM, we mentioned the necessity for applicants to cooperate with State efforts to pursue third-party medical payments. The HCFA NPRM noted above, however, described this information collection requirement fully, noted that it was mandated by Federal law, and stated our intention to administer it. Consequently, we believe the public has been notified of our intent to administer this particular requirement.

3. Medicaid Qualifying Trusts

Section 9506 of Pub. L. 99–272 amended section 1902 of the Act by adding a new paragraph (k) on "Medicaid Qualifying Trusts" to section 1902 of the Social Security Act. The new paragraph (k) specifies that for purposes of Medicaid eligibility, the maximum amount of distributions that can be made from certain Medicaid qualifying trusts will be considered available to the individual, or spouse of the individual, who established the trust, whether or not the trust is irrevocable, or was established for purposes other than to enable a grantor to qualify for Medicaid, and whether or not the distributions are actually made. A Medicaid qualifying trust is defined as a trust or other similar legal device established, other than by will, by an individual (or spouse) under which the individual is a beneficiary and distribution of payments under the trust is determined at the discretion of one or more trustees. Prior to enactment of this legislation, there was no specific statutory provision concerning distributions from trusts and only the income and resources found to be actually available to individuals were considered in determining eligibility.

It is clear from the legislative history of section 9506 of Pub. L. 99–272 that Congress intended the integration of this provision in the Federal-State arrangements under which we make Medicaid determinations for States under section 1634 of the Act to be accomplished in a manner satisfactory to the Secretary. We are continuing to study how to accomplish this integration within present Federal-State arrangements. We may be able to process Medicaid determinations that involve this provision under the scope of §§ 416.2111 and 416.2116 of the attached regulations. However, it may be necessary to devise a new procedure to process these determinations, in which case we will later publish a new rule describing the procedure.

Public Comments

We received one public comment on the NPRM, from a State Medicaid agency. The agency said these regulations should provide for us to notify the State if a person who refused to assign third-party payment rights when applying for SSI and Medicaid later decides to sign the assignment form. We plan to consider the feasibility of this recommendation.

We also received from a State welfare department a letter of detailed questions, not presented as suggestions for changes in the regulations, about administrative arrangements under the State's section 1634 agreement. HCFA has replied directly to the State.

On its NPRM published May 28, 1986, HCFA received one comment concerning SSA collection of Medicaid third-party liability information. A State department of human services objected to being required to pay us for data which the State believes may not be valid, because after we get the information from the applicant we do not otherwise verify it. We concur with the HCFA response to this comment (52 FR 5967, 5971 (1987)): It is true that verification is the State's responsibility. However, our charges cover only obtaining and transmitting the information, and would have to be substantially higher if we were to independently verify the information.

Other Regulatory Changes

Our NPRM proposed only one new exception to the rule that we make Medicaid determinations only if the Medicaid requirements are the same as SSI requirements. That exception was that the Medicaid requirements could include the assignment of rights to third-party medical care payments. This final regulation broadens that exception by providing that the Medicaid requirements can differ from SSI requirements in any way mandated by Federal law.

We believe the public has had adequate notice of, and opportunity to comment on, the broader exception stated in this final rule, even though it was not explicitly stated in our NPRM. While the fact that the assignment of rights requirement was mandated by Federal law was the only point our NPRM cited explicitly as a reason for making it an exception to our same-requirements rule, an NPRM published May 28, 1986 by HCFA explicitly gave the public notice of, and opportunity to comment on, our intention to administer another Medicaid requirement currently mandated by Federal law that differs from SSI requirements, namely the requirement to provide third-party liability information.

We believe our and HCFA's NPRM's together put the public on notice that we intended to administer any Medicaid eligibility requirement that is mandated for SSI recipients by Federal law. Moreover, we can see no possibility that anyone will be disadvantaged by our final regulation. With or without it, States and Medicaid applicants are required by Federal statute to comply with whatever additional eligibility requirements that the statute imposes; the only question is whether we or the State determines whether they have been met.

General Rewriting of Subpart U

We have rewritten and reorganized all of Subpart U to make it clearer and easier to understand. We summarize below the rewritten Subpart U and the additions and main clarifications we have made:

Basic Provisions

We have added section 1106 of the Social Security Act to the authority citations of Subpart U to clarify that we disclose information to the States and charge for this information when appropriate under this section of the Act as well.

Section 416.2101 cross-refers to the basic regulations of HCFA on the Medicaid program. This section also defines terms used in Subpart U.

Section 416.2111 states the conditions for our agreeing to make Medicaid eligibility determinations for a State. Section 416.2111(b) of the NPRM referred to the assignment requirement as a non-SSI eligibility requirement for Medicaid that will not prevent our agreeing to make Medicaid determinations. We have changed that reference from the assignment requirement to any requirement mandated by Federal law. We have also, however, in § 416.2116 and one place in § 416.2111, changed "we will agree" to "we may agree" to make Medicaid determinations, because of the possibility that Federal law might, at some time in the future, mandate a Medicaid eligibility requirement that we might consider preferable for States, rather than us, to administer. In that event we would terminate our existing agreements under the provisions of § 416.2171, and would not make new agreements with States under section 1634 unless the requirement is one which Congress designates as an exception to the general rule that the Secretary make full Medicaid eligibility determinations under section 1634 agreements.

Section 416.2116 states when we make the determinations. In the final regulation we have added here that our determinations may include any non-SSI requirements that are mandated by Federal law.

Section 416.2130 gives examples of Medicaid functions we will not agree to carry out for a State.

Liability

Section 416.2140 states the limits of our liability if we tell a State erroneously that a person is eligible for Medicaid. This provision is not in the current regulations but was in existing agreements with States.

Other Services

Section 416.2145 offers services, other than eligibility determinations, which we provide under authority of 31 U.S.C. 6505 to help a State administer its Medicaid program. (We also disclose information to States pursuant to section 1106 of the Act.) The NPRM gave here, as an example of these optional additional services, collecting and giving the State information about health insurance or other medical coverage. We have deleted this example, since this service will no longer be optional for a State with a section 1634 agreement.

Charges to States

Section 416.2161 provides, more specifically than the current regulations, under what circumstances and how much a State has to pay for each service we provide under this subpart. The States pay half of our additional costs directly related to making Medicaid eligibility determinations. The States pay our full additional costs for other services.

Changing the Agreement

Section 416.2166 provides that the State and we can agree in writing to change the agreement at any time.

Duration of the Agreement

Section 416.2171 identifies the duration of a Medicaid determination agreement and the ways it can be ended. Paragraphs (b) and (c) include ways of ending it that are not in the current regulations but that are in existing agreements with States. These are: (1) Either the State or we can end the agreement by giving written notice at least 90 days before the end of a term; or (2) if the State fails to pay our costs as agreed, we can notify the State in writing, at least 30 days before the ending date we select, why we intend to end the agreement. If the State gives a good reason for keeping the agreement in force beyond the ending date we selected, the termination will be postponed or the agreement will remain in force through the end of the term.

Disagreements Between a State and Us

Section 416.2176 describes the appeals procedure for resolving disagreements that may arise under a Medicaid determination agreement. Any disagreement related to performance under the agreement may be appealed. An appeal to the HHS Grant Appeals Board is the final level of administrative appeal. Again, this procedure was not in the current regulations but reflects the existing agreements with States, with minor modifications.

State Employees Working in Our Offices

We have deleted specific mention of letting State Medicaid employees work in our offices to take applications for Medicaid (former § 416.2118(c)), because very few State employees have been assigned to our offices and specific reference in the regulations to this service no longer seems necessary. In spite of the deletion, we will still permit these assignments where appropriate.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. The only additional costs are the new actions in connection with Medicaid determinations. These costs will be about $1.4 million a year of which States will pay half the cost and HCFA, pursuant to memorandums of understanding, the other half. (HCFA is responsible for Federal administration of Medicaid.) Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will apply only to States and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income; 13.714, Medical Assistance Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

Dated: January 20, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: March 10, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart A is revised to read as follows:

Authority: Secs. 1102 and 1601–1634 of the Social Security Act; 42 U.S.C. 1302 and 1381–1383c; sec. 212 of Pub. L. 93–66, 87 Stat. 155 and sec. 502(a) of Pub. L. 94–241, 90 Stat. 268.

§ 416.110 [Amended]

2. Section 416.110(f)(2) is amended by inserting "(except as permitted by § 416.2111)" after the word "identical."

3. Subpart U is revised to read as follows:

Subpart U—Medicaid Eligibility Determinations

Sec.

Subpart U—Medicaid Eligibility Determinations

Authority: Secs. 1102, 1106, 1631(d)(1), and 1634 of the Social Security Act; 42 U.S.C. 1302, 1306, 1383(d)(1), and 1383c.

§ 416.2101 Introduction.

(a) *What is in this subpart.* This subpart describes the agreements we make with States under which we determine the Medicaid eligibility of individuals who receive Supplemental Security Income (SSI) benefits. It includes a general description of the services we will provide under these agreements and the costs to the States for the services.

(b) *Related regulations.* The comprehensive regulations on eligibility for the Medicaid program, administered by the Health Care Financing Administration, are in Part 435 of Title 42 of the Code of Federal Regulations.

(c) *Definitions.* In this subpart——

"SSI benefits" means Federal SSI benefits, including special SSI cash benefits under section 1619(a) of the Social Security Act. In addition, we consider a person who has special SSI eligibility status under section 1619(b) of the Social Security Act to be receiving SSI benefits.

"State Medicaid Plan" means a State's medical assistance plan which the Secretary has approved under title XIX of the Act for Federal payment of a share of the State's medical assistance expenses.

"State supplementary payments" means supplementary payments we administer for a State under Subpart T of this part.

"We", "us", or "our" refers to the Social Security Administration.

§ 416.2111 Conditions for our agreeing to make Medicaid eligibility determinations.

We will agree to make Medicaid eligibility determinations for a State only if the State's Medicaid eligibility requirements for recipients of SSI benefits and for recipients of State supplementary payments are the same as the requirements for receiving SSI benefits and the requirements for receiving State supplementary payments, respectively. Exceptions: We may agree to make Medicaid eligibility determinations——

(a) For one, two, or all of the three categories of people (i.e., aged, blind, and disabled) who receive SSI benefits or State supplementary payments; or

(b) Even though the State's Medicaid eligibility requirements for recipients of SSI benefits or of State supplementary payments, or both, differ from the requirements for SSI or State supplementary payments, or both, in ways mandated by Federal law.

§ 416.2116 Medicaid eligibility determinations.

If a State requests, we may agree, under the conditions in this subpart, to make Medicaid eligibility determinations on behalf of the State. Under these agreements, we make the Medicaid determinations when determinations or redeterminations are necessary for SSI purposes. Our determinations may include non-SSI requirements that are mandated by Federal law. When we determine that a person is eligible for Medicaid in accordance with § 416.2111 or that we are not making the determination, we notify the State of that fact.

§ 416.2130 Effect of the agreement and responsibilities of States.

(a) An agreement under this subpart does not change——

(1) The provisions of a State's Medicaid plan;

(2) The conditions under which the Secretary will approve a State's Medicaid plan; or

(3) A State's responsibilities under the State Medicaid plan.

(b) Following are examples of functions we will not agree to carry out for the State:

(1) Stationing of our employees at hospitals or nursing homes to take Medicaid applications;

(2) Determining whether a person is eligible for Medicaid for any period before he or she applied for SSI benefits;

(3) Giving approval for emergency medical care under Medicaid before a determination has been made on whether a person is eligible for SSI benefits;

(4) Setting up or running a State's system for requiring a person to pay part

of the cost of services he or she receives under Medicaid; or

(5) Giving identification cards to people to show that they are eligible for Medicaid.

§ 416.2140 Liability for erroneous Medicaid eligibility determinations.

If the State suffers any financial loss, directly or indirectly, through using any information we provide under an agreement described in this subpart, we will not be responsible for that loss. However, if we erroneously tell a State that a person is eligible for Medicaid and the State therefore makes erroneous Medicaid payments, the State will be paid the Federal share of those payments under the Medicaid program as if they were correct.

§ 416.2145 Services other than Medicaid determinations.

We will agree under authority of section 1106 of the Act and 31 U.S.C. 6505 to provide services other than Medicaid determinations to help the State administer its Medicaid program. We will do this only if we determine it is the most efficient and economical way to accomplish the State's purpose and does not interfere with administration of the SSI program. The services can be part of a Medicaid eligibility determination agreement or a separate agreement. Under either agreement we will—

(a) Give the State basic information relevant to Medicaid eligibility from individuals' applications for SSI benefits;

(b) Give the State answers to certain purely Medicaid-related questions (in addition to any that may be necessary under § 416.2111(b)), such as whether the SSI applicant has any unpaid medical expenses for the current month or the previous 3 calendar months;

(c) Conduct statistical or other studies for the State; and

(d) Provide other services the State and we agree on.

§ 416.2161 Charges to States.

(a) *States with Medicaid eligibility determination agreement.* A State with which we have an agreement to make Medicaid eligibility determinations is charged in the following manner:

(1) If making Medicaid determinations and providing basic SSI application information for a State causes us additional cost, the State must pay half of that additional cost. "Additional cost" in this section means cost in addition to costs we would have had anyway in administering the SSI program.

(2) The State must pay half our additional cost caused by providing any information that we collect for Medicaid purposes and by any other services directly related to making Medicaid eligibility determinations.

(3) The State must pay our full additional cost for statistical or other studies and any other services that are not directly related to making Medicaid eligibility determinations.

(b) *States without Medicaid eligibility determination agreement.* A State with which we do not have an agreement to make Medicaid eligibility determinations is charged in the following manner:

(1) If providing basic SSI application information causes us additional cost, the State must pay our full additional cost.

(2) The State must pay our full additional cost caused by providing any information that we collect for Medicaid purposes and for statistical or other studies and any other services.

§ 416.2166 Changing the agreement.

The State and we can agree in writing to change the agreement at any time.

§ 416.2171 Duration of agreement.

An agreement under this subpart is automatically renewed for 1 year at the end of the term stated in the agreement and again at the end of each 1-year renewal term, unless—

(a) The State and we agree in writing to end it at any time;

(b) Either the State or we end it at any time without the other's consent by giving written notice at least 90 days before the end of a term, or 120 days before any other ending date selected by whoever wants to end the agreement; or

(c)(1) The State fails to pay our costs as agreed;

(2) We notify the State in writing, at least 30 days before the ending date we select, why we intend to end the agreement; and

(3) The State does not give a good reason for keeping the agreement in force beyond the ending date we selected. If the State does provide a good reason, the termination will be postponed or the agreement will be kept in force until the end of the term.

§ 416.2176 Disagreements between a State and us.

(a) If a State with which we have an agreement under this subpart and we are unable to agree about any question of performance under the agreement, the State may appeal the question to the Commissioner of Social Security. The Commissioner or his or her designee will, within 90 days after receiving the State's appeal, give the State either a written decision or a written explanation of why a decision cannot be made within 90 days, what is needed before a decision can be made, and when a decision is expected to be made.

(b) The Commissioner's decision will be the final decision of the Department of Health and Human Services, unless the State appeals the decision within 30 days after receiving it to the Department's Grant Appeals Board under procedures in 45 CFR Part 16.

[FR Doc. 88-8679 Filed 4-19-88; 8:45 am]
BILLING CODE 4190-11-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5523/R946; FRL-3366-9]

Pesticide Tolerances for Myclobutanil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule renews established food and feed additive regulations to permit the combined residues of the fungicide myclobutanil and its metabolites containing both the chlorophenyl and triazole rings in or on certain food and feed items. This regulation to renew maximum permissible levels for combined residues of myclobutanil was requested by the Rohm & Haas Co. to permit marketing of feed and food commodities resulting from experimental use of the fungicide on apples and grapes. These temporary tolerances expire on February 28, 1989.

EFFECTIVE DATE: Effective on March 23, 1988.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued § 193.477 *Myclobutanil* (21 CFR 193.477) and § 561.443 *Myclobutanil* (21 CFR 561.443), published in the **Federal Register** of January 4, 1988 (53 FR 21) establishing regulations permitting the combined residues of the fungicide myclobutanil (alpha-butyl-alpha(4-chlorophenyl)-1*H*-1,2,4-triazole-1-

propanenitrile) and its metabolites in or on apple pomace at 5.0 ppm, grape pomace at 5.0 ppm, raisins at 5.0 ppm, and raisin waste at 12.5 ppm. These regulations are being renewed to February 28, 1989, to permit the continued experimental use of myclobutanil on apples and grapes while further data are collected on the active ingredient.

Also, references to myclobutanil's metabolites containing both the chlorophenyl and triazole rings, which were referenced and discussed in the preamble to the January 4, 1988 (53 FR 21) final rules but which were inadvertently dropped from the codified text of §§ 193.477 and 561.443, are being reinserted in this final rule.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the fungicide may be safely used in accordance with the provisions of the experimental use permit (707-EUP-105) that was concurrently renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. It is concluded that the fungicide can be safely used in the prescribed manner when such use is in accordance with the label and labeling accepted in connection with the experimental use permit issued pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136 *et seq.*), and the regulations are renewed as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections.

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 food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

2. By revising § 193.477 to read as follows:

§ 193.477 Myclobutanil.

A food additive regulation is established to permit residues of the fungicide myclobutanil (alpha-butyl-alpha(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile) and its metabolites containing both the chlorophenyl and triazole rings in or on raisins at 5 parts per million when present therein as a result of application to grapes in connection with an experimental use program which expires February 28, 1989.

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 561.443 to read as follows:

§ 561.443 Myclobutanil.

A feed additive regulation is established to permit residues of the fungicide myclobutanil (alpha-butyl-alpha(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile) and its metabolites containing both the chlorophenyl and triazole rings in or on the following processed feeds when present therein as a result of application to grapes and apples in connection with an experimental use program which expires February 28, 1989:

Feeds	Parts per million
Apple pomace	5.0
Grape pomace	5.0
Raisin waste	12.5

[FR Doc. 88-8510 Filed 4-19-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5F3256/R953; FRL-3367-2]

Pesticide Tolerance for AC 222,293

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide AC 222,293 and its metabolites in or on various raw agricultural commodities. The regulation was requested by the American Cyanamid Co. and establishes the maximum permissible level for residues of the herbicide in or on the raw agricultural commodities.

EFFECTIVE DATE: Effective on April 20, 1988.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register on July 22, 1987 (52 FR 27575), which announced that the American Cyanamid Co. had submitted pesticide petition (PP) 5F3265 to EPA proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide AC 222,293 [Assert, a mixture of methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate] in or on the (4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl).*m*-toluate] in or on the raw agricultural commodities sunflower seed at 0.05 part per million (ppm), wheat grain and barley grain at 0.10 ppm, and wheat straw and barley straw at 1.50 ppm. There were no comments received in response to the notice of filing.

The petitioner subsequently amended the petition by submitting a revised Section F proposing the establishment of tolerances for residues of AC 222,293 and its metabolites 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluic acid and 2.-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*p*-toluic acid in or on wheat grain and barley grain at 0.10 ppm, wheat straw and barley straw

at 2.00 ppm, and sunflower seed at 0.10 ppm.

The data submitted in the petition and other relevant material have been evaluated. The data considered in the petition include several acute studies; a 2-feeding/oncogenic study in rats fed dosages of 0, 12.5, 50, and 200 milligrams/kilogram/day (mg/kg/day) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 200 mg/kg/day (HDT) and a systemic no-observed-effect level (NOEL) of 12.5 mg/kg/day; an 18-month feeding/oncogenic study with mice fed dosages of 0, 19.5, 78.75, and 315 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 315 mg/kg/day (HDT) and a systemic NOEL of 19.5 mg/kg/day; a 1-year feeding study in dogs fed dosage levels of 0, 6.25, 25, and 100 mg/kg/day with a NOEL of 6.25 mg/kg/day; a teratology study in rats fed dosage levels of 0, 250, 500, and 1,000 mg/kg/day with no teratogenic effects at 1,000 mg/kg/day (HDT), a maternal NOEL of less than 250 mg/kg/day, and a fetotoxic NOEL of 250 mg/kg/day (a NOEL for maternal toxicity was not established in this study); a teratology study in rabbits fed dosage levels of 0, 250, 500, and 750 mg/kg/day with no teratogenic effects at 750 mg/kg/day (HDT); a maternal NOEL of 750 mg/kg/day and a fetotoxic NOEL of 250 mg/kg/day; a 3-generation reproduction study in rats fed dosage levels of 0, 12.5, 50, and 200 mg/kg/day with a NOEL for reproductive effects of 12.5 mg/kg/day; a mutagenic test with *Salmonella typhimurium* (negative); mutagenic chromosomal aberration tests both *in vitro* and *in vivo* (no aberrations observed in Chinese hamsters ovary/cells with and without activation); an unscheduled DNA synthesis study in rat hepatocytes (negative); and a dominant lethal study in rats negative at doses up to and including 1,000 mg/kg (HDT).

The acceptable daily intake (ADI) based on the 1-year dog feeding study (NOEL of 6.25 mg/kg/day) and a hundred-fold safety factor is calculated to be 0.0625 mg/kg/day. The theoretical maximum residue contribution (TMRC) for these tolerances for a diet is calculated to be 0.00147 mg/kg/day. The current action will use 2.35 percent of the ADI. There are no published tolerances for this chemical. No desirable data are lacking. The pesticide is useful for the purposes of this tolerance rule. The nature of the residue is adequately understood, and adequate analytical methods (gas-liquid chromatography with a nitrogen-sensitive detector) are available for enforcement purposes.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual II, an interim analytical methods package is being made available to State pesticide enforcement chemists when requested from:

By mail: Information Services Section (TS–757C), Program Management Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 557–3262.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are therefore established as set forth below.

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

The Office of Management and Budget (OMB) has exempted this regulation from 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 significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

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

List of Subjects in 40 CFR Part 180

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

Dated: April 8, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is 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. New § 180.437 is added, to read as follows:

§ 180.437 AC 222,293; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide AC 222,293 [Assert, a mixture of methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*p*-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate] in or on the following raw agricultural commodities:

Commodities	Parts per million
Barley grain	0.10
Barley straw	2.00
Sunflower seed	0.10
Wheat grain	0.10
Wheat straw	2.00

[FR Doc. 88–8509 Filed 4–19–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[FRL 3365–6]

Suspension of Effective Date of Final Designation of Pensacola, Florida Site as an EPA-Approved Ocean Dumping Site, Pursuant to the Marine Protection, Resources and Sanctuaries Act (MPRSA) of 1972

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of suspension of effective date of designation of Pensacola, Florida site as an EPA-approved Ocean Dumping Site.

SUMMARY: On March 4, 1988, EPA published a final rule at 53 FR 6987, designating ocean dumping sites off shore Pensacola, Florida, Mobile, Alabama, and Gulfport, Mississippi,

pursuant to section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972. These designations were to become effective on April 4, 1988. On April 1, 1988, in response to a request by the State of Florida, the Regional Administrator of EPA-Region IV suspended the effective date of the final designation of only the Pensacola, Florida, site (§ 228.12(b)(48)). That site designation will now become effective on May 9, 1988. The other site designations—Gulfport, Mississippi, and Mobile, Alabama—became effective as scheduled.

FOR FURTHER INFORMATION CONTACT: Sally Turner, Chief, Marine Protection Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-2126.

Date: April 5, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-8183 Filed 4-15-88; 3:42 pm]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 406, 409, 410, 413, 416, 421, 489 and 498

[BERC-431-CN]

Medicare Program; Conditions for Medicare Payment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period; Correction.

SUMMARY: **Federal Register** document 88-4352, beginning on page 6629 of the issue of Wednesday March 2, 1988, redesignated Subparts A and P of Part 405 of the Medicare rules as a new Part 424, and made many technical and conforming amendments to other sections of those regulations. Through oversight, three of those amendments were retained even though in two instances the affected sections had been removed, and, in another, the addition had been made by another rule published while the above cited document was in clearance. This document removes those amendments, corrects a duplicated section number, clarifies two examples, restores an omitted paragraph heading, and corrects typographical errors.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, Telephone (202) 245-0383.

Corrections

1. On page 6634, column 1, under PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS, in the first line of item 2. a. "§ 410.64" is changed to "§ 410.66", and in the heading of the new section, "§ 410.64" is changed to "§ 410.66".

2. On page 6635, column 2, § 424.5(a)(3), in line 6, "on" is changed to "of".

3. On page 6635, column 2, § 424.7(a)(2)(i), in line 2, "(a)(2)" is changed to "(a)(2)(ii)".

4. On page 6635, column 3, § 424.10(b), in lines 9 and 10, "Comprehensive Outpatient Rehabilitation Facility" is changed to "comprehensive outpatient rehabilitation facility."

5. On page 6637, column 1, in § 424.16(b), the parenthetical statement in the heading is revised to read "(Hospital that is not a psychiatric hospital and is not subject to PPS)".

6. On page 6638, column 1, § 424.22(d)(4), in the heading, "or" is inserted after "officer".

7. On page 6638, column 3, § 424.24(c)(3)(ii), in line 2, "physician" is changed to "physical".

8. On page 6638, column 3, § 424.25, in the heading, "physician" is changed to "physical".

9. On page 6639, column 2, § 424.30, in line 6, "the" is changed to "a".

10. On page 6639, column 2, § 424.32(b), in the parenthetical statement after "HCFA-1500", "other" is inserted before "suppliers".

11. On page 6640, column 1, § 424.36(b)(5), in line 3, "in" is changed to "it".

12. On page 6640, column 1, § 424.37(b), in line 4, the apostrophe after "claim" is removed.

13. On page 6641, column 3, in § 424.56(d), the examples are revised to read as follows:

Example 1. An assigned bill of $300 on which partial payment of $100 has been made is submitted to the carrier. The carrier determines that $300 is the reasonable charge for the service furnished. Total payment due is 80 percent of $300 or $240. Of this amount, $200 (the difference between the $100 partial payment and the $300 reasonable charge) is paid to the supplier. The remaining $40 is paid to the beneficiary.

Example 2. An assigned bill of $325 on which partial payment of $275 has been made is submitted to the carrier. The carrier determines that $275 is the reasonable charge for the services. Total payment due is 80 percent of $275 or $220. The $220 is paid to the beneficiary, since any payment to the supplier, when added to the $275 partial payment would exceed the reasonable charge for the services furnished.

14. On page 6644, column 1, § 424.82(c)(3), in line 2, the "O" at the end of "reassignment" is removed, and in line 4, "contrary" is inserted after "payment".

15. On page 6644, column 3, in § 424.84, paragraph (c)(3) is redesignated as (d) and revised to read:

(d) *Effect of revocation when supplier or other party has a financial interest in another entity.* Revocation of the party's right to accept assignment also applies to any corporation, partnership, or other entity in which the party, directly or indirectly, has or acquires all or all but a nominal part of the financial interest.

16. On page 6646, column 3, § 424.124(a), in line 2, "physicians" is changed to "physician".

17. On page 6647, column 1, § 424.124(b), in the heading, "Physicians' " is changed to "Physician".

18. On page 6647, column 2, in § 424.352(b), the colon after "HCFA" is changed to a dash.

19. On page 6648, column 1, in conforming amendment No. 10, (§ 409.5), "Subpart H of Part 424" is changed to "Subparts G and H of Part 424".

20. On page 6648, column 1, conforming amendment No. 11 is removed.

21. On page 6648, column 2, conforming amendment No. 21 is removed.

22. On page 6648, column 2, in conforming amendment No. 23 (§ 410.175), "Part 424" is changed to "Subpart C of Part 424".

23. On page 6648, column 3, in conforming amendment No. 27a (§ 413.74), "Subpart G" is changed to "Subpart H".

24. On page 6648, column 3, in conforming amendment No. 29 (§ 416.30), "§ 425.64" is changed to "§ 424.64".

25. On page 6648, column 3, conforming amendment No. 38 is removed.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance, and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 13, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88-8644 Filed 4-19-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-435; RM-5840]

Radio Broadcasting Services; Lehigh Acres, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Lehigh Acres, Florida, and modifies the license for Station WOOJ-FM at the request of Dwyer Broadcasting, Inc., to provide for a first wide coverage area station. The proposed transmitter site for Channel 296C2 is 17.9 miles south of Lehigh Acres at coordinates 26-22-08 and 81-40-29. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-435, adopted April 5, 1988, and released April 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Florida, by adding Channel 296C2 and removing Channel 296A at Lehigh Acres.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-8633 Filed 4-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-285; RM-5813]

Radio Broadcasting Services; Boothbay Harbor, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 244B1 for Channel 244A at Boothbay Harbor, Maine, as that community's first wide coverage area broadcast service, in response to a petition filed by Bay Communications, Inc. We have also authorized the modification of Station WCME's license to specify Channel 244B1 in lieu of Channel 244A. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-285, adopted March 28, 1988, and released April 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Maine is amended by removing Channel 244A and adding Channel 244B1 at Boothbay Harbor.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-8632 Filed 4-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-187; RM-5564]

Radio Broadcasting Services; Bad Axe, MI

AGENCY: .Federal Communications Commission.

ACTION: Final rule.

SUMMARY: .This document allocates FM Channel 271C2 to Bad Axe, Michigan, and modifies the license of Station WLEW(FM), Channel 221A, to specify operation on Channel 271C2. This action is taken in response to a petition filed by Thumb Broadcasting, Inc., licensee of Station WLEW(FM). Comments were filed by the petitioner. No other comments were received. Canadian concurrence has been obtained for the allocation of Channel 271C2 at Bad Axe, Michigan. The coordinates for Channel 271C2 are 43-53-55, 83-07-37. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-187, adopted March 25, 1988, and released April 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended in the entry of Bad Axe, Michigan, to remove Channel 221A and add Channel 271C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-8630 Filed 4-19-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 76
Wednesday, April 20, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-01-AD]

Airworthiness Directive; SIAI-Marchetti S.p.A., Models F260, F260B, F260C, and F260D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) Docket 88-CE-01-AD, applicable to certain SIAI-Marchetti S.p.A., Models F260, F260B, F260C, and F260D airplanes, which was published in the Federal Register on February 9, 1988 (53 FR 3753). The NPRM proposed to adopt an Airworthiness Directive (AD) that would have required inspection of the aileron balance weight attachment to assure it is secured to the aileron and, if looseness is detected, modification of the securing mechanism. As a result of the subsequent evaluation of public comments to the NPRM, the lack of adverse service reports in this country, a complete technical reevaluation of the proposal, and existing maintenance procedures, the FAA is withdrawing this NPRM. In addition, the FAA will issue a General Airworthiness Alert in a forthcoming Advisory Circular (AC) 43-16 publication.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710; or Mr. R. F. Yotter, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection of the aileron balance weight attachment to assure it is secured to the aileron and if looseness is detected, modification of the securing mechanism on SIAI-Marchetti S.p.A., models F260, F260B, F260C, and F260D airplanes was published in the Federal Register on February 9, 1988 (53 FR 3753). The proposal was issued because the manufacturer issued Service Bulletin (S/B) NO. 260-B52, dated July 31, 1987, and because the Registro Aeronautico Italiano (RAI), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, classified this S/B as mandatory and subsequently issued RAI AD 87-150/F260-33, dated September 15, 1987, on the same subject. The FAA reviewed SIAI-Marchetti S/B No. 260-B52 and RAI AD 87-150/F260-33 and believed the condition addressed therein to be an unsafe condition.

Interested persons have been afforded an opportunity to comment on the proposal. One commenter, the sole U.S. SIAI-Marchetti agent, responded. The comments indicated opposition to the adoption of the proposal. The comments focused on the issues that follow:

1. There has never been an inflight failure of an SF260 (F260) airplane, and SB 260-B52 was issued based on only one report received in Italy on a Military aircraft. No reports of loose aileron balance weights have been reported in the U.S.

2. The aileron balance weight is attached with four to six screws readily visible on the lower skin of the aileron.

3. The manufacturer's inspection guide specifies inspection of the ailerons, the aileron skin, the fasteners and the hinges, etc., on the preflight inspection, the 50 and the 100 hour inspections and at each annual inspection.

4. Information supplied by the ISAI-Marchetti U.S. Representative indicates that not one incident of an aileron having a missing or loose balance weight attachment screw has been reported during assembly and inspection of several airplanes over an eight year period.

Based on the foregoing, the FAA has determined that the proposed action is unnecessary and the NPRM is being withdrawn. The FAA will issue a General Aviation Airworthiness Alert in a forthcoming AC 43-16 publication.

Withdrawal of Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration deletes a proposal to amend § 39.13 of the FAR as follows:

PART 39—[AMENDED]

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

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

2. NPRM Docket No. 88-CE-01-AD, published in the Federal Register on February 9, 1988 (53 FR 3753), is withdrawn.

Issued in Kansas City, Missouri, on April 4, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-8616 Filed 4-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ACE-05]

Proposed Alteration of Transition Area; Milford, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Milford, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Fuller Municipal Airport utilizing the Spencer VOR/DME as a navigational aid.

DATES: Comments must be received on or before May 19, 1988.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic

Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181), by altering the 700-foot transition area at Milford, Iowa. To enhance airport usage, an additional instrument approach procedure is being developed for the Fuller Municipal Airport, Milford, Iowa, utilizing the Spencer VOR/DME as a navigational aid. The establishment of this new instrument approach procedure, based on this navigational aid, entails alteration of the transition area at Milford, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR).

Section 71.181 of Part 7 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By revising 71.181 as follows:

§ 71.181 [Revised]

That airspace extending upward from 700 ft. above the surface within a five (5) mile radius of the Fuller Municipal Airport (Lat. 43°19'17"N, Long. 95°09'29"W) and within 1.75 miles each side of the 190° bearing from the Fuller Municipal Airport extending from the five (5) mile radius to 5.5 miles south of the airport.

Issued in Kansas City, Missouri, on April 4, 1988.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 88-8212 Filed 4-19-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Rel. Nos. 33-6767; 34-25579; IC-16359; File No. S7-6-88]

Amendments to Regulation S-K Regarding Changes in Accountants; Acceleration of the Timing for Filing Forms 8-K Relating to Changes in Accountants and Resignations of Directors

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rules.

SUMMARY: The Commission is proposing to amend its rules to reduce the time period for a registrant to file a Form 8-K announcing a change in its certifying accountants or the resignation of a director from fifteen to five calendar days. The Commission also is proposing to amend the requirements of Regulation S-K relating to a change in a registrant's certifying accountant to (1) reduce the time period from thirty to ten calendar days for the filing of the former accountant's letter as an exhibit to the report or registration statement announcing a change in accountants, (2) require the registrant to file any such letter within two calendar days after it is received by the registrant, and (3) permit the former accountant to provide an interim letter to the registrant, which must also be filed by the registrant within two days of receipt.

DATE: Comments should be received on or before May 20, 1988.

ADDRESS: Five copies of comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-6-88. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns or John M. Riley, (202) 272-2130, Office of the Chief Accountant, or William H. Carter, (202), 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

In connection with the disclosures required when a registrant changes its certifying accountant, the registrant is

required to request that the former accountant provide a letter that indicates whether the former accountant agrees with the disclosures made by the registrant regarding the circumstances surrounding the change, and if not the respects in which it does not agree.[1] In commenting on the Commission's proposals concerning disclosures of changes in certifying accountants and opinion shopping,[2] the American Institute of Certified Public Accountants ("AICPA") and other commentators suggested changes in the procedures regarding the filing of the former accountant's letter.[3] These suggestions would provide for more timely action by the former accountant in furnishing its letter to the registrant and for expeditious filing of the letter with the Commission by the registrant. The AICPA has also suggested that the Commission expressly permit the accountant to furnish the registrant with an interim letter (which must also be expeditiously filed with the Commission) indicating that a more detailed letter will be forthcoming discussing respects in which the former accountant does not agree with the registrant's disclosures. The Commission has determined that a reduction in the time period for disclosure of the change in accountants is appropriate and proposes to reduce not only the time period for the filing of the accountant's letter but also the time period for the initial filing by the registrant on Form 8–K announcing the change in its certifying accountant. The Commission is also proposing to reduce the time period, from fifteen to five calendar days, for disclosure on Form 8–K related to the resignation of a director.

II. Discussion Regarding Changes in Accountants

Under the present disclosure system, including the amendments announced today in Financial Reporting Release No. 31,[4] when a registrant changes its certifying public accountant it must provide the disclosure required by Item 304 of Regulation S–K.[5] Generally, this disclosure will first appear in a Form 8–K [6] filing. If not previously disclosed, General Instruction B1 to Form 8–K requires that a change in accountants be reported within fifteen days after the earlier of the former accountant's resignation, dismissal, or declination to stand for re-election, or the engagement of a new accountant. Regardless of whether the change in accountants disclosure occurs in a Form 8–K filing or any other report or registration statement, Item 304(a)(3) of Regulation S–K directs the registrant to request the former accountant to provide a letter to the registrant (although the letter is addressed to the Commission) indicating whether the former accountant agrees with the registrant's disclosures regarding the change in accountants and, if not, the respects in which it does not agree.[7] If such a letter is provided, it is presently required to be filed by the registrant as an exhibit to the document containing the relevant disclosure within thirty days after that document has been filed with the Commission. Assuming the disclosure is made on a Form 8–K fifteen days after the change in accountants, and the former accountant's letter is filed thirty days after the date of the filing of the Form 8–K, a total of forty-five days may elapse from the date of the change in accountants to the filing with the Commission of the former auditor's concerns regarding the registrant's disclosure of reportable events,[8] disagreements [9] or other areas. The AICPA's comment letter, referenced above, offers the following suggestions. It states:

1. The auditor needs a reasonable amount of time to prepare any letter taking issue with management's representations about whether and what disagreements might have taken place. Among other things, the disclosures cover an extended period of time and there is a need to carefully review possibly voluminous audit files; members of previous audit teams may not be readily available for consultation; and, it may also be necessary to consult with legal counsel on sensitive disclosure matters. Notwithstanding these problems, we suggest that the period within which the registrant must file the prior auditor's letter be reduced from the present 30 days to 21 days after filing Form 8–K.

2. The Commission should adopt a rule requiring registrants to file any letter received by them from an auditor pursuant to Item 4 of Form 8–K within forty-eight hours of receipt.

3. " * * * [T]he Commission should make clear that an auditor would be permitted to deliver an interim letter to his client that should be filed by the registrant with the SEC within forty-eight hours of receipt. Such a letter might indicate, for example, that the auditor was not terminated but, rather, resigned, or that a subsequent letter will be forthcoming taking serious issue with management's representations in the Form 8–K."

The Commission agrees that more prompt disclosure of the former accountant's concerns would be in the public interest and aid in the protection of investors. It also believes that a more prompt initial announcement of the change in accountants, with the related disclosure of the existence of any reportable events or disagreements between the registrant and the former accountant, may be beneficial to shareholders and investors. The Commission is therefore proposing to amend Item 304(a) to incorporate the substance of the AICPA's suggestions, except that the forty-eight hour periods would be expressed as two calendar days and the twenty-one day period suggested by the AICPA would be shortened to ten days. The Commission is also proposing to reduce the time period for the filing of an initial Form 8–K responding to Item 4 of that form, Changes in Registrant's Certifying Accountant, from fifteen to five calendar days. The Commission recognizes that a reasonable period of time is required to research, prepare and review the disclosure called for by Item 304. However, the principal areas of disclosure will be those where there have been disagreements between the former accountant and the registrant, or where the reporting and performance procedures enumerated in Statement on Auditing Standards No. 50 [10] have been followed by the newly-engaged accountant. It may be assumed that documentation regarding these events is

[1] If the disclosures appear in an annual report to shareholders or a proxy or information statement, however, in lieu of requesting a letter from the former accountant the registrant is to provide that accountant with the opportunity to submit a brief statement to be included directly in the registrant's document. *See* Instruction 2 to Item 304 of Regulation S–K, 17 CFR 229.304.

[2] The adoption of these amendments is discussed in a companion release, Financial Reporting Release No. 31 (April 7, 1988).

[3] The AICPA's letter is contained in File No. S7–24–87. Copies may be obtained by contacting the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[4] See note 1, *supra*.

[5] 17 CFR 229.304.

[6] 17 CFR 249.308.

[7] Item 304(a)(3) of Regulation S–K states: (3) The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the report or registration statement containing this disclosure. If the former accountant's letter is unavailable at the time of filing, it shall be filed by amendment within thirty days thereafter.

But see note 1, *supra*.

[8] Item 304(a)(1)(v) of Regulation S–K, 17 CFR 229.304(a)(1)(v).

[9] Item 304(a)(1)(iv) of Regulation S–K, 17 CFR 229.304(a)(1)(iv).

[10] Statement on Auditing Standards No. 50, *Reports on the Application of Accounting Principles* (July 1986). Paragraph 7 of that document requires the consulted (newly-engaged) accountant to consult the former accountant to ascertain all the available facts relevant to forming a professional judgment.

readily available to both the registrant and the former accountant, and that, therefore, some reduction in the time period for reporting a change in accountants would not result in an inappropriate burden on accountants or registrants.

The requirement for the registrant to file the accountant's letter within two days of receipt [11] will expressly prevent a registrant that receives the accountant's letter soon after the Form 8–K is filed from keeping the letter private until the expiration of the proposed maximum ten day period. The provision for the filing of an interim letter would permit the accountant to provide public notice of its general areas of concern while it continues to finalize the details of a more substantive letter. These procedures, therefore, would assure the former accountant more immediate disclosure of its concerns.

The Commission also is proposing to require that the former accountant be provided with a copy of the registrant's disclosures no later than the time those disclosures are filed with the Commission. The Commission staff believes this is a codification of existing practice.

The Commission specifically requests comment on whether registrants and accountants would be able to prepare informative disclosures within the respective five and ten day periods or within some shorter periods. If not, the Commission requests comment on the minimal periods necessary to prepare such disclosures. Since it is the Commission's understanding that the vast majority of auditor changes are based on valid business reasons (including fees and quality of service) and are thoroughly considered by management before making the change, the Commission believes a reduction in these time periods should not impose a significant burden on registrants. While the Commission has specifically proposed a reduction to the above stated five and ten day filing periods, it is also considering other periods shorter than the current fifteen and thirty day periods set forth in Instruction B1 of Form 8–K and Item 304(a)(3) of Regulation S–K.

The Commission also requests comments on other ways to improve the procedures for disclosing the circumstances regarding a change in the registrant's certifying accountant.

III. More Timely Filing of Information Regarding Resignation or Refusal To Stand for Re-Election of Directors

In addition to proposing the acceleration of the timing for filing information concerning changes in accountants, the Commission also is proposing to shorten the time for filing information for another item of Form 8–K concerning a comparable event, the resignation by a director as a result of a disagreement with the registrant. A Form 8–K must be filed in response to Item 6, Resignations of Registrant's Directors, only when a director resigns (or declines to stand for re-election) because of a disagreement with the registrant relating to its operations, policies or practices, and only after the director has furnished a letter that describes the disagreement and requests that the matter be disclosed. Such information, like that relating to a change in accountants, may indicate difficulties material to an investment decision with respect to the registrant's securities. The Commission, accordingly, has determined that more prompt disclosure of such disagreements would benefit the investing public, and proposes to reduce the filing period from fifteen to five calendar days after the event. The Commission also is considering other filing periods shorter than the current requirement, such as ten calendar days.

A Form 8–K filed in response to Item 6 must include the date of the resignation or refusal to stand for reelection, summarize the director's description of the disagreement, and attach the letter as an exhibit. The registrant also may briefly state its own view of the disagreement. While it appears that such information would readily be available to the registrant, the Commission solicits comment on whether the proposed five calendar day filing period presents any practical difficulties, and if so, on the minimal period necessary.

IV. Cost/Benefits of the Proposed Actions

The proposals announced in this release affect the timing of procedures for the registrant filing a Form 8–K disclosing a change in the registrant's certifying accountant and the filing of a letter containing the views of the registrant's former accountant regarding certain matters disclosed by the registrant. They also impact the timing for filing information concerning the resignation of a director required to be disclosed under Item 6 of Form 8–K. The proposals, however, do not affect the recordkeeping, substance of the disclosures, or contents of the registrant's disclosure or the former accountant's letter. It is anticipated therefore that the costs associated with these proposals would be small and relate solely to the more prompt preparation of the registrant's disclosure and the former accountant's letter. The principal benefit of the proposals is the presentation of significant information to the market on a more timely basis.

The Commission requests specific comment on its assessment of the costs and benefits associated with these proposals, including any specific estimates of any costs and benefits perceived by commentators.

V. Request for Comments

Any interested person wishing to submit written comments on the proposals, or the costs and benefits of the proposals, or to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, is requested to do so.

The Commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Exchange Act of 1934 (the "Exchange Act"). Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[12]

VI. Regulatory Flexibility Act Analysis

David S. Ruder, Chairman of the Commission, has certified that the proposed amendments to Regulation S–K and form 8–K will not have a significant impact on any entity subject to its provisions and, therefore, will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposed Amendments

It is proposed to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

[11] If the expiration of the two day period was to occur on a Saturday, Sunday or Holiday, the registrant would be required to file the letter on the first business day following. See Rule 0–3(a) under the Securities Exchange Act of 1934, 17 CFR 240.0–3(a).

[12] 15 U.S.C. 78w(a)(2).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K.

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 78o(d), 78w(a).

2. By revising § 229.304(a)(3) to read as follows:

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a) * * *

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 304(a) that the former accountant shall receive no later than the time that disclosure is filed with the Commission. The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the report or registration statement containing this disclosure. If the former accountant's letter is unavailable at the time of filing such report or registration statement, then the registrant shall request the former accountant to provide the letter as promptly as possible to permit the registrant to file the letter with the Commission within ten calendar days after the filing of the report of registration statement. The registrant shall file the letter by amendment within two calendar days of receipt. The former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating a subsequent, more detailed letter will be forthcoming within the ten day period noted above. If not filed with the report or registration statement containing the registrant's disclosure under this Item 304(a), then the interim letter, if any, shall be filed by the registrant by amendment within two calendar days of receipt.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 continues to read in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

4. By amending General Instruction B1 to Form 8–K (§ 249.308 of this chapter) to read as follows:

Editorial Note.—Form 8–K does not appear in the Code of Federal Regulations.

FORM 8–K

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports.

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1–4 and 6 of this form. A report of an event specified in Items 1–3 is to be filed within 15 days after the occurrence of the event. A report of an event specified in Item 4 or 6 is to be filed within 5 days after the occurrence of the event.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

April 12, 1988.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendments to Form 8–K and Regulation S–K to increase the timeliness of the filing of information concerning a change in a registrant's certifying accountant, contained in Securities Act Release No. 33–6767, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that it is anticipated that the effects of the amendments, if adopted, will not be significant for any class of registrants because the substance of the disclosure and recordkeeping requirements are not being amended and it is anticipated that even with the proposed acceleration in timing the registrant and the former accountant should have adequate time for preparation of the information that is to be disclosed.

Dated: April 12, 1988.

David S. Ruder,

Chairman.

[FR Doc. 88–8565 Filed 4–19–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 15–88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system is the "Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA–003)." Records in this system contain copies of records requested from the "Executive Clemency Filed (JUSTICE/OPA–001)" under the Freedom of Information/Privacy Acts and therefore relate to official Federal investigations and matters of law enforcement. The exemption is needed to protect ongoing investigations and the identities of confidential sources involved in such investigations.

DATE: Submit any comments by May 20, 1988.

ADDRESS: Address all comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark (202) 272–6474.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA–003)."

This order relates to individuals other than small business entities. Nevertheless, pursuant to the requirement of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and Sunshine Acts.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to

amend 28 CFR Part 16 by revising § 16.79 as set forth below.

Dated: April 6, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by revising § 16.79 to read as follows:

§ 16.79 Exemption of Pardon Attorney Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(d):

(1) Executive Clemency Files (JUSTICE/OPA–001).

(2) Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA–003).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Executive Clemency Files contain investigatory and evaluative reports relating to applicants for Executive clemency. The FOI/PA Request File contains copies of documents from the Executive Clemency Files which have not been released either in whole or in part pursuant to certain provisions of the FOI/PA. Release of such information to the subject would jeopardize the integrity of the investigative process, invade the right of candid and confidential communications among officials concerned with recommending clemency decisions to the President, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) The purpose of the creation and maintenance of the Executive Clemency Files is to enable the Pardon Attorney to prepare for the President's ultimate decisions on matters which are within the President's exclusive jurisdiction by reason of Article II, Section 2, Clause 1 of the Constitution, which commits pardons to the exclusive discretion of the President.

[FR Doc. 88–8609 Filed 4–19–88; 8:45 am]

BILLING CODE 4410–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

Arbitration Policy; Roster of Arbitrators, and Procedures for Arbitration Services

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The following proposed revision to Subparts A, B and C of 29 CFR Part 1404 is being published in order to revise the policies and procedures used by the Federal Mediation and Conciliation Service in administering its Roster of Arbitrators.

The goals of the proposed revision are to more accurately reflect current practice, clarify the role of the Arbitrator Review Board, revise the standards for arbitrator listing on the Roster, and compel parties to follow these proposed rules. Among the changes made are:

First, requests for special experience or qualifications, or other special requirements, must be either jointly submitted by the parties, or, if unilaterally submitted, must certify that (a) the other party agrees, or (b) there is no conflict with the applicable contract. This will allow a single party, for example, to request a panel with special expertise, so long as the required assurances are made. Similarly, FMCS will make a direct appointment of an arbitrator based on the assurances of one party.

Second, the Federal Mediation and Conciliation Service Division of Arbitration Services, (DAS) will no longer receive or interpret contract language in regard to furnishing services.

Third, the regulations also provide that if the parties make separate submissions regarding desired selections from a panel, and one party fails to make its submission within 20 days of the date of the other parties' submission, FMCS will make an appointment of an arbitrator based on the one response it received so long as that party certifies that either both parties agree to such procedure, or that there is no conflict with the parties' collective bargaining agreement.

These changes, and the others that have been made, are explained in the section titled **SUPPLEMENTARY INFORMATION,** which appears below.

DATES: Comments must be received on or before June 30, 1988.

ADDRESSES: Interested organizations and individuals are invited to submit written comments to these proposed regulatory changes. Comments should be submitted in duplicate to Peter L. Regner, Director of Staff Operations and Programs, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427. All written comments will be available for inspection during work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Jewell Myers, Director, Division Arbitration Services, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427, (202/653–5280).

SUPPLEMENTARY INFORMATION: A section by section analysis of the proposed revisions follows.

Subpart A: Arbitration Policy; Administration of Roster, Sections 1404.1–1404.3

Section 1404.1 Scope and authority

The section has not been substantially changed. The legal citations have been changed to more accurately reflect the authority under which the regulations are listed.

Section 1404.2 Policy

The chapter has only been rewritten to express more clearly that voluntary arbitration is encouraged by the labor policy of the United States.

Section 1404.3 Administrative responsibilities

Section (a) provides that the Director of FMCS has final responsibility for all aspects of the agency arbitration policy and procedure. This is not a substantive change from the current regulations.

(b) Division of Arbitration Services. This subsection outlines the role and responsibility of the office within FMCS directly responsible for managing the Roster. The only substantive change is a change in the name of that office from the Office of Arbitration Services to the Division of Arbitration Services.

(c) This section establishes the Arbitrator Review Board and outlines its powers and duties. It is essentially a rewrite of the current regulations, § 1404.3(c) except that the number of members to be appointed by the Director is not specified.

(1) Duties of the Board. Paragraphs (i), (ii) and (iii) are all unchanged from the current regulations. These paragraphs merely outline that the Board is to review qualifications and status of candidates and members listed or to be listed on the Roster. Paragraph (iv) is new. It provides that the Board may, upon request of the Director, review

FMCS arbitration policies and procedures.

Subpart B: Roster of Arbitrators; Admission and Retention, Sections 1404.4–1404.7

Section 1404.4

This provision governs the procedures and policy by which the Federal Mediation and Conciliation Service will operate the Roster. It replaces the current 1404.4.

(a) Provides that FMCS shall maintain a Roster of Arbitrators. The subsection deletes the current language relating to individuals who are removed from the Roster, although these rules retain a provision and procedures for removal at § 1404.5(d).

(b) Provides that arbitrators listed on the roster shall comply with these rules, FMCS guidelines and the relevant Code of Professional Responsibility promulgated by the National Academy of Arbitrators, Federal Mediation and Conciliation Service and the American Arbitration Association.

(c) Is unchanged and provides that the individuals listed on the roster or selected by the parties do not become Federal employees as a result of their selection or appointment.

(d) Is intended to be a restatement of current policy. It states that FMCS has no power to, and does not intend to compel the parties to either agree to arbitrate; appear in a particular case or matter, or any case or matter; enforce an agreement to arbitrate, or to arbitrate any issue; influence in any way or alter or set aside any decision by an arbitrator; or require or modify or deny payment or compensation to an arbitrator.

(e) Except for the change in the name of the Division of Arbitration Services, this subsection is unchanged. It merely provides that the DAS will provide names from the Roster without charge to parties to an agreement to arbitrate or factfinding, or where provided by statute, according to procedures outlined in Subpart C herein.

(f) Is also essentially unchanged and states that the concerns of the parties are paramount. No person listed on the Roster has the right to remain on the Roster, or a right to have his or her name sent out on any particular list unless requested as provided in § 1404.9(e). FMCS uses several methods and criteria for the preparation and computer selection of panels such as the experience and background of the person listed on the Roster, availability, and acceptability and geographical location. Obviously the preferences of the parties is also a criteria for a person's name being listed, or not listed, on any particular panel. FMCS is retaining the maximum flexibility, as in the current regulations, to accomplish these purposes.

Section 1404.5

This section outlines the criteria the Arbitrator Review Board will use in recommending to the Director whether or not an individual will be listed on the Roster. This section provides that applicants for listing on the Roster must complete and submit an application. The Division of Arbitration Services will review the application, make the necessary inquiries, and forward the application to the Arbitrator Review Board. The Board will then review the application and make a recommendation to the Director about whether or not to list an applicant on the Roster based on the criteria established in subsections (a), (b) and (c) of § 1404.5. The Director of FMCS has the authority to make all final decisions about listing on the Roster. This section is substantially unchanged from current regulations.

Subsection (a) outlines the general criteria the Arbitrator Review Board will use when considering an applicant. Individuals requesting listing on the Roster must be experienced, competent and acceptable in labor management decision-making roles. This subsection is changed from the current regulations only to the extent that a statement in the current rules that the applicant have extensive experience in collective bargaining, and that he or she be capable of conducting an orderly hearing, analyze testimony and evidence and prepare a clear and concise award, is deleted. However, subsection (b) now contains similar requirements as outlined immediately below.

Subsection (b), Proof of Qualifications, is different from the current regulations in that the proposed rule provides that the standards of acceptability, experience and competence in subsection (a) above, are demonstrated by the submission of at least 5 actual arbitration awards, issued by the applicant while serving as an arbitrator of record chosen by the parties to a labor dispute. The Board is also authorized to consider an applicant's bargaining and labor negotiations experience, or experience as a judge or hearing examiner in labor relations issues as a substitute for the awards. This provision is similar to the current regulations § 1404.5(a) (1) and (2). However, the specific requirement of 5 awards is new. It is designed to allow the Board to objectively apply a test of acceptability.

Subsection (c) Advocacy is substantially the same as the current § 1404.5(c) (1) and (2). The subsection prohibits advocates, except those who are "grandfathered" under the current rules, from being listed on the Roster. All persons who were listed on the Roster as advocates before the date of the "grandfather" clause, that is November 17, 1976, may remain listed on the Roster. However, no applicant for listing who is an advocate will be listed on the Roster. A person who was on the Roster before November 17, 1976 and did not divulge his or her advocacy status, *at the time of his or her listing,* (emphasis added) may not remain listed on the Roster. This policy, designed to insure that parties receive the names of arbitrators who are, and are seen as truly neutral, except in the case of those individuals listed on the Roster before the prohibition of advocacy as adopted.

The definition of an advocate in (1) is the same as current FMCS policy. It is designed to be as broad as necessary to insure that parties will not have any reason to question the neutrality of a potential arbitrator. The provision prohibits listing on the Roster people who earn money, or any form of compensations, by representing either side in a labor relations matter.

Subsection (d) establishes the policies and procedures for listing, retention and removal of an individual listed on the Roster. It is a clarification of the current policy in § 1404.5(d). It provides that the Director of FMCS shall make all final decisions about an applicant's listing on the Roster. Removal is by the recommendation of the Arbitrator Review Board after notice for violations of the regulations and/or the Code of Professional Responsibility for Arbitrators of Labor Management Disputes as cited in § 1404.4(b). Notice of cancellation will be given by the Board when a Roster member:

(1) No longer meets the criteria for admission. This is the same policy as in the current regulations.

(2) Has become an advocate as defined in § 1404.5(c). This is a new provision and a clarification of current FMCS practice of removing from the Roster individuals who become advocates in order to protect the integrity and neutrality of the Roster.

(3) Has been repeatedly and flagrantly delinquent in submitting awards. This is also the current FMCS rule, and allows the Board to recommend removal of individuals who fail to meet the timely needs of the parties.

(4) Has refused to make reasonable reports as required by FMCS in accordance with Subpart C *infra.* This is

also current FMCS policy and regulation. It is designed to insure that the agency can obtain the necessary information to efficiently operate the program.

(5) Has been the subject of complaints by the parties, and the Board, after inquiry, concludes that reasonable grounds for cancellation has been shown. This is also substantially the same as current FMCS policy and is designed to establish a method for parties to state their concerns and complaints. Removal under such grounds, however, must be conducted according to the procedures established in this subsection.

(6) This is the same as the current § 1404.5(d)(5) and merely provides that the Director may remove an individual who is not being selected by the parties in at least 2 percent of the cases per year in which his/her name is submitted to parties for selection. This is to insure that the Roster is composed of individuals who are acceptable to the parties.

The procedure for removal is left up to the Arbitrator Review Board, so long as as the individual proposed to be removed is given 60 days prior notice of the proposed removal and an opportunity to respond. Either the Board or a hearing officer will consider the reasons for the removal and all responses before making a recommendation to the Director. All decisions to remove must be made by the Director. This is designed to insure that individuals will be given an opportunity to present evidence and argument on their behalf before a decision is made to remove. The section is substantially the same as in the current regulations at § 1404.6.

Section 1404.6

This is a new provision which states that the Director of the Division of Arbitration Services (DAS) may suspend—that is not send out an individual's name on any panel or appoint an individual to serve as arbitrator for up to 180 days—if the Director of DAS has determined that the FMCS will be harmed.

This subsection was established to insure that in a matter where there is a dispute which is not yet resolved, FMCS can act to protect the arbitration process, the Roster and the parties. A suspension is not a determination on the merits of any dispute or controversy, and the suspension, except upon the request of the individual listed on the Roster, may not exceed 180 days. Arbitrators will be notified promptly of a suspension and will be afforded an opportunity to appeal, if they wish to do so, to the Arbitrator Review Board. The Board will make a recommendation to the Director of FMCS, whose decision shall constitute final agency action.

Section 1404.7

This is also a new section which provides that an individual listed on the Roster may request that he or she may be put on an inactive status. This means that while they are on such status, their name will not be sent to the parties. This enables a Roster member to request that his or her name not be sent to parties while, for example, they are on an extended vacation. It is designed for the convenience of the person listed on the Roster and the parties.

Subpart C: Procedures for Arbitration Services, Sections 1404.8–1404.16

Section 1404.8

This new provision applies only to Subpart C. The new text incorporates the provision which currently appears at § 1404.6, but points out that while the parties are free to choose arbitration procedures that are acceptable to them, such procedures are subordinate to the provisions of Subpart C. Thus, if either

(a) The parties designate in their agreement that FMCS furnish arbitration services, or

(b) One or more parties request FMCS arbitration services, then all parties are subject to the rules contained in Subpart C. This new language has been added to insure that FMCS has the authority to remedy any abuse of Subpart C rules and enforce compliance with them.

Section 1404.9

Subsection (a) is essentially a repeat of the provision now found at § 1404.10, with the address for requests to the DAS added.

Subsection (b) is essentially a repeat of the provision found at § 1404.10(a). In stating that the issuance of a panel—or a direct appointment—is nothing more than a response to a request, the text adds new language stating that such actions also do not signify the adoption of any position in regard to arbitrability. This additional language aligns the text with the wording that appears at the bottom of FMCS Form R–43, Request For Arbitration Services. This Form is shown in the Appendix to this proposed regulation.

Subsection (c). This new provision allows FMCS to refuse to supply arbitration services if the request creates difficult operational problems. For example, if FMCS received a request for 100 panels, it might be refused because of the workload imposed. In such a case the DAS might contact the requestor to see if some less burdensome arrangements could be made.

Subsection (d). This provision changes the text found in § 1404.10(b) and (d) and replaces those two subsections. While the current language urges parties to use FMCS Form R–43 to make requests for arbitration services, it also allows the use of letters as a substitute. The revised text mandates that only Form R–43 be used and states that a failure to do so may result in the request being returned to the sender. This change to mandatory use of Form R–43 is required because the DAS has converted its operations from a manual system to a computer system, and the receipt of requests on Form R–43 is necessary in order to obtain prompt and accurate entry of data. Although approximately 80% of all requests are now received on Form R–43, FMCS will (1) allow for a phase-in period for this new requirement (2) conduct a campaign of notification and education to make requestors aware of the requirement, and (3) make Form R–43 available in quantity to all labor organizations and employers dealing with FMCS. A reproduction of Form R–43, Request For Arbitration Services, is shown in the Appendix to this proposed regulation.

Subsection (e). This is a new provision. It is based on the experience of the DAS, that a significant increase has taken place in incidents involving procedural quarrels between the parties. These clashes concern such matters as (1) whether or not one party or the other has refused to cooperate in striking names from a panel of arbitrators (2) whether or not the grievance issues have been determined in a previous arbitration award, (3) whether arbitrators on a panel should or should not have special expertise, (4) whether arbitrators should or should not come from a particular geographic area, and (5) whether a local contract or a national contract governs the parties.

The DAS has found itself increasingly entangled in such procedural disputes and therefore has decided on the following changes:

(1) The DAS will no longer receive or review the terms contained in the parties' collective bargaining agreements, and will make no determinations as to the meaning or effect of such agreements. Accordingly, the second sentence of the text now appearing at § 1404.10(c)—calling for submissions of contract language—has been deleted. Also, since there is no longer a requirement that a brief statement describing each issue in dispute accompany the request, the first

sentence of the current § 1404.10(c) has similarly been deleted, thus negating the entire text of that section.

(2) For unilateral requests—except those asking for a standard panel of seven names—the requestor will certify that one of the following conditions applies:

(a) The other party has agreed to the request, or

(b) There is no conflict with the parties collective bargaining agreement.

FMCS Form R–43, Request For Arbitration Services, has been modified—as shown in the Appendix to these proposed regulations—to allow requestors to so certify in a simple and convenient way. The DAS will consider all statements as made in good faith and will honor all requests as submitted. A failure to supply the information required in (a) or (b) above disqualifies the request.

While the DAS realizes that a unilateral request, under the conditions set out above, may be subject to abuse by one party or the other, the following policy considerations have led to the adoption of the proposed new language.

As to the issuance of panels

If the DAS were to require that all requests—except for a standard 7 person panel—be submitted on the basis of mutual consent, the arbitration process would be frustrated by the quarrels of the parties. That is, there would be no agreement, no submission of a request, and recourse would have to be sought through the relatively lengthy procedures of the National Labor Relations Board, the Federal Labor Relations Authority or the courts.

By placing a burden of good faith on the party submitting the unilateral request, and by acting promptly to honor it, the DAS acts to further the arbitration process. Moreover, receivng the DAS panel establishes no obligation on any party to use it, or to arbitrate any issue. The panel simply permits the option of moving further on the path of arbitration.

As to direct appointments

In the case of a unilateral request for appointment of an arbitrator, the result may cause a burden to be placed on a party. That is, a party may be either obliged to appear before an appointed arbitrator to argue that arbitration is not warranted, or risk the result of an *ex parte* award. While the DAS is mindful of this possible result, it has proposed the new procedure for the following reasons.

(i) Reliance by the DAS on contract interpretation, as the basis for a direct appointment, means becoming entangled in the parties' quarrels. One side or the other may dispute the reading of the contract made by the DAS, and thus make the DAS interpretation one more obstacle to arbitration.

(ii) Reliance by the DAS, on mutual assent by the parties, as the basis for a direct appointment, again means frustrating the arbitration process. Thus, the quarreling parties will refuse to agree, and a solution will have to be sought through the relatively time consuming procedures of the National Labor Relations Board, the Federal Labor Relations Authority, or the courts.

(iii) By instead placing a burden of good faith on the party making the unilateral request, and simply honoring it, the DAS will promptly place the matter of proper jurisdiction before a neutral decision maker—the arbitrator. If the arbitrator finds that one party or the other has acted improperly in pursuing arbitration, the arbitrator may provide redress in the terms of the remedy awarded, or the arbitrator's finding may be used as the basis for redress before another tribunal.

Section 1404.10

This provision follows the language which currently appears at § 1404.11. No significant change has been made.

Section 1404.11

This section—made up of four subsections—replaces the current § 1404.12.

Subsection (a) describes the content of a standard panel. The language is similar to that now found at § 1404.12(a), but (i) deletes the reference to the parties' contract, as contracts will no longer be reviewed, (ii) deletes the reference to requests by parties for a number of arbitrators different than 7, as joint requests for services other than a standard panel are described in the last sentence of the new text, and (iii) adds the statement that requests for standard panels—made jointly or unilaterally—will be honored without the need for compliance with § 1404.9(e).

Subsection (b) describes non-standard panels, and states, in conformance with the new policy of FMCS, that unilateral requests for a non-standard panel must comply with the requirements of § 1404.9(e). This subsection serves as a replacement for the language now appearing at § 1404.12(c)(4).

Subsection (c). This provision describes the assignment of DAS case numbers and is essentially the same as that now found at § 1404.12(b).

Subsection (d) describes the factors involved in selecting names for panels and follows, for the most part, the language now found at § 1404.12(c). The current statement—that the agreed upon wishes of the parties are paramount—is deleted, as this concept is expressed in subsections (d)(2) and (d)(3) which follow immediately below. Likewise, the statement—that special qualifications and experience may be identified for purposes of placing names on panels—is deleted, as this idea is expressed in the new text of Subsection (b) described above.

Subsection (d)(1) is a new provision which explains that unless the parties jointly request otherwise, the site of the dispute serves as the geographical basis for the selection of the arbitrators.

Subsection (d)(2) is a repeat of the text of § 1404.12(c)(1), with one change. The phrase—*for valid reasons*—is omitted because the DAS will not pass judgment on the validity of the reasons given—if any—that persons be included or omitted from panels of arbitrators. This position corresponds to the FMCS policy that its arbitration services constitute a response to a request and nothing more.

Subsection (d)(3) repeats the text of § 1404.12(c)(2), except that it carries over the proviso—from § 1404.12(c)(1)—that the number of names must not be excessive. This change corrects an inadvertent omission in the text of § 1404.12(c)(2).

Subsection (d)(4). This language replaces the current text at § 1404.12(c)(3). Again, the same proviso as to excessive numbers is carried over from § 1404.12(c)(1). While the current language prohibits a single party from including or omitting names from a panel, the revised text permits one party to do so, if the conditions as to numbers, and compliance with § 1404.9(e), are met.

Section (e) replaces the language now found at § 1404.12(c)(5). The new text eliminates reference to the terms of agreement in the parties' contract—as the DAS will no longer receive or review such terms—and places a fixed ceiling—of three—on the number of panels which will be successively issued. Under the current language no fixed ceiling is established, and instead the matter is left open ended with consideration to be made on a case by case basis. As in previous sections, unilateral requests must comply with the provisions of § 1404.9(e).

Section 1404.12. This section, consisting of three subsections, replaces the current § 1404.13.

Subsection (a). The current language—in § 1404.13(a)—says that parties *should* notify the DAS of their selection of an arbitrator. The new text makes this requirements mandatory and states that the parties *must* do so. The

new text also adds a requirement—not present in the current § 1404.13(c)—that parties *must* notify the DAS if they decide instead not to proceed to arbitration. As to both of these mandatory provisions there is also new penalty language stating that a consistent failure to comply may lead to a denial of DAS services. These changes will assist FMCS in implementing these regulations.

The portion of the revised text directing the arbitrator to notify the DAS of his or her selection remains the same, except for (i) the added word stating that the arbitrator must do so *promptly*, and (ii) the added statement that the arbitrator is *expected to communicate with the parties within 14 days* of notification of appointment by DAS. This added statement replaces the current § 1404.13(d) which requires the arbitrator to communicate immediately.

Subsection (b). The current text—found at § 1404.13(b)—is unchanged except for the following:

(i) The concept of freedom of the parties to select an arbitrator from a panel by whatever method they agree to, has been transferred from its current location at § 1404.13(b)(3)—to the first sentence of this subsection.

(ii) In place of the transferred item (b)(3), a new provision has been added which states that if the parties select any method calling for each of them to make a separate submission to the DAS (an example of such a method is given at item (2) of the revised text) then a 20 day time limit applies. That is, if one party fails to make its submission to the DAS within 20 days of the date of the first submission, then the DAS will respond to the request it has received, and will make an appointment, using the name on that one submission. Again, this will be done *if* the requesting party complies with the requirements of § 1404.9(e). The second party will be notified of the 20 day time limit upon receipt of a submission from the first party.

Subsection (c) describes direct appointments. The revised text removes the phrase referring to the applicable collective bargaining agreement, as such agreements will no longer be considered by the DAS. Once more, if a unilateral request for a direct appointment is made, the unilteral request must comply with § 1404.9(e). In other respects, the revised text is basically the same as the current provisions in § 1404.13(c).

Section 1404.13. The revised text is similar to that now found at § 1404.14, except as follows:

(i) The current text says that an arbitrator is *expected* to conduct all proceedings in comformity with § 1404.4(b). The revised text states that the arbitrator *shall* do so.

(ii) The current text says that the arbitrator's decision *is to be* based upon the evidence and testimony presented. The revised text states that the decision *shall* be so based.

Section 1404.14. The revised text is similar to that now found at 1404.15, except as follows:

Subsection (a).

(i) The current text of § 1404.15(a) says that arbitrators *are encouraged* to render awards not later than 60 days from the date of the closing of the record. The revised text, at § 1404.14(a), states that arbitrators *shall* make awards no later than 60 days from the same date.

(ii) In the current text, at § 1404.15(a), the date of the closing of the record is described as *determined by the arbitrator, unless otherwise agreed upon by the parties or specified by law.* The revised text, at § 1404.14(a), adds to this description by inserting the phrase—*or specified by the collective bargaining agreement.*

(iii) The current text, as § 1404.15(a) says that the issuance of untimely awards by an arbitrator may lead to *his* removal from the FMCS roster. The revised text, at § 1404.14(a), removes the word *his*, thus deleting any reference to whether the arbitrator is male or female.

Subsection (b). The current text states that an arbitrator should inform the OAS (now DAS) concerning a delay in issuing an award, and in describing the circumstances when the arbitrator should do so, says that this should happen when the arbitrator cannot schedule, hear and *determine issues* promptly. The revised text changes the phrase *determine issues* to *render decisions*, as the new phrase is more complete and encompasses within it the inability to determine issues.

Subsection (c). While the wording in the revised text has been compressed—in comparison to § 1404.15(c)—no significant changes in meaning or requirements have been made.

Subsection (d). Again, while the wording in the revised text has been compressed—compared to § 1404.15(d)—no significant changes in meaning or requirements have been made.

Section 1404.15. The revised text is similar to that now found at § 1404.16, except as follows:

Subsection (a).

(i) The current text requires that fees charged by arbitrators be *certified* in advance to the Service. The revised text requires only that they be *provided* in advance.

(ii) The current text provides that certain arbitrator fees are shown on the biographical sketch sent to the parties by the Service, and that these fees *are controlling.* The revised text states that these fees are controlling *for a minimum of 30 days unless otherwise specified.*

(iii) The revised text adds two requirements, not contained in the current provisions at § 1404.16(a), as follows:

(A) *Arbitrators with dual business addresses shall bill the parties for expenses from the nearest business address to the hearing site.* This provision has been added in order to prevent excessive billing charges.

(B) *Arbitrators shall submit their schedule of fees to both parties when accepting arbitration appointments.* This provision has been added because biographical sketches state only the per diem fee charged by the arbitrator. Other fees involved in the arbitrator's service must therefore be made known to the parties when accepting an appointment.

Subsection (b). The revised text is identical to that now found at § 1404.16(b).

Subsection (c). Except for the change in reference—from § 1404.16(a) to 1404.15(a)—the revised text is identical to that now found at § 1404.16(c).

Subsection (d). While the current text, at § 1404.16(d), states that the Service will not *attempt* to resolve any fee dispute, the revised text states that the Service *does not* resolve such disputes. Otherwise, the texts are identical.

Section 1404.16. The revised text changes the language of § 1404.17 as follows:

Subsection (a). Except for the change in reference—from § 1404.4(c)(1) to § 1405.4(c)(1)—the new text is identical to that now found at § 1404.17(a).

Subsection (b). While the current text says that the *Service* may require arbitrators to provide and update biographical information, the revised text removes the idea that FMCS will invoke such a requirement. Instead, the new text carries over only the concept—now found at § 1404.17(b)—that the *arbitrator* may request revision of biographical information.

Executive Order 12291

This proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant decline in

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act Certification

The FMCS finds that this proposed rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 605(g)), and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not, in itself, impose any additional economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act of 1980

Pursuant to 44 U.S.C. 3501 *et seq.*, and 5 CFR 1320.13, the revision to FMCS Form R–43, *Request For Arbitration Services*, must be submitted to the Office of Management and Budget (OMB) for approval. Accordingly, FMCS will submit the proposed revision to OMB, and organizations or individuals desiring to submit comments regarding the information collection items on the Form, are requested to direct their comments to (1) the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: James Mason, (2) with a copy to Peter L. Regner, Director of Staff Operations and Programs, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

List of Subjects in 29 CFR Part 1404

Arbitration, Administrative practice and procedure, Labor management relations.

Dated: April 14, 1988.

Kay McMurray,

Director.

Accordingly, Part 1404 is proposed to be revised as follows:

PART 1404—ARBITRATION SERVICES

Subpart A—Arbitration Policy; Administration of Roster

Sec.

Subpart B—Roster of Arbitrators; Admission and Retention

Subpart C—Procedures for Arbitration Services

Appendix

Authority: Sec. 202, 61 Stat. 153, as amended; 29 U.S.C. 172, and interpret or apply sec. 3, 80 Stat. 250, sec. 203, 61 Stat. 153; 5 U.S.C. 552, 29 U.S.C. 173.

Subpart A—Arbitration Policy Administration of Roster

§ 1404.1 Scope and Authority.

This chapter is issued by the Federal Mediation and Conciliation Service (FMCS) under Title II of the Labor Management Relations Act of 1947 (Pub. L. 80–101) as amended. It applies to all arbitrators listed on the FMCS Roster of Arbitrators, to all applicants for listing on the Roster, and to all persons or parties seeking to obtain from FMCS either names or panels of names of arbitrators listed on the Roster in connection with disputes which are to be submitted to arbitration or factfinding.

§ 1404.2 Policy.

The labor policy of the United States promotes and encourages the use of voluntary arbitration to resolve disputes over the interpretation or application of collective bargaining agreements. Voluntary arbitration and factfinding are important features of constructive employment relations as alternatives to economic strife.

§ 1404.3 Administrative Responsibilities.

(a) *Director.* The Director of FMCS has responsibility for all aspects of FMCS arbitration activities and is the final agency authority on all questions concerning the Roster and FMCS arbitration procedures.

(b) *Division of Arbitration Services.* The Division of Arbitration Services (DAS) maintains a Roster of Arbitrators (the Roster); administers Subpart C of these Regulations (Procedures for Arbitration Services); assists, promotes, and cooperates in the establishment of programs for training and developing new arbitrators; collects information and statistics concerning arbitration; and performs other tasks as assigned by the Director of FMCS.

(c) *Arbitrator Review Board.* The Arbitrator Review Board shall consist of a chairman and members appointed by the Director who shall serve at the Director's pleasure. The Board shall be composed entirely of full-time officers or employees of the Federal Government and shall establish procedures for carrying out its duties.

(1) *Duties of the Board.* The Board shall:

(i) Review the qualifications of all applicants for listing on the Roster, interpreting and applying the criteria set forth in Section 1404.5 of this part;

(ii) Review the status of all persons whose continued eligibility for listing on the Roster has been questioned under subsection 1404.5 of this part;

(iii) Recommend to the Director the acceptance or rejection of applicants for listing on the Roster, or the withdrawal of listing on the Roster for any of the reasons set forth herein.

(iv) At the request of the Director of FMCS, review arbitration policies and procedures, including all regulations and written guidance regarding the use of the FMCS arbitrators, amd make recommendations regarding such policies and procedures to the Director.

Subpart B—Roster of Arbitrators Admission and Retention

§ 1404.4 Roster and Status of Members.

(a) *The Roster.* The FMCS shall maintain a Roster of labor arbitrators consisting of persons who meet the criteria for listing contained in § 1404.5 of this part.

(b) *Adherence of Standards and Requirements.* Persons listed on the Roster shall comply with th FMCS rules and regulations pertaining to arbitration and with such guidelines and procedures as may be issued by the DAS pursuant to Subpart C. Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Prefessional Responsibility for Arbitrators of Labor Management Disputes, as approved by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association.

(c) *Status of Arbitrators.* Persons who are listed on the Roster and are selected or appointed to hear arbitration matters or to serve as factfinders do not become employees of the Federal Government by virtue of their selection or appointment. Following selection or appointment, the arbitrator's relationship is solely with the parties to

the dispute, except that arbitrators are subject to certain reporting requirements and to standards of conduct as set forth in this Part.

(d) *Role of FMCS.* FMCS has no power to:

(1) Compel parties to appear before an arbitrator;

(2) Enforce an agreement to arbitrate;

(3) Compel parties to arbitrate any issue;

(4) Influence, alter or set aside decisions of arbitrators listed on the Roster;

(5) Compel, deny or modify payment of compensation to an arbitrator.

(e) *Nominations and Panels.* On request of the parties to an agreement to arbitrate or engage in factfinding, or where arbitration or factfinding may be provided for by statute, DAS will provide names or panels of names without charge. Procedures for obtaining these services are outlined in Subpart C. Neither the submission of a nomination or panel nor the appointment of an arbitrator constitutes a determination by FMCS that an agreement to arbitrate or enter factfinding proceedings exists; nor does such action constitute a ruling that the matter in controversy is arbitrate under any agreement.

(f) *Rights of Persons Listed on the Roster.* No person shall have any right to be listed or to remain listed on the Roster. FMCS retains its authority to assure that the needs of the parties using its services are served. To accomplish this purpose FMCS may establish procedures for the preparation of panels or the appointment of arbitrators or factfinders which include consideration of such factors as background and experience, availability, acceptability, geographical location and the expressed preferences of the parties.

§ 1404.5 Listing on the Roster; Criteria for Listing and Retention.

Persons seeking to be listed on the Roster must complete and submit an application form which may be obtained from the DAS. Upon receipt of an application, DAS will review the application, assure that it is complete, make sure inquiries as are necessary, and submit the application to the Board. The Board will review the completed application under the criteria in § 1404.5 (a), (b), and (c), and will forward to the Director its recommendation as to whether the applicant meets the criteria for listing on the Roster. The Director shall make all final decisions as to whether an applicant may be listed on the Roster. Each applicant shall be notified in writing of the Director's decision and the reasons therefore.

(a) *General Criteria.* Applicants for the Roster will be listed on the Roster upon a determination that they are experienced, competent and acceptable in decision-making roles in the resolution of labor relations disputes.

(b) *Proof of Qualification.* The qualifications for recommending listing on the Roster shall be demonstrated by submission of at least 5 actual arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor disputes. The Board may consider experience in relevant positions in collective bargaining or as a judge or hearing examiner in labor relations controversies as a substitute for such awards.

(c) *Advocacy.* No person who at the time of application is an advocate as defined in paragraph (c)(1) of this section, may be recommended for listing on the Roster by the Board. Except in the case of persons listed on the Roster as advocates before November 17, 1976, any person who did not divulge his or her advocacy at the time of listing or who has become an advocate while listed on the Roster shall be recommended for removal by the Board after the fact of advocacy is revealed.

(1) *Definition of Advocacy.* An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney or consultant, in matters of labor relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity and other areas generally recognized as constituting labor relations. The definition includes representatives of employers or employees in individual cases or controversies involving workmen's compensation, occupational health or safety, minimum wage or other labor standards matters. This definition of advocate also includes a person who is directly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

(d) *Duration of Listing, Retention.* Listing on the Roster shall be by decision of the Director of FMCS. The Board may recommend, and the Director may remove, any person listed on the Roster, for violation of these regulations and/or the Code. Notice of cancellation shall be given to a person listed on the Roster whenever a Roster member:

(1) No longer meets the criteria for admission;

(2) Has become an advocate as defined in § 1404.5(c), above;

(3) Has been repeatedly and flagrantly delinquent in submitting awards;

(4) Has refused to make reasonable and periodic reports in a timely manner to FMCS, as required in Subpart C of this part, concerning activities pertaining to arbitration;

(5) Has been the subject of complaints by parties who use FMCS services, and the Board after appropriate inquiry, concludes that reasonable grounds for cancellation has been shown.

(6) Is determined by the Director to be unacceptable to the parties who use FMCS arbitration services; the Director may base a determination of unacceptability on FMCS records which show that an arbitrator is selected in less than 2 percent of cases in a year in which his/her name is submitted to the parties for selection.

The Board may, at its discretion, conduct an inquiry into the facts of any proposed removal from the Roster. An arbitrator listed on the Roster may only be removed after 60 day notice and an opportunity to submit a response or information showing why the listing should not be cancelled. The Board, or a hearing officer, shall recommend to the Director whether to remove an arbitrator from the Roster. All determinations to remove an arbitrator from the Roster shall be made by the Director.

§ 1404.6 Suspension of Listing.

The Director of the DAS may suspend for a period not to exceed 180 days any person listed on the Roster upon a determination that the FMCS or the parties will be harmed by continued listing. Such suspension, except upon the request of the member, shall not exceed 180 days. Arbitrators shall be promptly notified of a suspension. They may appeal a suspension to the Arbitrator Review Board, which shall make a recommendation to the Director of FMCS. The decision of the Director of FMCS shall constitute the final action of the agency.

§ 1404.7 Inactive Status.

A member of the Roster who continues to meet the criteria for listing on the Roster may request that he or she be put in an inactive status.

Subpart C—Procedures for Arbitration Services

§ 1404.8 Freedom of Choice.

Nothing contained herein should be construed to limit the rights of parties who use FMCS arbitration services to jointly select any arbitrator or arbitration procedure acceptable to

them. However, the parties must follow these regulations if they choose to name FMCS as the provider of arbitration services in their collective bargaining agreement. In any case, once a request is made to DAS, all parties are subject to the procedures contained herein.

§ 1404.9 Procedures for Requesting Arbitration Panels.

(a) The Division of Arbitration Services (DAS) has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Federal Mediation and Conciliation Service, Division of Arbitration Services, Washington, DC 20427.

(b) The DAS will refer a panel of arbitrators to the parties upon request. The DAS prefers to act upon a joint request. In the event, however, that the request is made by only one party, the DAS will submit a panel of arbitrators. All parties are advised, however, that the issuance of a panel—pursuant to either a joint or unilateral request—is nothing more than a response to a request. It does not signify the adoption of any position by the DAS regarding the arbitrability of any dispute or the terms of the parties' contract.

(c) The DAS reserves the right to decline to submit a panel or make appointments of arbitrators, if the request submitted is overly burdensome or otherwise impracticable.

(d) The parties are required to use the Request for Arbitration Panel Form (R–43), which has been prepared by the DAS and is available in quantity upon request to the Federal Mediation and Conciliation Service, Division of Arbitration Services, Washington, DC 20427. The Form R–43 is reproduced herein for purposes of identification. Requests not made on this form may be returned to the parties.

(e) Whenever a request is made by only one party, and the request is for a service *other than* the furnishing of a standard panel of 7 randomly selected arbitrators, then the requestor must certify that one of the following conditions applies:

(1) Both parties agree to the request, or

(2) There is no conflict with the parties' collective bargaining agreement.

The DAS will consider all statements as having been made in good faith and will honor requests as submitted. Absent statements conforming to the requirements of this paragraph, the unilateral request will not be honored.

§ 1404.10 Arbitrability.

If either party claims that a dispute is not subject to arbitration, the DAS will not decide the merits of such a claim.

§ 1404.11 Nominations of Arbitrators—Standard and Non-Standard Panels.

(a) The DAS will submit a randomly selected standard panel to the parties containing the names of seven (7) arbitrators accompanied by a biographical sketch for each member of the panel. This sketch states the background, qualifications, experience, and per diem fee, as furnished to the DAS by the arbitrator. It also states that other fees may exist, such as cancellation, postponement, rescheduling, or administrative fees, as furnished by the arbitrator, but does not state the amounts of such other fees. Requests for a standard panel of 7 arbitrators, whether joint or unilateral, will be honored without the need for compliance with Section 1404.9(e). Joint requests for a non-standard panel, a direct appointment of an arbitrator, or other service will also be honored without compliance with Section 1404.9(e) so long as the request does not otherwise conflict with the regulations in this Subpart C.

(b) Unilateral requests for a non-standard panel requesting (1) a different number of arbitrators (2) arbitrators with special qualifications (3) arbitrators located in particular cities, states or other areas, or (4) otherwise requesting a panel other than a standard list of seven arbitrators, must conform to the requirements of Section 1404.9(e).

(c) All panels submitted to the parties by the DAS, and all letters issued by the DAS making a direct appointment, will have an assigned FMCS case number. All future communications between the parties and the DAS must refer to this case number.

(d) The DAS considers various factors when selecting names for inclusion on a panel. Such factors include, but are not limited to, general acceptability, geographical location, availability and the need to expose new arbitrators to the selection process. The DAS has no obligations to put an individual on any given panel, or on a minimum number of panels in any fixed period, such as a month or a year.

(1) The geographical location of arbitrators placed on panels is governed by the site of the dispute as stated on the request received by the DAS.

(2) If at any time both parties request that a name or names be omitted from a panel, such name or names will be omitted, unless the number of names is excessive.

(3) If at any time both parties request that a name or names be included on a panel, such name or names will be included, unless the number of names is excessive.

(4) If a unilateral request is made to omit or include names on a panel, the request must not be for an excessive number and must comply with the provisions of Section 1404.9(e).

(e) In most cases, an arbitrator is chosen from one panel. However, if jointly requested, the DAS will furnish a second, and third panel to the parties. If a second or third panel is requested by only one party, the request will be honored if it is made in conformance with the procedures stated at § 1404.9(e). Requests for further panels will not be honored. If parties are unable to agree on a selection after having received three panels, they may wish to consider a direct appointment pursuant to § 1404.12(c).

§ 1404.12 Selection by Parties and Direct Appointments.

(a) The parties must notify the DAS of their selection of an arbitrator *or* of the decision not to proceed with arbitration. Consistent failure to follow this procedure may lead to a denial of future DAS services. Should an arbitrator be notified directly by the parties that he or she has been selected, the arbitrator must promptly notify the DAS of the selection and his or her willingness to serve. Upon notification of the selection of an arbitrator, the DAS will make a formal appointment of the arbitrator. The arbitrator, upon notification of appointment, is expected to communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing.

(b) Where the parties' collective bargaining agreement is silent on the manner of selecting arbitrators, the parties may wish to consider any jointly determined method or one of the following methods for selection of an abitrator from a panel:

(1) Each party alternately strikes a name from the submitted panel until one remains, or

(2) Each party advises the DAS of its order of preference by numbering *each name* on the panel and submitting the numbered lists in writing to the DAS. The name that has the lowest accumulated numerical number will be appointed.

(3) If the above method, or any other method calling for parties to make separate submissions to the DAS, is selected, the following time limit will apply:

(i) If one party fails to make its submission within 20 calendar days from the date of receipt by FMCS of the other party's submission, the DAS shall respond to the submission it has received by making an appointment based on that one submission.

(ii) The DAS, upon receipt of the first submission by a party, will notify the other party of the date of receipt and of the 20-calendar day time limit.

(iii) Upon expiration of the 20-calendar day time limit, and in the absence of a submission by the other party, the DAS will notify the party which made the submission that an appointment will be made, if the submitting party provides a certification in accordance with the requirements of Section 1404.9(e).

(c) The DAS will make a direct appointment of an arbitrator either on joint or unilateral request. If the request is unilateral, it must be accompanied by a statement as provided for in § 1404.9(e), that certifying either (1) the request is agreed to by both parties, or (2) the request does not conflict with the applicable contract.

(d) The issuance of a DAS panel of names, or the issuance of a DAS designated name as a direct appointment, in no way signifies a determination concerning arbitrability or an interpretation of the terms and conditions stated in the parties' collective bargaining agreement. The resolution of disputes as to such matters rests solely with the parties.

§ 1404.13 Conduct of Hearings.

(a) All proceedings conducted by the arbitrators shall be in conformity with the contractual obligations of the parties. The arbitrator shall comply with § 1404.4(b) of these regulations. The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control and the arbitrator's decision shall be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding. The arbitrator may, unless prohibited by law, proceed in the absence of any party who, after due notice, fails to be present or to obtain a postponement. An award rendered in the *ex parte* proceeding of this nature must be based upon evidence presented to the arbitrator.

§ 1404.14 Decision and Awards.

(a) Arbitrators shall make awards no later than 60 days from the date of the closing of the record as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by the collective bargaining agreement or law. A failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the FMCS Roster.

(b) The parties should inform the DAS whenever a decision is unduly delayed. The arbitrator shall notify the DAS if and when the arbitrator (1) cannot schedule, hear, and render decisions promptly, or (2) learns a dispute has been settled by the parties prior to the decision.

(c) Within 15 days after an award has been submitted to the parties, the arbitrator shall submit an Arbitrator's Report and Fee Statement, Form R–19, to FMCS showing a breakdown of the fee and expense charges so that the Service may review conformance with stated charges under Section 1404.12(a). The Form R–19 is not to be used for purpose of billing the parties.

(d) While the Service encourages the publication of arbitration awards, arbitrators should not give publicity to awards they issue if objected to by one of the parties.

§ 1404.15 Fees and Charges of Arbitrators.

(a) No administrative or filing fee is charged by the Service. All arbitrators listed on the Roster may charge a per diem fee and other predetermined fees for services, if the amount of such fees have been provided in advance to the Service. Each arbitrator's maximum per diem fee and the existence of other predetermined fees, if any, are set forth on a biographical sketch which is sent to the parties when panels are submitted. These are the controlling fees for a maximum of 30 days unless otherwise specified. The arbitrator shall not change any fee or add charges without giving at least 30 days advance notice to the Service. Arbitrators with dual business addresses shall bill the parties for expenses from the nearest business address to the hearing site. Arbitrators shall submit their schedule of fees to both parties when accepting arbitration appointments.

(b) In cases involving unusual amounts of time and expenses relative to pre-hearing and post-hearing administration of a particular case, an administrative charge may be made by the arbitrator.

(c) All charges other than those specified in 1404.15(a) shall be divulged to and agreement obtained by the arbitrator with the parties immediately after appointment.

(d) The Service requests that it be notified of any arbitrator's deviation from the policies expressed herein. However, the Service does not resolve fee disputes.

§ 1404.16 Reports and Biographical Sketches.

(a) Arbitrators listed on the Roster shall execute and return all documents, forms and reports required by the Service. They shall also keep the Service informed of changes of address, telephone number, availability, and of any business or other connection or relationship which involves labor-management relations or which creates or gives the appearance of advocacy as defined in Section 1404.5(c)(1).

(b) The Service will prepare biological information on each person admitted to listing on the Roster from information supplied by applicants in their applications for initial listing. Arbitrators may request revision of biographical information at later dates to reflect changes in fees, the existing of additional charges, address, experience, or other relevant data. The Service reserves the right to decide and approve the format and content of biographical sketches.

Appendix

BILLING CODE 6372-01-M

FMCS Form R–43
Sep 1975

Form Approved
OMB NO. 23-R0007
Expires 7-31-88

FEDERAL MEDIATION AND CONCILIATION SERVICE
WASHINGTON, D.C. 20427

REQUEST FOR ARBITRATION SERVICES

To: Director, Arbitration Services
Federal Mediation and Conciliation Service
Washington, D.C. 20427

Date _____

1.

Name of Company _____

Name and Address of Representative to Receive Panel _____ (NAME)
_____ (STREET)
_____ (CITY, STATE, ZIP)

Telephone (include area code) _____

2.

Name of Union and Local No. _____

Name and Address of Representative to Receive Panel _____ (NAME)
_____ (STREET)
_____ (CITY, STATE, ZIP)

Telephone (include area code) _____

3. Site of Dispute _____ (CITY, STATE, ZIP)

4. Identification of Grievance _____ (By Number, Name, Issue, Etc.)

5.a. /_/ Standard Panel. This is a request for the names of 7 arbitrators.

b. /_/ Non-Standard Panel - Direct Appointment - Or Other Service. This is a request for a different number of arbitrators and/or for special requirements as to qualifications, geographical location, etc.; or is a request for the direct appointment of an arbitrator; or is for another service. Please describe:

_____

_____

6. If this is a request by only one party and the request is for a Non-Standard Panel - Direct Appointment - Or Other Service (Item 5b above) one of the following must be checked:

a. /_/ I certify that the other party has agreed to this request, or

b. /_/ I certify that there is no conflict with the applicable contract.

7. Type of Industry

- ☐ Manufacturing
- ☐ Construction
- ☐ Mining, Agriculture and Finance
- ☐ Federal Government
- ☐ State Government
- ☐ Local Government
- ☐ Public Utilities, Communications, Transportation (including trucking)
- ☐ Retail, Wholesale and Service Industries
- ☐ Other (Specify) _____

8. Signatures

_____ (COMPANY)

_____ (UNION)

Although the FMCS prefers to act upon a joint request of the parties, a submission will be made based on the request of a single party. However, any submission of a panel should not be construed as anything more than compliance with a request and does not reflect on the substance or arbitrability of the issue in dispute.

[FR Doc. 88–8517 Filed 4–19–88; 8:45 am]
BILLING CODE 6372-01-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3367-8]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On March 3, 1988 (53 FR 6842), EPA proposed approval of a revision submitted by the State of Connecticut for the Guilford Gravure Company, Incorporated. On April 4, 1988, the National Resources Defense Council (NRDC) requested an extension of the public comment period. EPA has evaluated this request and is hereby granting a thirty (30) day extension of the public comment period.

DATES: Comments should be received on or before May 4, 1988.

FOR FURTHER INFORMATION CONTACT: David B. Conroy; (617) 565-3252; FTS 835-3252.

Authority Citation: 42 U.S.C. 7401-7642.

Date: April 8, 1988.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88-8657 Filed 4-19-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-3320-3]

Standards of Performance for New Stationary Sources; State Plans for Designated Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Amendments and Notice of Public Hearing.

SUMMARY: This proposal would amend the existing requirement in 40 CFR 60.22(a) that a standard of performance for control of a designated pollutant from new sources must be promulgated before the Administrator may publish a draft emission guideline document on control of that designated pollutant from existing facilities. The effect of the proposed amendment would be to allow a draft or final emission guideline document to be published pursuant to section 111(d) of the Clean Air Act at the same time as the new source performance standard for similar new sources is proposed or promulgated pursuant to section 111(b). A public hearing will be held, if requested, to provide interested parties an opportunity for oral presentations of data or views concerning the proposed amendment.

DATES: Comments. Comments must be received on or before June 24, 1988.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 17, 1988, a public hearing will be held on May 24, 1988 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 at (919) 541-5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by May 17, 1988.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention Docket Number A-87-21, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-87-21, containing supporting information used in developing the proposed amendment, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Susan Thorneloe, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5393.

SUPPLEMENTARY INFORMATION: On November 17, 1975 (40 FR 53340), EPA promulgated a new Subpart B in 40 CFR Part 60 to establish procedures and requirements for submittal of State plans for control of designated pollutants from existing facilities under section 111(d) of the Clean Air Act. A designated pollutant is defined by 40 CFR 60.21(a) as,

> any air pollutant, emissions of which are subject to a standard of performance for new stationary sources but for which air quality criteria have not been issued, and which is not included on a list published under Section 108(a) or Section 112(b)(1)(A) of the Act.

The rule at 40 CFR 60.22(a) requires that the new source performance standard for a designated pollutant must be promulgated before the corresponding draft emission guideline document for existing sources is published. When originally proposed on October 3, 1974 (39 FR 36102), the rule required that draft emission guidelines for control of emissions of designated pollutants from existing facilities be published at the same time corresponding standards of performance for new sources were proposed.

After the 1974 proposal, comments were received regarding the timing of the proposal of standards for new facilities and publication of the corresponding draft emission guidelines for existing facilities. A few commenters said that more time would be needed to evaluate a standard of performance and the corresponding draft emission guidelines than would be allowed by simultaneous proposal of the standard and publication of the draft emission guidelines. Commenters also stated that by publishing draft emission guidelines after promulgation of the corresponding new source performance standard, EPA could benefit from the comments on the standard of performance in developing the emission guideline. Based on these comments, when the EPA promulgated the procedures and requirements in 1975, the timing of the rule was changed to require that draft emission guidelines be announced for public comment after promulgation of the corresponding standard of performance for new sources.

Today EPA is revising the requirements of 40 CFR 60.22(a) relating to the timing of promulgation of the new source performance standard for designated pollutants and publication of the corresponding draft emission guideline document. Specifically, today's proposal provides EPA the flexibility to publish draft emission guidelines either at the same time or after the corresponding standard of performance for new sources is proposed. Similarly, the final emission guidelines could be published at the same time or after the corresponding new source performance standard is promulgated. However, it should be noted that today's amendment does not commit EPA to propose the new source performance standard and

publish the draft emission guidelines simultaneously. Rather, it gives EPA flexibility to choose announcement of emission guidelines at the same time or after the new source performance standard is proposed or promulgated.

This flexibility is appropriate. Depending on the specific source category involved, simultaneous proposal of the new source performance standard and publication of the associated draft emission guideline document may be reasonable and necessary to efficiently achieve the goal of protecting public health and welfare. For example, when regulatory studies of new and existing sources can be completed at the same time, waiting until promulgation of the new source performance standard before publishing the draft emission guideline document would unnecessarily delay control of existing sources. In addition, for certain source categories, it would be useful to receive comments on draft emission guidelines at the same time as comments on the proposed new source performance standard. In these cases, flexibility to propose the new source performance standard and to announce the draft emission guidelines at the same time is important. In some circumstances, however, it might still be best to promulgate the new source performance standard before publishing the draft emission guideline document.

On July 7, 1987 (52 FR 25399), the Agency published an advance notice of proposed rulemaking announcing the intent to regulate new and existing municipal waste combustor emissions under the authority of Clean Air Act sections 111(b) and 111(d), respectively. Since both new and existing sources have been studied simultaneously, this source category is an example of an instance where it would be reasonable to publish the draft emission guideline document at the same time the new source performance standard is proposed.

Public Hearing

A public hearing will be held, if requested, to discuss the proposed amendment in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section at the address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

Docket

The docket is an organized and complete file for all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials [Section 307(d)(7)(A)]).

Executive Order 12291 Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed amendment is not major because it 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 major.

This amendment was submitted to the OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments will be included in Docket A-87-21. This docket is available for public inspection at EPA's Central Docket Section, which is listed in the **ADDRESSES** section of this notice.

Paperwork Reduction Act

There are no information collection requirements in this proposed amendment. Therefore, review and approval of such requirements by the Office of Management and Budget do not apply.

Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this amendment, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the impact of the proposed amendment is not significant.

List of Subjects in 40 CFR Part 60

Air pollution control, Designated pollutants, Inter-governmental relations.

Date: April 10, 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: Sections 101, 111, 114, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7601).

2. Section 60.22 is amended by revising paragraph (a) to read as follows:

§ 60.22 Publication of guideline documents, emission guidelines, and final compliance times.

(a) Concurrently upon or after proposal of a standard of performance for the control of a designated pollutant from affected facilities, the Administrator will publish a draft guideline document containing information pertinent to control of the designated pollutant from designated facilities. Notice of the availability of the draft guideline document will be published in the **Federal Register** and public comments on its contents will be invited. After consideration of public comments and upon or after promulgation of a standard of performance for control of a designated pollutant from affected facilities, a final guideline document will be published and notice of its availability will be published in the **Federal Register.**

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[FR Doc. 88-8656 Filed 4-19-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-144, RM-6167]

Radio Broadcasting Services; Larned, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Thomas L. Higgins proposing the allocation of FM Channel 295A to Larned, Kansas, as that community's second FM broadcast service. The coordinates used for this proposal are 38-10-48 and 99-06-00.

DATES: Comments must be filed on or before June 6, 1988, and reply comments on or before June 21, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: Thomas L. Higgins, 9913 Lakeshore Blvd., Cleveland, Ohio 44108.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–144, adopted March 24, 1988, and released April 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–8628 Filed 4–19–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–143, RM–6159]

Radio Broadcasting Services; Cloquet and Grand Marais, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WKLK, Inc. proposing the substitution of FM Channel 263C1 for Channel 265A at Cloquet, Minnesota, and modification of its license for Station WKLK–FM, to specify operation on the higher class channel. To accommodate Channel 263C1 at Cloquet, an additional channel substitution would be necessary. Channel 263C must be substituted for Channel 237C at Grand Marais, Minnesota. An application for Channel 263C at Grand Marais has been filed by Timothy D. Martz. Canadian concurrence must be obtained for the allotment of Channel 263C1 at Cloquet and Channel 237C at Grand Marais. The coordinates used in this proposal are, for Cloquet, Minnesota, Channel 263C1, 46–45–50 and 92–22–12, and for Grand Marais, Minnesota, Channel 237C, 47–59–13 and 90–24–12.

DATES: Comments must be filed on or before June 6, 1988, and reply comments on or before June 21, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Anne Thomas Paxson, Borsari & Paxson, 2100 M Street NW., Suite 610, Washington, DC 20037, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–143, adopted March 24, 1988, and released April 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–8631 Filed 4–19–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–145, RM–6201]

Radio Broadcasting Services; Summerville, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Millennium Communications of Charleston, Inc. seeking the substitution of Channel 227C2 for Channel 228A at Summerville, South Carolina, and the modification of its license for Station WWWZ–FM to specify operation on the higher powered channel. In accordance with § 1.420(g) of the Commission's Rules, the license of Station WWWZ–FM can be modified to specify adjacent Channel 227C2 without requiring the petitioner to demonstrate the availability of an additional equivalent channel for use by other interested parties. Channel 227C2 can be allocated to Summerville, South Carolina, in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.7 kilometers (14.7 miles) northeast to avoid a short-spacing to Station WEAS–FM, Channel 226C1, Savannah, Georgia. The restricted site coordinates are: North Latitude 33–11–17; West Longitude 80–01–27.

DATES: Comments must be filed on or before June 6, 1988 and reply comments on or before June 21, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Alan C. Campbell, Esq., Elizabeth J. Gustafson, Esq., Dow, Lohnes & Albertson, 1255–23rd Street, NW., Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–145, adopted March 21, 1988, and released April 14, 1988. The full text of this Commission decision is available

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

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-8634 Filed 4-19-88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 53, No. 76
Wednesday, April 20, 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

April 15, 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 numbers of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.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.

Reinstatement

- Food and Nutrition Service
  17 CFR Parts 253 and 254, Food Distribution Program on Indian Reservations/Oklahoma
  AD–623, SF–269 and SF–270
  Recordkeeping; Monthly; Quarterly; Semi-annually; and Annually
  Individuals or households; State or local governments; 45,292 responses; 209,596 hours; not applicable under 3504(h)
  Sandra J. Robinson (702) 756–3660

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 88–8687 Filed 4–19–88; 8:45 am]

BILLING CODE 3410–01–M

Soil Conservation Service

Madison Canal Flood Prevention RC&D Measure, MD

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Madison Canal Flood Prevention RC&D Measure, Dorchester County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Pearlie S. Reed, State Conservationist, Soil Conservation Service, 4321 Hartwick Road, College Park, Maryland 20740, telephone 301–344–4180.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Pearlie S. Reed, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan to control tidal flooding on agricultural land. The planned works of improvement include installation of two 3 feet by 5 feet cast iron, automatic tidegates. The tidegates will be mounted on a concrete headwall across Madison Canal, immediately downstream of the Route 16 bridge. A minor amount of excavating and filling will be perofrmed to re-route roadside drainage and to prevent tidal water from flowing around the structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Pearlie S. Reed. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernment consultation with state and local officials.)

Pearlie S. Reed,

State Conservationist.

[FR Doc. 88–8680 Filed 4–19–88; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on May 10, 1988, at the Federal Building, 701 C Street, (Room C–121), Anchorage, Alaska 99513. The purpose of the meeting is to develop future program plans and to review prior program activities, including the November 1987 forum on minority and womens' business enterprise programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chair-person, Daniel Alex or Philip Montez, Directof the Western

Regional Divison (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working day 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., April 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–8598 Filed 4–19–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Preliminary Determination of Sales at Less than Fair Value: Granular Polytetrafluoroethylene Resin from Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that granular polytetrafluoroethylene (PTFE) resin from Italy is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of granular PTFE resin from Italy as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 28, 1988.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Brian H. Nilsson or Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377–5332 or 377–2613.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that granular PTFE resin from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of initiation (52 FR 45982, December 3, 1987), the following events have occurred. On December 21, 1987, the ITC determined that there is reasonable indication that a U.S. industry is materially injured by reason of imports of granular PTFE resin (52 FR 49209, December 30, 1987).

On January 20, 1988, we presented an antidumping duty questionnaire to Montefluos S.p.A., which accounts for most of the exports of granular PTFE resin from Italy during the period of investigation.

On February 17, 1988, we granted Montefluos an extension of two weeks for filing its response. The questionnaire response was received from Montefluos on March 4, 1988. Three deficiency letters were sent and supplemental responses were received on March 22, 1988, and March 30, 1988.

Scope of Investigation

The product covered by this investigation is granular polytetrafluoroethylene (PTFE) resin, filled and unfilled, provided for in item 445.54 of the *Tariff Schedules of the United States* (TSUS) and currently classifiable under Harmonized System (HS) item number 3904.61.00. PTFE dispersions in water and fine powders are not covered by this investigation.

Montefluos has argued that the Department should not include filled PTFE resins within the scope of the investigation because (1) Du Pont, the sole petitioner and the only company supporting the petition, does not produce filled resins and, therefore, does not have the requisite standing to warrant an investigation of filled PTFE; (2) Du Pont's fear of circumvention, its sole reason for including filled PTFE in the petition, is unfounded, since (a) filled PTFE cannot be reprocessed or converted into unfilled PTFE or marketed as a substitute for unfilled PTFE and (b) the U.S. producers that account for about 90 percent of the U.S. production of filled PTFE make their own unfilled PTFE which is used as an imput with the filled product; (3) filled PTFE cannot be substituted for unfilled PTFE since it is a different product in use and composition; and (4) two of the four producers of filled resins in the United States, who hold the vast majority of U.S. market share for filled resins, oppose the inclusion of filled PTFE within the scope of the investigation.

The petitioner argues that the Department should continue to investigate filled resins because (1) filled resins fall within the same class or kind of merchandise as unfilled resins, according to the criteria normally used by the Department; (2) the possibility of circumvention remains an issue; and (3) the ITC found that filled and unfilled resins are within one "like product" category.

Du Pont filed the petition on behalf of the industry that manufactures granular PTFE resin, filled and unfilled. Du Pont was deemed to be an interested party under section 771(9)(C) of the Act because it manufactures the product under investigation. No domestic producer, other than parties that are related to, and/or import from, a respondent, and who are excludable under section 771(4)(B) of the Act, has objected to the inclusion of filled PTFE in this investigation.

Furthermore, the International Trade Commission (ITC) has preliminarily found that filled and unfilled PTFE resins constitute one "like product" under section 771(10) of the Act and found that there is one industry producing the "like product" in the United States, as defined by section 771(4). USITC Pub. 2043 (December 1987). Under the circumstances, we preliminarily determine that the petitioner possesses the requisite standing to file a petition including filled resins under section 732(b) because the petitioner is an interested party with respect to the "like product", in accordance with section 771(9)(C). Thus, we have continued to include filled granular PTFE resins within the scope of this investigation.

We will, however, continue to examine the issue of whether filled PTFE is within the scope of the investigation for our final determination. We are considering the following factors, based on additional information currently being complied: (1) General physical characteristics; (2) the expectations of the ultimate purchasers; (3) the channels of trade in which the product is sold; (4) the manner in which the product is advertised and displayed; and (5) the ultimate use of the merchandise in question.

Period of Investigation

The period of investigation is June 1, 1987, through November 30, 1987.

Such or Similar Comparisons

We determined that Montefluos had sufficient home market sales of such or similar merchandise to form the basis for calculating foreign market value.

Where possible, we compared sales of identical merchandise in the two markets. Where identical merchandise was not sold in both markets, we based our comparisons on the most similar merchandise within each product category, basing our matches on basic properties, average particle size, bulk density, radial shrink, and transforming conditions. Montefluos has claimed that there is no difference in costs between each grade. Accordingly, no adjustments for differences in merchandise were made.

Fair Value Comparisons

To determine whether sales of granular PTFE resin from Italy to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Montefluos failed to report data on filled resins. Therefore, for purposes of our preliminary determination, the dumping margin for sales of filled resins was based on best information available, to compensate for that percentage of sales not reported, in accordance with section 776(b) of the Act. This margin, based on the petition, has been factored into Montefluos' weighted-averaged margin.

United States Price

For all sales by Montefluos, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because sales were made after importation. We calculated exporter's sales price based on packed, c.i.f. duty paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for brokerage and handling, ocean freight, insurance charges, U.S. duty, U.S. inland frieght, credit expenses, and other U.S. selling expenses pursuant to section 772(e) (1) and (2) of the Act.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on packed, c.i.f. delivered prices to unrelated purchasers. We made deductions, where appropriate, for inland freight and insurance, credit, rebates, and warranty expenses. We offset indirect selling expenses incurred on home market sales up to the amount of selling expenses incurred on sales in the U.S., in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from the foreign market value and added U.S. packing costs.

Currency Conversion

Since all U.S. sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

We will verify the information used in making our final determination in accordance with section 776(a) of the Act.

Suspension of Liquidiation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of granular PTFE resin from Italy, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of granular PTFE resin from Italy exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Montefluous S.p.A.	45.23
All others	45.23

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproperietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Acting Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination or 45 days after final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on June 6, 1988, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue NW., Washington, DC. 20230.

Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Acting Assistant Secretary by May 31, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

Dated: April 14, 1988.

[FR Doc. 88-8674 Filed 4-19-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-707]

Preliminary Determination of Sales at Less than Fair Value: Granular Polytetrafluoroethylene Resin from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that granular polytetrafluoroethylene (PTFE) resin from Japan is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all

entries of granular PTFE resin from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 28, 1988.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Paul H. Tambakis (202) 377–4136 or Michael J. Ready (202) 377–2613, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that granular PTFE resin from Japan is being, or is likely to be, sold in the United States at less than fair market value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of initiation (52 FR 45983, December 3, 1987), the following events have occurred. On December 21, 1987, the ITC determined that there is reasonable indication that a U.S. industry is materially injured by reason of imports of granular PTFE resin from Japan (52 FR 49209, December 30, 1987).

On January 26, 1988, we presented an antidumping duty questionnaire to Daikin Industries (Daikin), which accounts for the majority of exports of granular PTFE resin from Japan during the period of investigation. Asahi Fluoropolymers, Inc. (Asahi), requested that it be allowed to participate in the investigation since it was a producer and exporter of PTFE resin. The Department sent a questionnaire to Asahi on January 26, 1988, as well.

On February 25, 1988, we were notified by Daikin that it would not be responding to the Department's questionnaire. We received questionnaire responses from Asahi between March 3 and March 30, 1988.

Scope of Investigation

The product covered by this investigation is granular polytetrafluoroethylene resin, filled and unfilled, as provided for in item 445.54 of the *Tariff Schedules of the United States* (TSUS) and currently classifiable under Harmonized System (HS) item number 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this investigation.

Asahi has argued that filled and unfilled granular PTFE resin should be treated as separate classes or kinds of merchandise. While the petitioner requested in the petition that filled granular PTFE resin be included in an investigation to prevent probable circumvention of a final dumping order on unfilled granular PTFE resin, the petitioner has not otherwise commented on this matter. We note that all granular PTFE resin exported to the United States by Asahi was unfilled. However, ICI Americas Inc. (ICIA), a U.S. company related to Asahi, imports a certain amount of unfilled granular PTFE resin from Asahi and fills it prior to selling it to unrelated customers in the United States.

Based on our reivew of relevant information currently on the record, we are treating all granular PTFE resin, both filled and unfilled, as one class or kind of merchandise for purposes of the preliminary determination. As a result, we will instruct U.S. Customs to suspend liquidation of all entries of both filled and unfilled granular PTFE resin from Japan. We will consider this issue further for our final determination.

Period of Investigation

The period of investigation is June 1, 1987, through November 30, 1987.

Such or Similar Comparisons

We determined that Asahi had sufficient home market sales of such or similar merchandise to form the basis for calculating foreign market value. All comparisons were based on sales of identical merchandise in the home market.

Fair Value Comparisons

To determine whether sales of granular PTFE resin from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Since Daikin failed to respond to our questionnaire, its margin is based on information from the petition as best information available, in accordance with section 776(b) of the act.

Asahi did not respond to the Department's request for information concerning sales of filled PTFE resins by ICIA to unrelated U.S. customers. Therefore, we based the portion of its margin attributable to filled PTFE resins on information from the petition as best information available, in accordance with section 776(b) of the Act.

United States Price

For all sales by Asahi of unfilled granular PTFE resin, we based United States Price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation. We calculated exporter's sales price based on packed, ex-warehouse or delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and insurance, brokerage and handling charges, ocean freight, marine insurance, U.S. duty, U.S. inland freight, credit expenses and other U.S. selling expenses pursuant to sections 772(e) (1) and (2) of the Act.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value for sales of unfilled granular PTFE by Asahi based on packed, delivered prices to unrelated purchasers in Japan. We made deductions, where appropriate, for inland freight and insurance, credit and warranty expenses. We offset indirect selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from foreign market value and added U.S. packing costs.

Currency Conversion

Since all U.S. sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

We will verify the information used in making our final determination in accordance with section 776(a) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of granular PTFE resin from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of granular PTFE resin from Japan exceeds the United States

price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Daikin Industries, Inc.	103.00
Asahi Fluoropolymers, Inc.	38.94
All others	87.68

This suspension of liquidation covers imports of granular PTFE resin from Japan as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Acting Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later or 120 days after the date of this determination or 45 days after the final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 8, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Acting Assistant Secretary by June 1, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

April 14, 1988.

[FR Doc. 88–8675 Filed 4–19–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Petitions by Producing Firms for Determinations of Eligibility to Apply for Trade Adjustment Assistance; Kasper Foundry Co. et al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Kasper Foundry Company, P.O. Box 359, Elyria, Ohio 44036, producer of compressor parts, parts for printing press, vacuum pumps and light bulbs (January 11, 1988); (2) Beach-Russ Company, 544 Union Avenue, Brooklyn, New York 11211, producer of vacuum pumps (January 11, 1988); (3) Aladdin Toy Motors, Inc., 180 Commerce Drive, Hauppage, New York 11799, producer of toy motors, ice buckets, trays, glasses, coaster, napkin rings and sox (insulated sleeves for glasses) (January 12, 1988); (4) Herr Manufacturing Company, Inc., 17 Pearce Avenue, Tonawanda, New York 14150, producer of textile rings for yarn, outdoor power equipment accessories (January 12, 1988); (5) Science Typographers, Inc., 15 Industrial Boulevard, Medford, New York 11803, producer of books and journals (January 13, 1988); (6) Slager Machine Instruments, 431 North Buchanan Circle #7, Pacheco, California 94553, producer of metal enclosures (January 20, 1988); (6) Dakota Oat Processors, Inc., P.O. Box 300, Arlington, South Dakota 57212, producer of oats, barley and wheat (animal feed) (January 19, 1988); (7) Hollinee Corporation, P.O. Box 594, Hollister, California 95023, producer of asphalt saturated roofing paper (January 26, 1988); (8) Pioneer Pottery, Inc., P.O. Box 981, East Liverpool, Ohio 43920, producer of ceramic mugs and other misc. ceramic products (January 26, 1988); (9) The Osterneck Company, P.O. Box 849, Lumberton, North Carolina 28359, producer of bags, bale covers, furniture and carpet backing (January 27, 1988); (10) Accessocraft Products Corporation, 48 Lawton Street, New Rochelle, New York 10802, producer of women's belts and jewelry (February 1, 1988); (11) Achilles Construction Co., Inc., 262 Green Street, Brooklyn, New York 11222, producer of fabricated structural steel (February 9, 1988); (12) Pacific studs & Lumber Co., Highway 64, P.O. Box 488, Cimarron, New Mexico 87714, producer of planed lumber (February 4, 1988); (13) Robotics, Inc., R.D. #3, Route 9, Ballston Spa, New York 12020, producer of automated dispensing equipment for adhesives and sealants (February 8, 1988); (14) Robinson Knife Manufacturing Co., Inc., 243 W. Main Street, Springville, New York 14141, producer of cutlery and blades for appliances (February 9, 1988); (15) S. Howes Co., Inc., 8 Howard Street, Silver Creek, New York 14136, producer of grain cleaning equipment, flour milling equipment and machined parts (February 9, 1988); (16) Pacific Graphics, Inc., 15323 Proctor Avenue, City of Industry, California 91745, producer of manifold business forms (February 9, 1988); (17) Columbia Manufacturing Co., Inc., One Cycle Street, Westfield, Massachusetts 01086, producer of bicycles (February 10, 1988); (18) Vancraft Corporation, 630 Lycaste, Detroit, Michigan 48214, producer of metal tubing for the automotive industry (February 10, 1988); (19) Visual Information Institute, Inc., P.O. Box 33, Xenia, Ohio 45385, producer of video test instrumentation (February 10, 1988); (20) Wolverine Machine Products Co., 319 Cogshall Street, Holly, Michigan 48442, producer of industrial fastner (February 10, 1988); (21) Spectex Industries, Inc., 505 Carroll Street, Brooklyn, New York 11215, producer of women's sweater and skirt sets (February 12, 1988); (22) A.J. Wahl, Inc., 143 Central Avenue Brocton, New York 14716, producer of automatic jiggers, pug mills, hydraulic extruders, insulator production machinery, and material transporters (conveyers and dryers) (February 12, 1988); (23) Lumco Manufacturing Company, 2027 Mitchell Lake Road, Lum, Michigan 48452, producer of interchangeable tools for machine tools, and tool holders automobile water pump impellers (February 16, 1988); (24) Robotics, Inc., R.D. #3, Route 9, Ballston Spa, New York 12020, producer of automated dispensing equipment for adhesives and sealants (February 8, 1988); (25) SWS Industries, Inc., 142 East Prairie Street, Marengo, Illinois 60152, producer of paper punches, mouse and rat traps and coin changers (February 12, 1988); (26)

Meyers Manufacturing Company, 330 Fifth Avenue, New York, New York 10001, producer of handbags (February 9, 1988); (27) International Microtronics Corporation, 4016 E. Tennessee Street, Tucson, Arizona 85714, producer of digital panel meters and printed circuit boards (February 23, 1988); (28) Rye Industries, Inc., 125 Spencer Place, Mamaroneck, New York, producer of headphones (February 23, 1988); (29) Leo F. MacIver Co., Inc., 75 Ames Street, Brockton, Massachusetts 02403, producer of leather and rubber insoles and trimmings for men's leisure and dress shoes (February 26, 1988); (30) Rolshear, Inc., 100 Shirland Avenue, South Beloit, Illinois 61080, producer of machines for angle bending fabricated steel (February 26, 1988); (31) Clifford H. Jones, Inc., 608 Young Street, Tonawanda, New York 14150, producer of plastic molds (February 29, 1988); (32) Paula Carbone, Ltd., 180 Madison Avenue, New York, New York 10016, producer of women's nightgowns, pajamas, slips, camisoles, teddys and panties (February 29, 1988); (33) Fresh Island Fish company, Inc., RR 1 P.O. Box 373–B, Wailuku, Maui, Hawaii 96793, distributor of fish (March 1, 1988); (34) Columbine Plastics Corporation 3195 Blupp Street, Boulder, Colorado 80301, producer of plastic injection molded components for electronic and computer equipment (March 3, 1988); (35) Innovative Ventures, Inc., 3106 Century Street, Colorado Springs, Colorado 80907, producer of Tiffany lighting fixtures (March 7, 1988); (35) DeBoles Nutritional Foods, Inc., 2120 Jericho Turnpike, Garden City Park, New York 11040, producer of macaroni, spaghetti, noodles, lasagna and substitute rice pasta (March 9, 1988); (36) H.M.S. Direct Mail Service, Inc., 2299 Military Road, Tonawanda, New York 14150, producer of catalogs, brochures and educational booklets (March 10, 1988); (37) Hope's Architectural Products, Inc., 84 Hopkins Avenue, Jamestown, New York 14701, producer of security windows of steel and aluminum (March 14, 1988); (38) All Metal Stamping Corporation, 3902 Seventh Avenue, Brooklyn, New York 11232, producer of parts of brass beds, fire place tools, coffee pots, trays, planters, and sugar and cream servers of brass (March 21, 1988); (39) Armor Safe Corporations 1435 Grand Avenue, San Marcos, California 92069, producer of safes (March 21, 1988); (40) Oak Switch Systems, Inc., 100 South Main Street, P.O. Box 517, Crystal Lake, Illinois 60014, producer of switches, solenoid and keyboards (March 25, 1988); (41) Taylor and Friend Enterprises, Inc., 1101 South Emerson Avenue, Indianapolis, Indiana 46203, producer of compression and plastic, injection molds and components for the medical and automotive industry (March 28, 1988); (42) Hazel's Interurban Avenue South, Tukwila, Washington 98188, producer of candy (March 30, 1988); (43) Modulex, Inc., 15421 Assembly Lane, Huntington Beach, California 92649, producer of aluminum door frames and aluminum scrap (March 31, 1988); (44) Rocon Manufacturing Corporation, 606 Hague Street, Rochester, New York 14606, producer of machined parts for automotive components, photocopying machines and airplane navigation systems (March 31, 1988); (45) Vanguard Corporation, 10 Java Street, Brooklyn, New York 11222, producer of metal desks and file cabinets (March 31, 1988).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increases imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

S. Cassin Muir,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 88–8661 Filed 4–19–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of amendments to systems of records subject to the Privacy Act of 1974.

SUMMARY: The Department of the Army is amending one of its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice on May 20, 1988, unless comments are received which result in a contrary determination.

ADDRESS: Send comments to Mr. Cliff Jones, AS–OPS–MR, Fort Huachuca, AZ 85613–5000, telephone: 602–538–6568, autovon: 879–6568.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40479) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987
FR Doc. 87–11379 (52 FR 18798) May 19, 1987
FR Doc. 87–15611 (52 FR 25905) July 9, 1987
FR Doc. 87–19686 (52 FR 32329) August 27, 1987
FR Doc. 87–26438 (52 FR 43932) November 17, 1987

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, published in its entirety.

The proposed amendment is not within the purview of the provision of 5 U.S.C. 552a(o), which require the submission of a new or altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 15, 1988.

Amendment

A0305.05aDACA

SYSTEM NAME:

Travel Payment System (50 FR 22119) May 29, 1985.

CHANGES:

SYSTEM LOCATION:

Add: "All Army activities receiving an allotment of TDY funds to expend."

RETENTION AND DISPOSAL:

Add: "Copies of travel settlement vouchers are destroyed after 1 year."

RECORD SOURCE CATEGORIES:

Add: "/activities."

A0305.05aDACA

SYSTEM NAME:

Travel Payment System.

SYSTEM LOCATION:

Decentralized to Finance and Accounting Offices world-wide; addresses may be obtained from the System Manager. All Army activities receiving an allotment of TDY funds to expend.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel of the Department of Defense, U.S. Army, U.S. Navy, and U.S. Air Force, and other individuals who perform invitational travel for the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual travel vouchers and documents used to effect travel allowance payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Department of Defense Annual Appropriations Act; 5 U.S.C., sections 5701–5742; 10 U.S.C., sections 828, 832, 946, 3012; 28 U.S.C., section 1821; 37 U.S.C., sections 404–427; E.O. 9397.

PURPOSE(S):

To provide basis for reimbursing military and civilian personnel for expenses incident to travel for official Government business purposes and to account for such payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices. Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, cards, magnetic tape/disks, cassettes, computer printouts.

RETRIEVABILITY:

By individual's SSN.

SAFEGUARDS:

Records are accessible only to authorized persons who are properly screened, cleared and trained. Buildings employ security guards and/or military police patrols. Access to automated files is controlled by assigned passwords.

RETENTION AND DISPOSAL:

Individual vouchers and documents used for payment are retained at the installation making payment until end of month, following which they are sent to U.S. Army Finance and Accounting Center.

Signature cards used for approval of certain vouchers are retained at installation where payments are made until 3 years after date of revocation of authority, following which they are destroyed.

Records of travel payments are retained for 3 years following settlement at installation making current payments. Military member's record of outstanding advance payments is transferred to new servicing finance office upon permanent change of station or to the U.S. Army Finance and Accounting Center upon death or separation from active duty. Civilian employee's record of outstanding advance payments is transferred to new servicing finance office upon reassignment. Military and civilian records of travel payments for settled travel claims are destroyed by the old duty station 3 years following separation or transfer. Records for individuals performing invitational travel are destroyed 1 year from date of final payment.

Copies of travel settlement vouchers are destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Army, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring information on them from this system should inquire of the Finance and Accounting Office who currently pays them. For periods of Army service prior to current assignment, request should be addressed to the Commander, U.S. Army Finance and Accounting Center, ATTN: DACA–FAZ–S, Indianapolis, IN 46249–0526. Individual must provide full name and Social Security Number as well as current address.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records pertaining to them should write either to the appropriate Finance and Accounting Officer where record is believed to exist or to the Commander, U.S. Army Finance and Accounting Center providing information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Department of Defense staff agencies and field commands/installations/activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–8671 Filed 4–19–88; 8:45 am]

BILLING CODE 3810–01–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, April 27, 1988 beginning at 1:30 p.m. in the Washington Room of the George Washington Lodge, Route 202 South and Warner Road, King of Prussia, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. in the Lodge's Anthony Wayne Room and will include a presentation by the U.S. Geological Survey on climate change.

The subjects of the hearing will be as follows:

Amendment to the Comprehensive Plan Relating to Criteria and Operations Formulae for Emergency Operations During a Lower Basin Drought Warning and Drought.

In February, 1983 the Commission received Interstate Water Management Recommendations of the Parties to the U.S. Supreme Court Decree of 1954 to the Delaware River Basin Commission Pursuant to Commission Resolution 78–20. These recommendations were

unanimously agreed to by the Governors of the Commonwealth of Pennsylvania, the States of New York, New Jersey and Delaware, and the Mayor of New York City. Recommendation 4 of these "Good Faith" Recommendations called for the development of a plan for coordinated operation of existing Basin impoundments during drought periods to complement the operating formula for the New York City Delaware Basin reservoirs in order to maintain reliable supplies for essential uses, to conserve water, and to control salinity. Recommendation 4 further specified that the plan should include operating criteria for the Beltzville, Blue Marsh, Walter, Prompton and Nockamixon projects and the hydroelectric power reservoirs in the Basin of the Pennsylvania Power and Light Company and Orange and Rockland Utilities, Inc.

The Commission's Flow Management Technical Advisory Committee has conducted a study and recommended alternative lower Basin drought warning and drought operating plans.

Article 2 of the Water Code of the Delaware River Basin includes Commission policy relating to the conservation, development and utilization of Basin water resources. Specifically, it is proposed to:

1. Amend the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin by the addition of a new Section 2.5.6 Coordinated Operation of Reservoirs During a Lower Basin Drought Warning and Drought, a summary of which follows.

As part of the assessment of the hydrologic condition of the lower basin, the Delaware River Master Advisory Committee would meet each year prior to June 15 to determine if it would be prudent to save the New York City Delaware Basin reservoirs' excess release quantity (presently 7.4 bg). If saved, the excess release quantity could be used to maintain the Trenton flow objective of 3000 cfs.

The criteria for defining the three stages of lower basin hydrologic conditions of normal, drought warning and drought would be based on the storage levels in Beltzville and Blue Marsh Reservoirs. After exhausting the excess release quantity, the releases from Blue Marsh and Beltzville would maintain the flow objective at Trenton until their combined storage of 19.5 bg decreased by more than a third or about 6.5 bg, at which time a drought warning would be declared. The flow objective at Trenton would decrease and vary depending upon the location of the 250 mg/1 chloride salt front in the Estuary. Voluntary water conservation would be called for as would cutbacks in conservation releases from the lower basin reservoirs. The New Jersey Delaware and Raritan Canal Diversion would be reduced to 70 mgd from 100 mgd.

A lower basin drought emergency would be declared when the combined storage in Beltzville and Blue Marsh falls another third, or about 6 bg, thus leaving only 6 bg in those reservoirs. Mandatory conservation would be declared on nonessential water use and storage in the other lower basin reservoirs, including the power reservoirs and Lake Hopatcong, would be marshalled. The New Jersey Delaware and Raritan Canal diversion would again be reduced, at this point from 70 mgd to 65 mgd.

Once a lower basin drought emergency is declared by the Commission, the parties to the 1954 U.S. Supreme Court Decree, in consultation with the DRBC, shall consider and select one of six suggested "lower basin drought" reservoir operation plans or any other plan designed to meet then-existing conditions. The parties may, by unanimous agreement, modify or adjust any such operations plans. The Commission would then implement the agreed upon plan.

Considerations in formulating the agreed to plan include the amount of lower basin storage, the amount of New York City storage, storage in Lake Wallenpaupack, the Mongaup facilities, Lake Hopatcong as well as time of year of drought onset.

The lower basin drought would end when the storage levels in Beltzville and Blue Marsh Reservoirs return to normal storage levels for 30 consecutive days or either one of these reservoirs spills, unless the Decree parties unanimously agree otherwise.

Information Briefings

Information briefing sessions on the lower Basin drought operation proposal are scheduled as follows:

April 29, 1988, 10:00 a.m.—Holiday Inn, Routes 512 and 22, Bethlehem, Pennsylvania

May 2, 1988, 10:00 a.m.—Radisson Wilmington Hotel, Newport Room, 700 King Street, Customs House Plaza, Wilmington, Delaware.

In addition, a presentation on the Lower Basin drought operating plan will be made at the Spring Conference of the Water Resources Association of the Delaware River Basin on April 28, 1988. Please contact WRA/DRB at (215) 783–0634 for further information.

Anyone interested in obtaining a copy of the full text of the proposed Comprehensive Plan amendment and a briefing paper on the proposal may request a copy by writing or calling Christopher Roberts, Public Information Officer, at (609) 883–9500.

The April 27, 1988 hearing continues that of March 23, 1988. Written statements postmarked by May 24, 1988 will be included in the hearing record.

* * * * *

Applicaitons for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Metropolitan Edison Company D–86–25.* An application to upgrade an industrial wastewater treatment plant (IWTP) located in Upper Mount Bethel Township, Northampton County, Pennsylvania. The applicant desires to improve the Portland Generating Station IWTP by constructing additional facilities and modifying several existing units. An industrial process variation will not increase the current design capacity of 0.7 million gallons per day (mgd). The treated effluent will continue to be discharged to the Delaware River. An unused outfall, located about 300 feet upstream of the currently used outfall, will service the upgraded plant.

2. *Pottstown Plating Works, Inc. D–86–68.* An existing ground water withdrawal project supplies approximately 0.131 mgd from existing Well No. 3, for cooling and industrial processing at the applicant's plant in the Borough of Pottstown, Montgomery County, Pennsylvania. The applicant is requesting approval of a withdrawal of 6.0 million gallons (mg)/30 days from Well No. 3, located about 4000 feet east of the intersection of Route 100 and U.S. Route 422. The project is in the Southeastern Pennsylvania Ground Water Protected Area.

3. *Mount Laurel Municiapl Utilities Authority D–87–68 CP.* An application to construct a new 1.0 mgd contact stabilization plant adjacent to an existing 2.95 mgd plant in Mount Laurel Township, Burlington, Country, New Jersey. The proposed facility is designed to serve an additional 10,000 residents of Mount Laurel Township through the year 1990. The proposed sewage treatment plant is designed to remove 90 percent of the BOD and SS loading. Treatment plant effluent will continue to be discharged to Rancocas Creek through the existing outfall.

4. *Philadephia Electric Company D–87–78.* Overhead cable crossing of the Schuylkill River from Barbadoes Island within West Norriton Township to Norristown Borough in Montgomery County, Pennsylvania. The aerial transmission lines will consist of two

220 kV cables from the proposed substation and an additional 33 kV wire from an existing substation. Tubular steel poles spaced 552 feet apart will be provided for the 33 kV line crossing. The four proposed towers for the 220 kV cables will be 727 feet and 775 feet apart. The proposed crossing is in a section designated for modified recreation under the Pennsylvania Scenic Rivers Act.

5. *Warrington Township Municipal Authority (WTMA) D–87–100 CP.* An application for approval of a ground water withdrawal project to pump up to 1.5 mg/30 days from WTMA Well No. 6, located about 200 feet south of the intersection of Street Road and Little Meshaminy Creek in Warrington Township. The well will be used as a recovery well for controlling the spread of ground water which has been contaminated by volitile organic compounds. After the ground water from Well No. 6 has been treated by air stripping, it will be used as an additional source of water for the WTMA system. The project is in Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Wind Gap Municipal Authority D–87–101 CP.* An application to upgrade and expand a 0.3 mgd sewage treatment plant to provide high quality secondary treatment of 1.0 mgd via the sequencing batch reactor process. The plant is located off Abel Colony road in Plainfield Township, Northampton County, Pennsylvania. The proposed plant is designed to serve Wind Gap Borough and a portion of Plainfield Township through the year 2008. The existing secondary treatment plant discharges to an unnamed tributary of Little Buchkill Creek. The applicant proposes to construct a post-aeration flume at the site of the existing outfall.

7. *Fox Hollow Associates D–88–4.* An application to expand a 0.05 mgd sewage treatment plant to provide high quality secondary treatment of 0.1 mgd. The plant is located in Birmingham Township, Delaware County, Pennsylvania. The plant is designed to serve only the residents of the applicant's development Spring Hill Farm. Treatment plant effluent will continue to be discharged to an unnamed tributary of West Branch Chester Creek through the existing outfall.

8. *Borough of Sounderton D–88–6 Cp.* An application to expand and upgrade a 0.675 mgd secondary treatment plant to provide high quality secondary treatment of 2.0 mgd. The sewage treatment plant is located in Franconia Township, Montgomery County, Pennsylvania. The proposed facility is designed to serve a portion of Hilltown Township in Bucks County through the year 2010. Treatment plant effluent will continue to be discharged to Skippack Creek through the siting outfall.

9. *Lemmon Company D–88–8.* An application for approval of a ground water withdrawal project to supply up to 5.66 mg/30 days of water to the applicant's pharmaceutical products manufacturing operation from existing Well Nos. 1, 2 and 3. The project is located approximately 1600 feet southwest of the interseciton of CAT Hill Road and Route 309 in West Rockhill Township, Bucks County, and is in the Southeastern Pennsylvania Ground Water Protected Area.

10. *Brookside Water Company D–88–11 CP.* An application for approval of a ground water withdrawal project to supply up to 6.08 mg/30 days of water to the applicant's distribution system from new Well Nos. 1 and 2, and to limit withdrawal from both wells to 6.08 mg/30 days. The project is located in Oxford Township, Warren County, New Jersey.

11. *Arco Petroleum Products Company D–88–12.* An application for approval of a ground water withdrawal project to withdraw up to 9.72 mg/30 days of water from the applicant's hydrocarbon recovery system from new Well No. RW–1, and to limit withdrawal from all wells to 9.72 mg/30 days. The project is located in the City of Philadelphia, Philadelphia County, Pennsylvania.

12. *Roamingwood Sewer and Water Association D–88–14.* An application to upgrade and expand a sewage treatment plant that serves a development in both Lake and Salem Townships, Wayne County, Pennsylvania. The existing plant has an approved design capacity of 0.205 mgd. The proposed expansion is designed to provide tertiary treatment of an average flow of 1.755 mgd through the year 2010. Treatment plant effluent will continue to be discharged to Ariel Creek, but a new outfall will be provided.

13. *Montgomeryville Industrial Sewer Company D–88–15.* An application to expand the Montgomeryville Industrial Complex Sewage Treatment Plant (STP) which is located on Hartman Road in Montgomery Township, Montgomery County, Pennsylvania. The existing STP is designed to provide tertiary treatment of 0.05 mgd. The proposed expansion is designed to treat a total average flow of 0.07 mgd through the year 2002. Treatment plant effluent will continue to be discharged to Park Creek through the existing outfall.

14. *Town of Smyrna D–88–19 CP.* An application for an increased allocation of water from Well Nos. 1 and 2 in the applicant's water supply system which have previously been included in the Comprehensive Plan. The applicant requests that the total withdrawal from all wells be increased from 30.0 mg/30 days to 33.99 mg/30 days. The project is located in the Town of Smyrna, Kent County, Delaware.

15. *Bernard W. Loeb—Carefree Village D–88–21.* An application to construct a 0.065 mgd sewage treatment plant to serve a proposed 160-home development in North Whitehall Township, Lehigh County, Pennsylvania. The proposed extended aeration treatment plant is designed to provide secondary treatment. The applicant proposes to construct a treatment plant outfall that will discharge directly to the Lehigh River.

16. *Delaware River Basin Commission (DRBC)—Upper Delaware Ice Jam Project D–88–22 CP.* An application by DRBC on behalf of the City of Port Jervis, New York; Borough of Matamoras and Westfall Township, Pennsylvania; the State of New York; and the Commonwealth of Pennsylvania to have the U.S. Army Corps of Engineers construct an ice diversion channel on Mashipacong Island and a 39-acre mitigation site on the mainland, both in Montague Township, Sussex County, New Jersey. The purpose of the mitigation site is to mitigate the effect of clearing of wetlands that are located within the diversion channel. A 13,000-foot-long, 200-foot-wide path will be cleared of all trees larger than four inches in diameter to allow the passage of ice in the Delaware River and reduce the potential for ice jams and the resulting upstream flooding in Pennsylvania and New York. No excavation is proposed. The clearing of the path, the construction of an access road for equipment and a 5-foot-high gabion dam at the mitigation site will be the only construction activities. The project has been studied, planned and designed by the U.S. Army Corps of Engineers.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

April 12, 1988.

[FR Doc. 88–8599 Filed 4–19–88; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2150) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the proposed Agreement for Cooperation between the Government of the United States of America and the Government of Japan Concerning Peaceful Uses of Nuclear Energy, and the Implementing Agreement Pursuant to Article 11 thereto ("Implementing Agreement"). (The proposed Agreement and the Implementing Agreement were transmitted to Congress by the President on November 9, 1987 by means of a letter, the text of which was published in the Congressional Record on November 9, 1987 at page H 9841 and on November 10, 1987 at page S 16092).

The subsequent arrangement to be carried out under the above-mentioned agreements will fulfill the undertaking of the United States in the Implementing Agreement to facilitate certain transfers of specified nuclear material from EURATOM to Japan. In particular, the subsequent arrangement involves approval for the return to Japan of: (a) Nuclear material recovered from irradiated nuclear material transferred from Japan to designated EURATOM facilities for reprocessing, and (b) irradiated nuclear material for testing and analysis transferred to designated EURATOM facilities from Japan as fuel samples containing plutonium in quantities not to exceed 500 grams per year per facility.

The designated facilities for reprocessing are: the Sellafield Plant, United Kingdom and the La Hague Plant, France. The designated facilities for sample fuel irradiation are the BR2 and BR3 Reactors, Belgium, the DR3 Reactor, Denmark, the Phenix Reactor, France, the GKN Dodewaard Reactor, Netherlands, and the SGHWR Reactor and Dounreay PFR Reactor, United Kingdom. Plutonium recovered from reprocessing must be transferred in accordance with detailed guidelines set forth in the Implementing Agreement, unless otherwise agreed by the United States. A complete analysis of this subsequent arrangement as well as the other approvals provided by the Implementing Agreement was provided with the President's submission of the proposed Agreement and the Implementing Agreement to Congress, and published in House Document 100–128, 100th Congress, 1st Session, (November 9, 1987).

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time period referred to above shall run concurrently.

Date: April 15, 1988.

Edward V. Badolato,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–8702 Filed 4–19–88; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Revised Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy and the proposed Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy, and the Implementing Agreement pursuant to Article 11 thereto, ("Implementing Agreement"). (The proposed Agreement and the Implementing Agreement were transmitted to Congress by the President on November 9, 1987 by means of a letter, the text of which was published in the Congressional Record on November 9, 1987 at page H 9841 and on November 10, 1987 at page S 16092).

The subsequent arrangement to be carried out under the above-mentioned agreements will fulfill the undertaking of the United States in the Implementing Agreement to facilitate certain transfers of specified nuclear materials from Norway to Japan. In particular, the susequent arrangement involves approval for the return to Japan for testing and analysis of irradiated nuclear material transferred to the Halden reactor, Institute for Energy Technology, from Japan as fuel samples containing plutonium in quantities not to exceed 500 grams per year. A complete analysis of this subsequent arrangement as well as the other approvals provided by the Implementing Agreement was provided with the President's submission of the proposed Agreement and the Implementing Agreement to Congress and published in House Document 100–128, 100th Congress, 1st Session (November 9, 1987).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it as been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Date: April 15, 1988.

Edward V. Badolato,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–8703 Filed 4–19–88; 8:45 am]

BILLING CODE 6450–01–M

Innovative Control Technology Advisory Panel (ICTAP), Commercialization Incentives Subcommittee; Open Meeting

Name: Commercialization Incentives Subcommittee of the Innovative Control Technology Advisory Panel (ICTAP).

Date and Time: May 4, 1988—8:30 a.m.–3:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: Sandy Guill, Office of Environment, Safety and Health, Washington, DC 20585, (202) 586–4628.

Purpose of the Parent Board—To advise the Secretary of Energy and provide recommendations concerning

innovative control technologies that will broaden cost-effective and efficient options for controlling precursor emissions associated with acid deposition.

Purpose of Panel—The Commercialization Incentives Subcommittee is a subgroup of ICTAP and reports to the parent board. This study will provide advice and recommendations to the Secretary on actions States could take to provide incentives for the demonstration and deployment of advanced clean coal technologies.

Tentative Agenda

8:30 a.m.
Definition of Subpanel Activities
Discussion and Presentations Regarding Issues Associated with the State Preference Issue
2:50 p.m.—Public Comment (10 minute rule)
3:00 p.m.—Adjourn.

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting—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.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–8699 Filed 4–19–88; 8:45 am]

BILLING CODE 6450–01–M

Innovative Control Technology Advisory Panel (ICTAP), Clean Coal Technologies Inventory Subcommittee; Open Meeting

Name: Clean Coal Technologies Inventory Subcommittee of the Innovative Control Technology Advisory Panel (ICTAP).

Date and Time: May 3, 1988—8:30 a.m.–3:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: Sandy Guill, Office of Environment, Safety and Health, Washington, DC 20585, (202) 586–4628.

Purpose of the Parent Board—To advise the Secretary of Energy and provide recommendations concerning innovative control technologies that will broaden cost-effective and efficient options for controlling precursor emissions associated with acid depositon.

Purpose of Panel—The Clean Coal Technologies Inventory Subcommittee is a subgroup of ICTAP and reports to the parent board. The panel will identify gaps in technology development and deployment. Specifically, this study will include an inventory of U.S. and foreign technologies and projects. The study will contain assessments of applicability, economic viability and environmental performance.

Tentative Agenda

8:30 a.m.
Definition of Subpanel Activities
Discussion and Presentations Regarding Inventory of U.S. and Foreign Technologies and Projects
2:50 p.m.—Public Comment (10 minute rule)
3:00 p.m.—Adjourn.

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting—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.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–8700 Filed 4–19–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–61–NG]

Great Lakes Gas Transmission Co. and Peoples Natural Gas Co.; Order Granting Reassignment of an Import Authorization and Authorizing Importation of an Additional Interruptible Volume From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting reassignment of an import authorization and authorizing importation of an additional interruptible volume from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Peoples Natural Gas Company Division of Utilicorp United Inc. (Peoples) authorization to import directly up to 4,052 Mcf per day of Canadian natural gas which the Federal Power Commission previously authorized Great Lakes Gas Transmission Company (Great Lakes) to import for resale to Peoples. The authorization was for firm sales over a term beginning on date of first delivery and ending October 31, 1990. The Order also grants Peoples authorization to import up to an additional 2,000 Mcf per day of natural gas from the Canadian supplier, TransCanada PipeLines Limited, on an interruptible basis beginning on the date of first delivery through October 31, 1990.

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, April 15, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–8701 Filed 4–19–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Application Filed With the Commission

April 15, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory

Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No.: 1967–002.

c. Date Filed: March 25, 1988.

d. Applicant: Kimberly-Clark Corporation.

e. Name of Project: Whiting-Plover.

f. Location: Whiting Paper Mill Dam on the Wisconsin River in the Village of Whiting, Portage County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact:

Mr. Michael R. Holcomb, President, Neenah Paper, Kimberly-Clark Corporation, 1400 Holcomb Bridge Road, Roswell, GA 30076 (404) 587–8634

Mr. F. Anthony Maio, Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202 (414) 289–3764

i. FERC Contact: Patrick K. Murphy, (202) 376–9640.

j. Comment Date: May 2, 1988.

k. Description of Amendment of License: Kimberly-Clark Corporation (licensee) proposes to close-off the intakes of units no. 5 and 6 of its 6-unit, 600-kilowatt, licensed project. The intakes would be closed through the expansion of the Whiting Paper Mill building.

1. This notice also consists of the following standard paragraphs: B and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–8682 Filed 4–19–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST88–1927–000 et al.]

Tennessee Gas Pipeline Co. et al.; Self-Implementing Transactions

April 18, 1988.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147 of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,

Acting Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88–1927	Tennessee Gas Pipeline Co	Quivira Gas Co	02–01–88	B		
ST88–1928	Tennessee Gas Pipeline Co	City of Clarksville	02–01–88	B		
ST88–1929	Tennessee Gas Pipeline Co	City of Portland	02–01–88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-1930	Tennessee Gas Pipeline Co	City of Springfield	02-01-88	B		
ST88-1931	Tennessee Gas Pipeline Co	Energy North, Inc	02-01-88	B		
ST88-1932	Transcontinental Gas Pipe Line Corp	Delhi Gas Pipeline Corp	02-01-88	B		
ST88-1933	ANR Pipeline Co	Madison Gas & Electric Co	02-01-88	B		
ST88-1934	ANR Pipeline Co	Southeastern Michigan Gas Co	02-01-88	B		
ST88-1935	ANR Pipeline Co	Michigan Consolidated Gas Co	02-01-88	B		
ST88-1936	ANR Pipeline Co	Wisconsin Natural Gas Co	02-01-88	B		
ST88-1937	ANR Pipeline Co	Wisconsin Public Service Co	02-01-88	B		
ST88-1938	Monterey Pipeline Co	Columbia Gulf Transmission Co	02-01-88	C	06-30-88	10.00
ST88-1939	United Texas Transmission Co	United Gas Pipe Line Co	02-01-88	C		
ST88-1940	Winnie Pipeline Co	Natural Gas Pipeline Co. of America	02-01-88	C		
ST88-1941	Arkla Energy Resources	City of Granite	02-01-88	B		
ST88-1942	TRANSOK, Inc	Panhandle Eastern Pipe Line Co	02-01-88	C	06-30-88	37.13
ST88-1943	TRANSOK, Inc	Panhandle Eastern Pipe Line Co	02-01-88	C	06-30-88	37.13
ST88-1944	Natural Gas Pipeline Co. of America	Northern Indiana Pub. Service Co., et al	02-01-88	B		
ST88-1945	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc., et al	02-01-88	B		
ST88-1946	Natural Gas Pipeline Co. of America	Illinois Power Co	02-01-88	B		
ST88-1947	Natural Gas Pipeline Co. of America	Iowa Southern Utilities Co	02-01-88	B		
ST88-1948	Natural Gas Pipeline Co. of America	Central Illinois Light Co	02-01-88	B		
ST88-1949	Natural Gas Pipeline Co. of America	Michigan Gas Utilities Co	02-01-88	B		
ST88-1950	Natural Gas Pipeline Co. of America	Niagara Mohawk Power Corp	02-01-88	B		
ST88-1951	Tennessee Gas Pipeline Co	Allerton Gas Co., et al	02-01-88	B		
ST88-1952	Sea Robin Pipeline Co	Bridgeline Gas Distribution Co	02-01-88	B		
St88-1953	Algonquin Gas Transmission Co	Commonwealth Gas Co	02-01-88	B		
ST88-1954	Algonquin Gas Transmission Co	City of Middleborough	02-01-88	B		
ST88-1955	South Georgia Natural Gas Co	City of Tallahassee	02-01-88	B		
ST88-1956	Southern Natural Gas Co	City of Pleasant Grove	02-01-88	B		
ST88-1957	Southern Natural Gas Co	Graysville Municipal Gas System	02-01-88	B		
ST88-1958	Southern Natural Gas Co	City of Sylacauga	02-01-88	B		
ST88-1959	Southern Natural Gas Co	City of Gordo	02-01-88	B		
ST88-1960	Southern Natural Gas Co	Eastex Gas Transmission Co	02-01-88	B		
ST88-1961	Southern Natural Gas Co	Channel Industries Gas Co	02-01-88	B		
ST88-1962	Southern Natural GAs Co	Alabama Gas Corp	02-01-88	B		
ST88-1963	Southern Natural Gas Co	Alabaster Water & Gas Board	02-01-88	B		
ST88-1964	Southern Natural Gas Co	Mississippi Valley Gas Co	02-01-88	B		
ST88-1965	Southern Natural Gas Co	City of Union Springs	02-01-88	B		
ST88-1966	Southern Natural Gas Co	City of Piedmont	02-01-88	B		
ST88-1967	Southern Natural Gas Co	Sabine-Desoto Pipeline Co., Inc	02-01-88	B		
ST88-1968	Southern Natural Gas Co	Sabine-Desoto Pipeline Co., Inc	02-01-88	B		
ST88-1969	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1970	Southern Natural Gas Co	South Carolina Pipeline Corp	02-01-88	B		
ST88-1971	Southern Natural Gas Co	City of Childersburg	02-01-88	B		
ST88-1972	Southern Georgia Natural Gas Co	Sabine-Desoto Pipeline Co., Inc	02-01-88	B		
ST88-1973	Southern Natural Gas Co	Alabama Gas Corp	02-01-88	B		
ST88-1974	Southern Natural Gas Co	Alabama Gas Corp	02-01-88	B		
ST88-1975	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1976	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1977	Southern Natural Gas Co	City of Thomson	02-01-88	B		
ST88-1978	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1979	Southern Natural Gas Co	Alabama Gas Corp	02-01-88	B		
ST88-1980	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1981	Southern Natural Gas Co	Alabama Gas Corp	02-01-88	B		
ST88-1982	Southern Natural Gas Co	City of Tallahassee	02-01-88	B		
ST88-1983	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1984	Southern Natural Gas Co	United Cities Gas Co	02-01-88	B		
ST88-1985	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1986	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1987	Southern Natural Gas Co	City of Wrens	02-01-88	B		
ST88-1988	Southern Natural Gas Co	Sabine-Desoto Pipeline Co., Inc	02-01-88	B		
ST88-1989	Southern Natural Gas Co	Alabama Gas Corp	02-01-88	B		
ST88-1990	Southern Natural Gas Co	Atlanta Gas Light Co	02-01-88	B		
ST88-1991	Valero Transmission, L.P	Trunkline Gas Co	02-01-88	C		
ST88-1992	Colorado Interstate Gas Co	Southern California Gas Co	02-01-88	B		
ST88-1993	Colorado Interstate Gas Co	Llano, Inc	02-01-88	B		
ST88-1994	Northern Natural Gas Co	Michigan Power Co	02-01-88	B		
ST88-1995	Northern Natural Gas Co	San Diego Gas & Electric Co	02-01-88	B		
ST88-1996	Northern Natural Gas Co	Western Gas Utilities	02-01-88	B		
ST88-1997	Northern Natural Gas Co	Northern States Power Co	02-01-88	B		
ST88-1998	Northern Natural Gas Co	Peoples Natural Gas Co	02-01-88	B		
ST88-1999	Northern Natural Gas Co	Southern California Gas Co	02-01-88	B		
ST88-2000	Northern Natural Gas Co	Minnegasco, Inc	02-01-88	B		
ST88-2001	Northern Natural Gas Co	City of Two Harbors	02-01-88	B		
ST88-2002	Northern Natural Gas Co	NGP Pipeline Co	02-01-88	B		
ST88-2003	Northern Natural Gas Co	City of Remsen	02-01-88	B		
ST88-2004	Northern Natural Gas Co	Owatonna Public Utilities	02-01-88	B		
ST88-2005	Colorado Interstate Gas Co	Lovera Pipeline Co	02-02-88	B		
ST88-2006	Colorado Interstate Gas Co	Southern California Gas Co	02-02-88	B		
ST88-2007	Colorado Interstate Gas Co	MGTC, Inc	02-02-88	B		
ST88-2008	United Gas Pipe Line Co	Jala Pipe Line Corp	02-02-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2009	Tennessee Gas Pipeline Co	Louisiana State Gas Corp	02-02-88	B		
ST88-2010	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	02-02-88	B		
ST88-2011	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	02-02-88	B		
ST88-2012	Transcontinental Gas Pipe Line Corp	Delhi Gas Pipeline Corp., et al	02-02-88	B		
ST88-2014	Transcontinental Gas Pipe Line Corp	Wisconsin Gas Co., et al	02-02-88	B		
ST88-2015	United Gas Pipe Line Co	Bishop Pipeline Corp	02-02-88	B		
ST88-2016	United Gas Pipe Line Co	Providence Gas Co	02-02-88	B		
ST88-2017	United Gas Pipe Line Co	Quivira Gas Co., et al	02-02-88	B		
ST88-2018	United Gas Pipe Line Co	LGS Intrastate, Inc	02-02-88	B		
ST88-2019	United Gas Pipe Line Co	Pennsylvania Gas and Water Co	02-02-88	B		
ST88-2020	United Gas Pipe Line Co	St. James Parish Utilities	02-02-88	B		
ST88-2021	United Gas Pipe Line Co	Caddo Natural Gas Co., et al	02-02-88	B		
ST88-2022	United Gas Pipe Line Co	Quivira Gas Co	02-02-88	B		
ST88-2023	Dehli Gas Pipeline Corp	ANR Pipeline Co	02-02-88	C		
ST88-2024	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	03-88	B		
ST88-2025	Natural Gas Pipeline Co. of America	Corning Natural Gas Co., et al	02-03-88	B		
ST88-2026	Tennessee Gas Pipeline Co	Boston Gas Co	02-03-88	B		
ST88-2027	Western Gas Supply Co	Public Service Co. of Colorado	02-03-88	C		
ST88-2028	Northern Border Pipeline Co	Peoples Natural Gas Co	02-03-88	B		
ST88-2029	Northern Border Pipeline Co	Dome Petroleum Corp	02-03-88	G-S		
ST88-2030	El Paso Natural Gas Co	Southern California Gas Co	02-03-88	B		
ST88-2031	Northern Border Pipeline Co	Bonus Gas Processors, Corp	02-03-88	G-S		
ST88-2032	Northern Border Pipeline Co	Quivira Gas Co	02-03-88	B		
ST88-2033	Northern Natural Gas Co	Public Service Electric and Gas Co	02-03-88	B		
ST88-2034	Northern Border Pipeline Co	Canterra Energy, Ltd	02-03-88	G-S		
ST88-2035	Tennessee Gas Pipeline Co	Goetz Oil Corp	02-03-88	G-S		
ST88-2036	Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co	02-03-88	B		
ST88-2037	Tennessee Gas Pipeline Co	Nashville Gas Co	02-03-88	B		
ST88-2038	Natural Gas Pipeline Co. of America	Niagara Mohawk Power Corp	02-03-88	B		
ST88-2039	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co., et al	02-03-88	B		
ST88-2040	Natural Gas Pipeline Co. of America	Southern Gas Co	02-03-88	B		
ST88-2041	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	02-03-88	B		
ST88-2042	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	02-04-88	B		
ST88-2043	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	02-04-88	B		
ST88-2044	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co., et al	02-04-88	B		
ST88-2045	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	02-04-88	B		
ST88-2046	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	02-04-88	B		
ST88-2047	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	02-04-88	B		
ST88-2048	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	02-04-88	B		
ST88-2049	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	02-04-88	B		
ST88-2050	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	02-04-88	B		
ST88-2051	Northern Natural Gas Co	Guthrie Center Municipal Utilities	02-04-88	B		
ST88-2052	Northern Natural Gas Co	St. Croix Valley Natural Gas Co	02-04-88	B		
ST88-2053	Northern Natural Gas Co	Interstate Power Co	02-04-88	B		
ST88-2054	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	02-04-88	C		
ST88-2055	Tennessee Gas Pipeline Co	Bishop Pipeline Corp	02-04-88	B		
ST88-2056	Louisiana Interstate Gas Corp	Freeport Interstate Pipeline Co	02-04-88	C	07-03-88	22.40
ST88-2057	Texas Gas Transmission Corp	Mississippi Valley Gas Co	02-05-88	B		
ST88-2058	Texas Gas Transmission Corp	CSX Intrastate Gas Co	02-05-88	B		
ST88-2061	Northern Natural Gas Co	Great Plains Natural Gas Co	02-05-88	B		
ST88-2062	Northern Natural Gas Co	Houston Pipe Line Co	02-05-88	B		
ST88-2063	Northern Natural Gas Co	Coastal States Gas Transmission Co	02-05-88	B		
ST88-2064	Northern Natural Gas Co	Southern California Gas Co	02-05-88	B		
ST88-2065	Northern Natural Gas Co	Spot Market Corp	02-05-88	G-S		
ST88-2066	Northern Natural Gas Co	Watertown Municipal Utility	02-05-88	B		
ST88-2067	Northern Natural Gas Co	Hibbing Public Utilities Commission	02-05-88	B		
ST88-2068	El Paso Natural Gas Co	Southern California Gas Co	02-05-88	B		
ST88-2069	El Paso Natural Gas Co	Llano, Inc	02-05-88	B		
ST88-2070	ANR Pipeline Co	Cheyenne Light, Fuel & Power Co	02-05-88	B		
ST88-2071	United Gas Pipe Line Co	Tristar Energy, Inc	02-05-88	B		
ST88-2072	United Gas Pipe Line Co	Gulf South Pipeline Co	02-05-88	B		
ST88-2073	United Gas Pipe Line Co	Western Kentucky Gas Co	02-05-88	B		
ST88-2074	Sea Robin Pipeline Co	Hydrocarbon Development Corp	02-05-88	B		
ST88-2075	Trunkline Gas Co	Tenngasco Exchange Corp	02-05-88	G-S		
ST88-2076	Trunkline Gas Co	Mississippi River Transmission Corp	02-05-88	G		
ST88-2077	Trunkline Gas Co	Consumers Power Co	02-05-88	B		
ST88-2078	Trunkline Gas Co	Exxon Co., U.S.A.	02-05-88	G-S		
ST88-2079	Trunkline Gas Co	Corpus Christi Industrial Pipeline Co	02-05-88	B		
ST88-2080	Transcontinental Gas Pipe Line Corp	United Cities Gas Co	02-05-88	B		
ST88-2081	Transcontinental Gas Pipe Line Corp	Channel Industries Gas Co	02-05-88	B		
ST88-2082	Transcontinental Gas Pipe Line Corp	Monterey Pipeline Co	02-05-88	B		
ST88-2083	Phillips Gas Pipeline Co	Phillips Natural Gas Co	02-05-88	B		
ST88-2084	Sabine Pipe Line Co	Loutex Energy, Inc	02-08-88	G-S		
ST88-2085	Channel Industries Gas Co	Tennessee Gas Pipeline Co	02-08-88	C		
ST88-2086	Channel Industries Gas Co	Northern Natural Gas Co	02-08-88	C		
ST88-2087	Channel Industries Gas Co	Northern Natural Gas Co	02-08-88	C		
ST88-2088	Channel Industries Gas Co	Neches Gas Distribution Co	02-08-88	C		
ST88-2089	ANR Pipeline Co	Michigan Consolidated Gas Co	02-08-88	B		
ST88-2090	ANR Pipeline Co	Ohio Gas Co	02-08-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2091	Colorado Interstate Gas Co	Coastal States Gas Transmission Co	02-08-88	B		
ST88-2092	ANR Pipeline Co	Wisconsin Power and Light Co	02-08-88	B		
ST88-2093	Northern Natural Gas Co	Harlan Municipal Utilities	02-08-88	B		
ST88-2094	Northern Natural Gas Co	City of Gilmore	02-08-88	B		
ST88-2095	ANR Pipeline Co	South Carolina Pipeline Corp	02-08-88	B		
ST88-2096	ANR Pipeline Co	Wisconsin Natural Gas Co	02-08-88	B		
ST88-2097	ANR Pipeline Co	Wisconsin Fuel and Light Co	02-08-88	B		
ST88-2098	CNG Transmission Corp	Hope Gas, Inc	02-08-88	B		
ST88-2099	CNG Transmission Corp	Cranberry Pipeline Corp	02-08-88	B		
ST88-2100	CNG Transmission Corp	Public Service Electric and Gas Co	02-08-88	B		
ST88-2101	CNG Transmission Corp	Consolidated Edison Co. of NY, Inc	02-08-88	B		
ST88-2102	Columbia Gas Transmission Corp	Piedmont Natural Gas Co	02-08-88	B		
ST88-2103	Trunkline Gas Co	Intercon Gas, Inc	02-08-88	G-S		
ST88-2104	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc., et al	02-08-88	B		
ST88-2105	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	02-08-88	B		
ST88-2106	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	02-08-88	B		
ST88-2108	Tennessee Gas Pipeline Co	Louisiana Gas System, Inc	02-08-88	B		
ST88-2109	Tennessee Gas Pipeline Co	Brooklyn Union Gas Co., et al	02-08-88	B		
ST88-2110	Tennessee Gas Pipeline Co	Western Kentucky Gas Co	02-08-88	B		
ST88-2111	Trunkline Gas Co	Central Illinois Light Co	02-09-88	B		
ST88-2112	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2113	Trunkline Gas Co	Alabama Gas Corp., et al	02-09-88	B		
ST88-2114	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2115	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2116	Trunkline Gas Co	Northern Indiana Public Service Co	02-09-88	B		
ST88-2117	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2118	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2119	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2120	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2121	Trunkline Gas Co	Louisiana Gas System, Inc	02-09-88	B		
ST88-2122	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2123	Trunkline Gas Co	Ohio Gas Co	02-09-88	B		
ST88-2124	Trunkline Gas Co	Valero Transmission Co	02-09-88	B		
ST88-2125	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2126	Trunkline Gas Co	Tejas Power Corp	02-09-88	G-S		
ST88-2127	Trunkline Gas Co	Northern Indiana Public Service Co	02-09-88	B		
ST88-2128	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2129	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2130	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2131	Trunkline Gas Co	Consumers Power Co	02-09-88	B		
ST88-2132	United Gas Pipe Line Co	Louisiana State Gas Corp	02-09-88	B		
ST88-2133	United Gas Pipe Line Co	Excel Intrastate Pipeline Co	02-09-88	B		
ST88-2134	United Gas Pipe Line Co	United Texas Transmission Co	02-09-88	B		
ST88-2135	United Gas Pipe Line Co	NGC Intrastate Pipeline Co	02-09-88	B		
ST88-2136	United Gas Pipe Line Co	Woodward Pipeline, Inc	02-09-88	B		
ST88-2137	United Gas Pipe Line Co	Sabine-Desoto Pipeline Co., Inc	02-09-88	B		
ST88-2138	United Gas Pipe Line Co	Humble Gas System, Inc	02-09-88	B		
ST88-2139	United Gas Pipe Line Co	Hydrocarbon Development Corp	02-09-88	B		
ST88-2140	United Gas Pipe Line Co	Concorde Gas Intrastate, Inc., et al	02-09-88	B		
ST88-2141	United Gas Pipe Line Co	Louisiana State Gas Corp	02-09-88	B		
ST88-2142	United Gas Pipe Line Co	Jala Pipe Line Corp	02-09-88	B		
ST88-2143	United Gas Pipe Line Co	Entex, Inc	02-09-88	B		
ST88-2144	Natural Gas Pipeline Co. of America	Reliance Pipeline Co	02-09-88	B		
ST88-2145	Natural Gas Pipeline Co. of America	Southern California Gas Co., et al	02-09-88	B		
ST88-2146	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	02-09-88	B		
ST88-2147	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	02-09-88	B		
ST88-2148	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	02-09-88	B		
ST88-2149	Natural Gas Pipeline Co. of America	North Shore Gas Co	02-09-88	B		
ST88-2150	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	02-09-88	B		
ST88-2151	ANR Pipeline Co	Wisconsin Gas Co	02-09-88	B		
ST88-2152	ANR Pipeline Co	Consumers Power Co	02-09-88	B		
ST88-2153	ANR Pipeline Co	Yankee Pipeline Co	02-09-88	B		
ST88-2154	Valero Transmission, L.P	El Paso Natural Gas Co	02-09-88	C		
ST88-2155	Valero Transmission, L.P	El Paso Natural Gas Co	02-09-88	C		
ST88-2156	Valero Transmission, L.P	Natural Gas Pipeline Co. of America	02-09-88	C		
ST88-2157	Valero Transmission, L.P	El Paso Natural Gas Co	02-09-88	C		
ST88-2158	Valero Transmission, L.P	El Paso Natural Gas Co	02-09-88	C		
ST88-2159	Valero Transmission, L.P	Valero Interstate Transmission Co	02-09-88	C		
ST88-2160	Valero Transmission, L.P	Transwestern Pipeline Co	02-09-88	C		
ST88-2161	Natural Gas Pipeline Co. of America	Central Illinois Light Co	02-10-88	B		
ST88-2162	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	02-10-88	B		
ST88-2163	Natural Gas Pipeline Co. of America	North Shore Gas Co	02-10-88	B		
ST88-2164	Panhandle Eastern Pipe Line Co	Consumers Power Co	02-10-88	B		
ST88-2165	Panhandle Eastern Pipe Line Co	Consumers Power Co	02-10-88	B		
ST88-2166	Panhandle Eastern Pipe Line Co	Consumers Power Co	02-10-88	B		
ST88-2167	United Gas Pipe Line Co	Jala Pipe Line Corp	02-10-88	B		
ST88-2168	United Gas Pipe Line Co	Yankee Pipeline Co	02-10-88	B		
ST88-2169	Williams Natural Gas Co	Mobil Oil Corp	02-10-88	G-S		
ST88-2170	Williams Natural Gas Co	Mobil Oil Corp	02-10-88	G-S		

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ST88-2171	Williams Natural Gas Co	PSI, Inc	02-10-88	G-S		
ST88-2172	Northern Natural Gas Co	Cabot Gas Supply Corp	02-10-88	B		
ST88-2173	Northern Natural Gas Co	Cabot Gas Supply Corp	02-10-88	B		
ST88-2174	Northern Natural Gas Co	Wisconsin Power and Light Co	02-10-88	B		
ST88-2175	Panhandle Eastern Pipe Line Co	Northern Indiana Fuel & Light Co	02-11-88	B		
ST88-2176	Panhandle Eastern Pipe Line Co	Consumers Power Co	02-11-88	B		
ST88-2177	Panhandle Eastern Pipe Line Co	Consumers Power Co	02-11-88	B		
ST88-2178	Panhandle Eastern Pipe Line Co	Consumers Power Co	02-11-88	B		
ST88-2179	Panhandle Eastern Pipe Line Co	Louisiana Intrastate Gas Co	02-11-88	B		
ST88-2180	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	02-11-88	B		
ST88-2181	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	02-11-88	B		
ST88-2182	Natural Gas Pipeline Co. of America	Enogex Inc	02-11-88	B		
ST88-2183	Natural Gas Pipeline Co. of America	Illinois Power Co.	02-11-88	B		
ST88-2184	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	02-11-88	B		
ST88-2185	Natural Gas Pipeline Co. of America	Houston Pipe Line Co	02-11-88	B		
ST88-2186	ANR Pipeline Co	Llano, Inc	02-11-88	B		
ST88-2187	ANR Pipeline Co	Wisconsin Natural Gas Co	02-11-88	B		
ST88-2188	ANR Pipeline Co	Columbia Gas of Ohio, Inc	02-11-88	B		
ST88-2189	Northern Border Pipeline Co	Petrorep (Canada) Ltd	02-11-88	G-S		
ST88-2190	Northern Border Pipeline Co	Placer Cego Petroleum	02-11-88	G-S		
ST88-2191	Northern Border Pipeline Co	Northern States Power Co	02-11-88	B		
ST88-2192	Algonquin Gas Transmission Co	City of Norwich	02-12-88	B		
ST88-2193	Algonquin Gas Transmission Co	Colonial Gas Company	02-12-88	B		
ST88-2194	Transcontinental Gas Pipe Line Corp	Longhorn Pipeline Co	02-12-88	B		
ST88-2195	Transcontinental Gas Pipe Line Corp	Eastex Gas Transmission Co	02-12-88	B		
ST88-2196	Transcontinental Gas Pipe Line Corp	Polo Energy Corp	02-12-88	B		
ST88-2197	Natural Gas Pipeline Co. of America	Midven Pipeline Co	02-16-88	B		
ST88-2198	Natural Gas Pipeline Co. of America	Neches Pipeline System	02-16-88	B		
ST88-2199	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	02-16-88	B		
ST88-2200	Natural Gas Pipeline Co. of America	Dayton Power and Light Co	02-16-88	B		
ST88-2201	Valero Transmission, L.P	El Paso Natural Gas Co	02-16-88	C		
ST88-2202	Valero Transmission, L.P	El Paso Natural Gas Co	02-16-88	C		
ST88-2203	Tennessee Gas Pipeline Co	Columbia Gas of KY, Inc., et al	02-16-88	B		
ST88-2204	Northern Natural Gas Co	Interstate Power Co	02-12-88	B		
ST88-2205	Llano, Inc		02-12-88	C	7-11-88	29.97/17.17/02.28
ST88-2206	Tennessee Gas Pipeline Co	North Penn Gas Co	02-12-88	B		
ST88-2207	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	02-12-88	G		
ST88-2208	Panhandle Eastern Pipe Line Co	Louisiana Intrastate Gas Co	02-16-88	B		
ST88-2209	Northwest Pipeline Corp	Mobil Producing Texas and New Mexico Inc.	02-16-88	G-S		
ST88-2210	Trunkline Gas Co	Central Illinois Public Service Co	02-16-88	B		
ST88-2211	Trunkline Gas Co	Transamerican Gas Transmission Corp	02-16-88	B		
ST88-2212	Trunkline Gas Co	Northern Indiana Public Service Co	02-16-88	B		
ST88-2213	Trunkline Gas Co	Consumers Power Co	02-16-88	B		
ST88-2214	Trunkline Gas Co	Union Gas Limited	02-16-88	B		
ST88-2215	Trunkline Gas Co	Eastex Gas Transmission Co	02-16-88	B		
ST88-2216	Columbia Gulf Transmission Co	Creole Gas Pipeline Corp	02-16-88	B		
ST88-2217	Tennessee Gas Pipeline Co	Amagas Resources, Inc	02-16-88	G-S		
ST88-2218	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	02-16-88	B		
ST88-2219	Northern Natural Gas Co	Arco Oil & Gas Co	02-16-88	G-S		
ST88-2220	Northern Natural Gas Co	Hibbing Public Utilities Commission	02-16-88	B		
ST88-2221	South Georgia Natural Gas Co	City of Dawson	02-16-88	B		
ST88-2222	South Georgia Natural Gas Co	City of Adel	02-16-88	B		
ST88-2223	South Georgia Natural Gas Co	City of Vienna	02-16-88	B		
ST88-2224	South Georgia Natural Gas Co	Americus Utility Commission	02-16-88	B		
ST88-2225	South Georgia Natural Gas Co	City of Blakely	02-16-88	B		
ST88-2226	South Georgia Natural Gas Co	City of Moultrie	02-16-88	B		
ST88-2227	South Georgia Natural Gas Co	City of Lumpkin	02-16-88	B		
ST88-2228	South Georgia Natural Gas Co	City of Meigs	02-16-88	B		
ST88-2229	South Georgia Natural Gas Co	City of Camilla	02-16-88	B		
ST88-2230	South Georgia Natural Gas Co	City of Quitman	02-16-88	B		
ST88-2231	South Georgia Natural Gas Co	City of Sylvester	02-16-88	B		
ST88-2232	South Georgia Natural Gas Co	City of Edison	02-16-88	B		
ST88-2233	South Georgia Natural Gas Co	City of Ashburn	02-16-88	B		
ST88-2234	South Georgia Natural Gas Co	City of Bainbridge	02-16-88	B		
ST88-2235	South Georgia Natural Gas Co	City of Pelham	02-16-88	B		
ST88-2236	South Georgia Natural Gas Co	Fitzgerald Water, Light and Bond Comm	02-16-88	B		
ST88-2237	South Georgia Natural Gas Co	City of Thomasville	02-16-88	B		
ST88-2238	South Georgia Natural Gas Co	City of Doerun	02-16-88	B		
ST88-2239	Southern Natural Gas Co	City of Camilla	02-16-88	B		
ST88-2240	Southern Natural Gas Co	United Cities Gas Co	02-16-88	B		
ST88-2241	Southern Natural Gas Co	United Cities Gas Co	02-16-88	B		
ST88-2242	Southern Natural Gas Co	City of Trussville	02-16-88	B		
ST88-2243	Southern Natural Gas Co	City of Cairo	02-16-88	B		
ST88-2244	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2245	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2246	Southern Natural Gas Co	City of Calera	02-16-88	B		

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ST88-2247	Southern Natural Gas Co	City of Lafayette	02-16-88	B		
ST88-2248	Southern Natural Gas Co	Chattanooga Gas Co	02-16-88	B		
ST88-2249	Southern Natural Gas Co	City of Fultondale	02-16-88	B		
ST88-2250	Southern Natural Gas Co	Alabama Gas Corp	02-16-88	B		
ST88-2251	Southern Natural Gas Co	Americus Utility Commission	02-16-88	B		
ST88-2252	Southern Natural Gas Co	City of Thomson	02-16-88	B		
ST88-2253	Southern Natural Gas Co	City of Jacksonville	02-16-88	B		
ST88-2254	Southern Natural Gas Co	City of Scottsboro	02-16-88	B		
ST88-2255	Southern Natural Gas Co	City of Pelham	02-16-88	B		
ST88-2256	Southern Natural Gas Co	City of Meigs	02-16-88	B		
ST88-2257	Southern Natural Gas Co	Alabama Gas Corp	02-16-88	B		
ST88-2258	Southern Natural Gas Co	City of Adel	02-16-88	B		
ST88-2259	Southern Natural Gas Co	City of Quitman	02-16-88	B		
ST88-2260	Southern Natural Gas Co	City of Thomasville	02-16-88	B		
ST88-2261	Southern Natural Gas Co	SNG Intrastate Pipeline, Inc	02-16-88	B		
ST88-2262	Southern Natural Gas Co	City of Sylvester	02-16-88	B		
ST88-2263	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2264	Southern Natural Gas Co	City of Lumpkin	02-16-88	B		
ST88-2265	Southern Natural Gas Co	Fitzgerald Water, Light and Bond Comm	02-16-88	B		
ST88-2266	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2267	Southern Natural Gas Co	SNG Intrastate Pipeline, Inc	02-16-88	B		
ST88-2268	Southern Natural Gas Co	City of Edison	02-16-88	B		
ST88-2269	Southern Natural Gas Co	Alabama Gas Corp	02-16-88	B		
ST88-2270	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2271	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2272	Southern Natural Gas Co	City of Dawson	02-16-88	B		
ST88-2273	Southern Natural Gas Co	City of Bainbridge	02-16-88	B		
ST88-2274	Southern Natural Gas Co	City of Blakely	02-16-88	B		
ST88-2275	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2276	Southern Natural Gas Co	City of Moultrie	02-16-88	B		
ST88-2277	Southern Natural Gas Co	City of Ashville	02-16-88	B		
ST88-2278	Southern Natural Gas Co	Alabama Gas Corp.	02-16-88	B		
ST88-2279	Southern Natural Gas Co	Chilton County Gas District	02-16-88	B		
ST88-2280	Southern Natural Gas Co	City of Vienna	02-16-88	B		
ST88-2281	Southern Natural Gas Co	SNG Intrastate Pipeline, Inc	02-16-88	B		
ST88-2282	Southern Natural Gas Co	SNG Intrastate Pipeline, Inc	02-16-88	B		
ST88-2283	Southern Natural Gas Co	City of Columbiana	02-16-88	B		
ST88-2284	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2285	Southern Natural Gas Co	City of Doerun	02-16-88	B		
ST88-2286	Southern Natural Gas Co	City of Boaz	02-16-88	B		
ST88-2287	Southern Natural Gas Co	City of Ashburn	02-16-88	B		
ST88-2288	Southern Natural Gas Co	Atlanta Gas Light Co	02-16-88	B		
ST88-2289	South Georgia Natural Gas Co	City of Cairo	02-16-88	B		
ST88-2290	Texas Eastern Transmission Corp	Hunt Petroleum Corp	03-04-88	G-S		
ST88-2291	Texas Eastern Transmission Corp	William Herbert Hunt Trust Estate	03-04-88	G-S		
ST88-2292	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co., et al	02-17-88	B		
ST88-2293	Natural Gas Pipeline Co. of America	Northern Indiana Pub. of Service Co., et al.	02-17-88	B		
ST88-2294	Natural Gas Pipeline Co. of America	North Shore Gas Co., et al	02-17-88	B		
ST88-2295	Crosstex Pipeline Co	Natural Gas Pipeline Co. of Am., et al	02-17-88	C		
ST88-2296	Panhandle Eastern Pipe Line Co	Kansas Gas Supply Corp	02-17-88	B		
ST88-2297	Panhandle Eastern Pipe Line Co	Iowa-Illinois Gas & Elect. Co., et al	02-17-88	B		
ST88-2298	Trunkline Gas Co	Consumers Power Co	02-17-88	B		
ST88-2299	Trunkline Gas Co	Northern Indiana Public Service Co	02-17-88	B		
ST88-2300	Trunkline Gas Co	Consumers Power Co	02-17-88	B		
ST88-2301	Trunkline Gas Co	Michigan Consolidated Gas Co	02-17-88	B		
ST88-2302	Trunkline Gas Co	Michigan Consolidated Gas Co., et al	02-17-88	B		
ST88-2303	Trunkline Gas Co	Battle Creek Gas Co	02-17-88	B		
ST88-2304	Tennessee Gas Pipeline Co	Natural Gas Pipeline Co. of America	02-17-88	G		
ST88-2305	Tennessee Gas Pipeline Co	NRG Energy Corp	02-17-88	B		
ST88-2306	ANR Pipeline Co	Tejas Power Corp. Pipeline Inc	02-17-88	B		
ST88-2307	ANR Pipeline Co	Northern Indiana Fuel & Light Co	02-17-88	B		
ST88-2308	Freeport Interstate Pipeline Co	Freeport Pipeline Co	02-18-88	B		
ST88-2309	Northern Border Pipeline Co	Northern Natural Gas Co	02-18-88	G		
ST88-2310	Tennessee Gas Pipeline Co	City of Holly Springs	02-18-88	B		
ST88-2311	Tennessee Gas Pipeline Co	Stellar Gas Co	02-18-88	B		
ST88-2312	Transcontinental Gas Pipe Line Corp	Baltimore Gas & Elect. Co., et al	02-18-88	B		
ST88-2313	Transcontinental Gas Pipe Line Corp	City of Winder	02-18-88	B		
ST88-2314	Transcontinental Gas Pipe Line Corp	City of Toccoa	02-18-88	B		
ST88-2315	Transcontinental Gas Pipe Line Corp	City of Sugar Hill	02-18-88	B		
ST88-2316	Transcontinental Gas Pipe Line Corp	City of Royston	02-18-88	B		
ST88-2317	Transcontinental Gas Pipe Line Corp	City of Social Circle	02-18-88	B		
ST88-2318	Transcontinental Gas Pipe Line Corp	City of Lawrenceville	02-18-88	B		
ST88-2319	Transcontinental Gas Pipe Line Corp	Northern Illinois Gas Co	02-18-88	B		
ST88-2320	Transcontinental Gas Pipe Line Corp	Pontchartrain National Gas System	02-18-88	B		
ST88-2321	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	02-18-88	B		
ST88-2322	Transcontinental Gas Pipe Line Corp	City of Elberton	02-18-88	B		
ST88-2323	Transcontinental Gas Pipe Line Corp	City of Hartwell	02-18-88	B		
ST88-2324	Transcontinental Gas Pipe Line Corp	City of Covington	02-18-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2325	Transcontinental Gas Pipe Line Corp	City of Bowman	02-18-88	B		
ST88-2326	Transcontinental Gas Pipe Line Corp	City of Buford	02-18-88	B		
ST88-2327	Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Co	02-18-88	B		
ST88-2328	Transcontinental Gas Pipe Line Corp	City of Wadley	02-18-88	B		
ST88-2329	Transcontinental Gas Pipe Line Corp	Blacksburg Natural Gas Co	02-18-88	B		
ST88-2330	Transcontinental Gas Pipe Line Corp	City of Monroe	02-18-88	B		
ST88-2331	Transcontinental Gas Pipe Line Corp	City of Madison	02-18-88	B		
ST88-2332	Transcontinental Gas Pipe Line Corp	City of Commerce	02-18-88	B		
ST88-2333	Transcontinental Gas Pipe Line Corp	City of Danville	02-18-88	B		
ST88-2334	Transcontinental Gas Pipe Line Corp	Frederick Gas Co	02-18-88	B		
ST88-2335	Transcontinental Gas Pipe Line Corp	City of Laurens	02-18-88	B		
ST88-2336	Trunkline Gas Co	Consumers Power Co	02-18-88	B		
ST88-2337	Trunkline Gas Co	Northern Indiana Public Service Co	02-18-88	B		
ST88-2338	Panhandle Eastern Pipe Line Co	Ohio Gas Co	02-18-88	B		
ST88-2339	Transcontinental Gas Pipe Line Corp	City of Shelby	02-19-88	B		
ST88-2340	El Paso Natural Gas Co	Pacific Gas and Electric Co	02-19-88	B		
ST88-2341	El Paso Natural Gas Co	Minnegasco, Inc	02-19-88	B		
ST88-2342	El Paso Natural Gas Co	Pacific Gas and Electric Co	02-19-88	B		
ST88-2343	El Paso Natural Gas Co	Southern California Gas Co	02-19-88	B		
ST88-2344	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	02-19-88	B		
ST88-2345	Natural Gas Pipeline Co. of America	Niagara Mohawk Power Co., et al	02-19-88	B		
ST88-2346	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	02-19-88	B		
ST88-2347	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	02-19-88	B		
ST88-2348	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	02-19-88	B		
ST88-2349	Natural Gas Pipeline Co. of America	Amalgamated Pipeline Co	02-19-88	B		
ST88-2350	Natural Gas Pipeline Co. of America	Southwest Gas Pipeline, Inc., et al	02-19-88	B		
ST88-2351	Natural Gas Pipeline Co. of America	Northern Indiana Pub. Service Co., et al	02-19-88	B		
ST88-2352	Natural Gas Pipeline Co. of America	ONG Transmission Co., et al	02-19-88	B		
ST88-2353	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co., et al	02-19-88	B		
ST88-2354	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	02-19-88	B		
ST88-2355	United Gas Pipe Line Co	NGC Intrastate Pipeline Co	02-19-88	B		
ST88-2356	Columbia Gulf Transmission Co	Alabama-Tennessee Natural Gas Co	02-19-88	G		
ST88-2357	ANR Pipeline Co	Northern Indiana Public Service Co	02-19-88	B		
ST88-2358	ANR Pipeline Co	Iowa Public Service Co	02-19-88	B		
ST88-2359	ANR Pipeline Co	Coastal States Gas Transmission Co	02-19-88	B		
ST88-2360	ANR Pipeline Co	Chattanooga Gas Co	02-19-88	B		
ST88-2361	Tennessee Gas Pipeline Co	Pontchartrain Natural Gas System	02-19-88	B		
ST88-2362	Northern Natural Gas Co	Enron Gas Marketing	02-19-88	G-S		
ST88-2363	Lear Gas Transmission Co	Texas Eastern Transmission Corp	02-22-88	C	07-21-88	21.50
ST88-2364	Arkla Energy Resources	Oklahoma Gas & Electric Co	02-22-88	B		
ST88-2365	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-22-88	B		
ST88-2366	Panhandle Eastern Pipe Line Co	Consumers Power Co	02-22-88	B		
ST88-2367	Trunkline Gas Co	Northern Indiana Public Service Co	02-22-88	B		
ST88-2368	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	02-22-88	B		
ST88-2369	Natural Gas Pipeline Co. of America	Midwest Gas Co	02-22-88	B		
ST88-2370	Natural Gas Pipeline Co. of America	Southern California Gas Co	02-22-88	B		
ST88-2371	Natural Gas Pipeline Co. of America	Rockland Pipeline System	02-22-88	B		
ST88-2372	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	02-22-88	B		
ST88-2373	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	02-22-88	B		
ST88-2374	Natural Gas Pipeline Co. of America	Central Illinois Light Co	02-22-88	B		
ST88-2375	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	02-22-88	B		
ST88-2376	Natural Gas Pipeline Co. of America	Pennsylvania Gas and Water Co	02-22-88	B		
ST88-2377	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	02-22-88	B		
ST88-2378	Natural Gas Pipeline Co. of America	Union Electric Co	02-22-88	B		
ST88-2379	Delhi Gas Pipeline Corp	Nycotex Gas Transport	02-22-88	C		
ST88-2380	Delhi Gas Pipeline Corp	Northern Natural Gas Co	02-22-88	C		
ST88-2381	ONG Transmission Co	Panhandle Eastern Pipe Line Co	02-22-88	C	07-21-88	10.00
ST88-2382	United Gas Pipe Line Co	Pennsylvania Gas and Water Co	02-22-88	B		
ST88-2383	Channel Industries Gas Co	Northern Natural Gas Co	02-22-88	C		
ST88-2384	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	02-22-88	G		
ST88-2385	Tennessee Gas Pipeline Co	Trunkline Gas Co., et al	02-22-88	G		
ST88-2386	Northern Natural Gas Co	Windward Energy & Marketing Co	02-23-88	G-S		
ST88-2387	ANR Pipeline Co	Washington Gas Light Co	02-23-88	B		
ST88-2388	Colorado Interstate Gas Co	Northern Illinois Gas Co	02-23-88	B		
ST88-2389	Colorado Interstate Gas Co	Minnegasco, Inc	02-23-88	B		
ST88-2390	Colorado Interstate Gas Co	Energy Pipeline Co	02-23-88	B		
ST88-2391	Colorado Interstate Gas Co	San Diego Power and Light Co	02-23-88	B		
ST88-2392	CNG Transmission Corp	Niagara Mohawk Power Corp	02-23-88	B		
ST88-2393	CNG Transmission Corp	Niagara Mohawk Power Corp	02-23-88	B		
ST88-2394	CNG Transmission Corp	East Ohio Gas Co	02-23-88	B		
ST88-2395	CNG Transmission Corp	Niagara Mohawk Power Corp	02-23-88	B		
ST88-2396	CNG Transmission Corp	New York State Electric and Gas Co	02-23-88	B		
ST88-2397	CNG Transmission Corp	East Ohio Gas Co	02-23-88	B		
ST88-2398	CNG Transmission Corp	Niagara Mohawk Power Corp	02-23-88	B		
ST88-2399	CNG Transmission Corp	Niagara Mohawk Power Corp	02-23-88	B		
ST88-2400	CNG Transmission Corp	Peoples Natural Gas Co	02-23-88	B		
ST88-2401	CNG Transmission Corp	New York State Electric and Gas Co	02-23-88	B		
ST88-2402	CNG Transmission Corp	New York State Electric and Gas Co	02-23-88	B		
ST88-2403	CNG Transmission Corp	Niagara Mohawk Power Corp	02-23-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2404	Northern Border Pipeline Co	Minnegasco, Inc	02-23-88	B		
ST88-2405	Northern Border Pipeline Co	Northern Natural Gas Co	02-23-88	G		
ST88-2406	Panhandle Eastern Pipe Line Co	Greeley Gas Co	02-23-88	B		
ST88-2407	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-23-88	B		
ST88-2408	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-23-88	B		
ST88-2409	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	02-23-88	B		
ST88-2410	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-23-88	B		
ST88-2411	Valero Transmission, L.P	El Pasco Natural Gas Co	02-23-88	C		
ST88-2412	Valero Transmission, L.P	Natural Gas Pipeline Co. of America	02-23-88	C		
ST88-2413	Valero Transmission, L.P	El Pasco Natural Gas Co	02-23-88	C		
ST88-2414	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	02-23-88	B		
ST88-2415	Valero Interstate Transmission Co	Valero Transmission, L.P	02-24-88	B		
ST88-2416	Northern Border Pipeline Co	Encor Energy (America), Inc	02-24-88	G-S		
ST88-2417	Cabot Pipeline Corp	El Paso Natural Gas Co., et al	02-24-88	C		
ST88-2418	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	02-24-88	C		
ST88-2419	Delhi Gas Pipeline Corp	Phillips Gas Pipeline Co	02-24-88	C		
ST88-2420	Delhi Gas Pipeline Corp	Panhandle Eastern Pipe Line Co	02-24-88	C		
ST88-2421	Transcontinental Gas Pipe Line Corp	Southern Gas Pipeline Co	02-24-88	B		
ST88-2422	Transcontinental Gas Pipe Line Corp	Creole Gas Pipeline Co	02-24-88	B		
ST88-2423	Columbia Gulf Transmission Co	Central Illinois Light Co., et al	02-25-88	B		
ST88-2424	Tennessee Gas Pipeline Co	Mobile Gas Service Corp	02-23-88	B		
ST88-2425	Northern Natural Gas Co	El Paso Hydrocarbons Co	02-24-88	B		
ST88-2426	Texas Gas Transmission Corp	Bay State Gas Co., et al	02-25-88	B		
ST88-2427	Texas Gas Transmission Corp	TPC Pipeline Co	02-25-88	B		
ST88-2428	Texas Gas Transmission Corp	Winnie Pipeline Co	02-25-88	B		
ST88-2429	Texas Gas Transmission Corp	CSX Intrastate Gas Co	02-25-88	B		
ST88-2430	Columbia Gas Transmission Corp	Delmarva Power and Light Co	02-25-88	B		
ST88-2431	Columbia Gulf Transmission Co	Acadian Gas Pipeline System	02-25-88	B		
ST88-2432	Columbia Gulf Transmission Co	Texas Eastern Transmission Corp	02-25-88	G		
ST88-2433	Columbia Gulf Transmission Co	Texas Eastern Transmission Corp	02-25-88	G		
ST88-2434	Columbia Gulf Transmission Co	Public Service Elect. and Gas Co., et al	02-25-88	B		
ST88-2435	Columbia Gulf Transmission Co	Entex, Inc	02-25-88	B		
ST88-2436	Columbia Gulf Transmission Co	Rochester Gas & Electric Corp., et al	02-25-88	B		
ST88-2437	Columbia Gulf Transmission Co	Public Service Elect. and Gas Co., et al	02-25-88	B		
ST88-2438	Columbia Gulf Transmission Co	Peoples Gas Light & Coke Co., et al	02-25-88	B		
ST88-2439	Columbia Gulf Transmission Co	Atlanta Gas Light Co., et al	02-25-88	B		
ST88-2440	Columbia Gulf Transmission Co	Memphis Light Gas and Water, et al	02-25-88	B		
ST88-2441	Columbia Gulf Transmission Co	Northern Ill. Gas Co., et al	02-25-88	B		
ST88-2442	Columbia Gulf Transmission Co	United Gas Pipe Line Co	02-25-88	G		
ST88-2443	Columbia Gulf Transmission Co	Union Texas Petroleum Products Corp	02-25-88	G-S		
ST88-2444	Columbia Gulf Transmission Co	Northern Ill. Gas Co., et al	02-25-88	B		
ST88-2445	Columbia Gulf Transmission Co	Louisiana Intrastate Gas Corp	02-25-88	B		
ST88-2446	Columbia Gulf Transmission Co	Niagara Mohawk Power Corp., et al	02-25-88	B		
ST88-2447	Columbia Gulf Transmission Co	Pontchartrain Natural Gas System	02-25-88	B		
ST88-2448	Columbia Gulf Transmission Co	Pontchartrain Natural Gas System	02-25-88	B		
ST88-2449	Columbia Gulf Transmission Co	Atlanta Gas Light Co., et al	02-25-88	B		
ST88-2450	Columbia Gulf Transmission Co	Texas Gas Transmission Corp	02-25-88	G		
ST88-2451	Columbia Gulf Transmission Co	Gulf South Pipeline Co	02-25-88	B		
ST88-2452	Valero Transmission, L.P	Trunkline Gas Co	02-26-88	C		
ST88-2453	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	02-26-88	G		
ST88-2454	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-26-88	B		
ST88-2455	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-26-88	B		
ST88-2456	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-26-88	B		
ST88-2457	Panhandle Eastern Pipe Line Co	Eastex Gas Transmission Co	02-26-88	B		
ST88-2458	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-26-88	B		
ST88-2459	Natural Gas Pipeline Co. of America	Coastal States Gas Transmission Co	02-29-88	B		
ST88-2460	Natural Gas Pipeline Co. of America	Pontchartrain Natural Gas System	02-29-88	B		
ST88-2461	Natural Gas Pipeline Co. of America	Pontchartrain Natural Gas System	02-29-88	B		
ST88-2462	Natural Gas Pipeline Co. of America	Louisiana Gas System, Inc	02-29-88	B		
ST88-2463	Natural Gas Pipeline Co. of America	LTV Steel Co	02-29-88	G-S		
ST88-2464	Natural Gas Pipeline Co. of America	ONG Transmission Co	02-29-88	B		
ST88-2465	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	02-29-88	G		
ST88-2466	El Paso Natural Gas Co	Pacific Gas and Electric Co	02-29-88	B		
ST88-2467	El Paso Natural Gas Co	Pacific Gas and Electric Co	02-29-88	B		
ST88-2468	El Paso Natural Gas Co	Southern California Gas Co	02-29-88	B		
ST88-2469	El Paso Natural Gas Co	Southwest Gas Corp	02-29-88	B		
ST88-2470	El Paso Natural Gas Co	Pacific Gas and Electric Co	02-29-88	B		
ST88-2471	El Paso Natural Gas Co	Valero Transmission Co	02-29-88	B		
ST88-2472	Natural Gas Pipeline Co. of America	Southern California Gas Co	02-26-88	B		
ST88-2473	Natural Gas Pipeline Co. of America	Dow Intrastate Pipeline Co	02-26-88	B		
ST88-2474	Natural Gas Pipeline Co. of America	Michigan Gas Utilities Co., et al	02-26-88	B		
ST88-2475	Natural Gas Pipeline Co. of America	Memphis Light, Gas and Water Division	02-26-88	B		
ST88-2476	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	02-26-88	B		
ST88-2477	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	02-26-88	B		
ST88-2478	Natural Gas Pipeline Co. of America	Sunshine Energy Co	02-26-88	B		
ST88-2479	Natural Gas Pipeline Co. of America	Northern Indiana Pub. Service Co., et al	02-26-88	B		
ST88-2480	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co., et al	02-26-88	B		
ST88-2481	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	02-26-88	B		
ST88-2482	Natural Gas Pipeline Co. of America	UGI Corp	02-26-88	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST88-2483	Natural Gas Pipeline Co. of America	Columbia Gas of Ohio, et al	02-26-88	B		
ST88-2484	Natural Gas Pipeline Co. of America	Louisiana Gas Marketing Co	02-26-88	B		
ST88-2485	Natural Gas Pipeline Co. of America	Sunshine Energy Co	02-26-88	B		
ST88-2486	Natural Gas Pipeline Co. of America	Louisiana Resources Co., et al	02-26-88	B		
ST88-2487	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	02-26-88	B		
ST88-2488	Natural Gas Pipeline Co. of America	Wintershall Pipeline Corp	02-26-88	B		
ST88-2489	Natural Gas Pipeline Co. of America	Washington Gas Light Co	02-26-88	B		
ST88-2490	Natural Gas Pipeline Co. of America	North Shore Gas Co	02-26-88	B		
ST88-2491	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co., et al	02-26-88	B		
ST88-2492	Natural Gas Pipeline Co. of America	Atlanta Gas Light Co	02-26-88	B		
ST88-2493	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co., et al	02-26-88	B		
ST88-2494	Natural Gas Pipeline Co. of America	Pontchartrain Natural Gas System	02-26-88	B		
ST88-2495	Northern Natural Gas Co	Superior Water, Light and Power Co	02-26-88	B		
ST88-2496	Equitable Gas Co	Equitable Gas Co	02-26-88	B		
ST88-2497	Equitable Gas Co	Equitable Gas Co	02-26-88	B		
ST88-2498	Tenngasco Gas Supply Co	Tennessee Gas Pipeline Co	02-26-88	C		
ST88-2499	Sea Robin Pipeline Co	Consolidated Edison Co. of NY, et al	02-29-88	B		
ST88-2500	United Gas Pipe Line Co	Eastex Gas Transmission Co	02-29-88	B		
ST88-2501	United Gas Pipe Line Co	Jala Pipe Line Corp	02-29-88	B		
ST88-2502	United Gas Pipe Line Co	Gulf Energy Pipeline Co	02-29-88	B		
ST88-2503	United Gas Pipe Line Co	Atlanta Gas Light Co	02-29-88	B		
ST88-2504	United Gas Pipe Line Co	Atlanta Gas Light Co., et al	02-29-88	B		
ST88-2505	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2506	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2507	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2508	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2509	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2510	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2511	Panhandle Eastern Pipe Line Co	Northern States Power Co	02-29-88	B		
ST88-2512	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2513	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2514	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2515	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2516	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2517	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2518	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2519	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2520	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2521	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2522	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2523	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2524	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2525	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2526	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2527	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2528	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2529	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2530	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2531	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2532	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2533	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2534	Panhandle Eastern Pipe Line Co	Yankee Pipeline Co	02-29-88	B		
ST88-2535	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	02-29-88	B		
ST88-2536	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	02-29-88	B		
ST88-2537	Tennessee Gas Pipeline Co	Peoples Gas Light & Coke, et al	02-29-88	B		
ST88-2538	Channel Industries Gas Co	Tennessee Gas Pipeline Co	02-29-88	C		
ST88-2539	Northern Border Pipeline Co	Canadianoxy Marketing Inc	02-29-88	G-S		
ST88-2540	Transcontinental Gas Pipe Line Corp	Valero Transmission, L.P	02-29-88	B		
ST88-2541	Transcontinental Gas Pipe Line Corp	Bishop Pipeline Corp	02-29-88	B		
ST88-2542	ANR Pipeline Co	Wisconsin Natural Gas Co	02-29-88	B		
ST88-2543	ANR Pipeline Co	Michigan Consolidated Gas Co	02-29-88	B		
ST88-2544	ANR Pipeline Co	Washington Gas Light Co	02-29-88	B		
ST88-2545	Transwestern Pipeline Co	Texas Utilities Fuel Co	02-29-88	B		
ST88-2546	Transwestern Pipeline Co	Michigan Consolidated Gas Co	02-29-88	B		
ST88-2547	Red River Pipeline	El Paso Natural Gas Co	02-29-88	C		
ST88-2548	Blue Dolphin Pipe Line Co	Dow Pipeline Co	02-29-88	B		
ST88-3010	Katy Interchange Service		12-09-87	C	05-08-88	03.18

The following petition for rate approval was filed by Katy Interchange Service (Katy) on December 9, 1987, and is noticed out of sequence. When Katy filed the petition they included it in a formal request for other Commission actions. Because of the nature of the filing, the Commission has determined to assign a separate docket number to the petition. Please note, the 150-day period ends on May 8, 1988.

The companies which comprise Katy are Transcontinental Pipe Line Corp., Coronado Transmission Co., Trunkline Gas Co., and Yankee Pipeline Co.

[1] Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-8684 Filed 4-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-85-004]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 15, 1988.

Take notice that on April 11, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, and FERC Gas Tariff, Original Volume No. 3:

FERC Gas Tariff, Original Volume No. 1

Seventh Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 51

FERC Gas Tariff, Original Volume No. 3

First Revised Sheet No. 22

Texas Gas states that the revised tariff sheets are being filed in compliance with the letter order issued by the Federal Energy Regulatory Commission on April 6, 1988, in Docket No. RP86-85.

Pursuant to the waiver of § 154.22 granted in the letter order, Texas Gas requests that all of the revisd tariff sheets be permitted to become effective April 1, 1988.

Copies of this filing were served on all parties in Docket No. RP86-85, as well as nonintervenor customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 22, 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 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. 88-8685 Filed 4-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-101-000]

Southern Natural Gas Co.; Petition for Waiver of Regulations Under Order No. 483

April 15, 1988.

Take notice that on April 11, 1988, Southern Natural Gas Company (Southern) tendered for filing a petition for waiver of certain of the filing requirements under Order No. 483. Specifically, Southern seeks a waiver of the transition filing required under § 154.310 of the Commission's Regulations to be effective on June 1, 1988, as well as the quarterly filing required under Section 154.308 of the Commission's Regulations to be effective July 1, 1988. Southern states that it has just been authorized to revise its Current and Surcharge Adjustments and that no useful purpose would be served by making the June 1 and July 1 filings since it would not change either its Current or its Surcharge Adjustments in such filings.

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 (1987)). All such motions or protests should be filed on or before April 22, 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. 88-8686 Filed 4-19-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3367-7]

Chesapeake Bay Program 1988 Grant Guidance; Availability

The 1988 Chesapeake Bay Program has issued grant guidance for State Nonpoint Source Implementation and Mainstem Monitoring Grants. These funds are authorized under the Clean Water Act, section 117(b). This notice fulfills requirements of the Administrative Procedures Act, 5 U.S.C. section 551 et seq.

Under the guidance, funds will be made available to Maryland, Virginia, Pennsylvania, and the District of Columbia for Chesapeake Bay Program implementation activities, including planning, education, technical assistance, resource restoration, financial assistance, and program evaluation.

Funds will also be made available to Maryland and Virginia for mainstem water quality and sediment monitoring. This monitoring is necesary for program evaluation on a continuing basis and will include information necessary for modeling analyses.

The guidance for implementation and monitoring describes funding criteria, guidelines, general procedures, and an administrative schedule.

Requests for information may be submitted to the Environmental Protection Agency, Chesapeake Bay Liaison Office, 410 Severn Avenue, Annapolis, Maryland 21403. Requests may also be made by phone to Mr. George Walker at the same office (301) 266-6873.

Charles S. Spooner,

Director.

[FR Doc. 88-8658 Filed 4-19-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42024F; FRL-3367-1]

Approval of Amendement to Texas Pesticide Applicator Certification Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Approval to Amend Texas Plan for Certification of Pesticide Applicators.

SUMMARY: EPA issued a Notice of Intent to Approve an amendment to the Texas Department of Agriculture Plan for the certification of restricted use pesticide applicators in the **Federal Register** of February 19, 1988. This amendment provides for the certification of Compound 1080 Livestock Protection Collar applicators. This notice announces approval by EPA of this amendment.

EFFECTIVE DATE: This document is effective April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dale Ratliff (214-655-7240).

SUPPLEMENTARY INFORMATION: Two typographical errors were identified in

the summary of the Notice of Intent to Approve. The 1080 Livestock Protection Collar Certification amendment requires recertification every 3 years not every 2 years as specified in the summary. Further, the summary stated that recertification will be based on the passing of an examination or participation in approved training. The Texas 1080 Livestock Protection Collar Certification amendment exceeds EPA standards and requires both the passing of an examination and participation in approved training for recertification. These two typographical errors have no effect on the public's overall understanding of the program or on the availability of the amendment for review and comment. Therefore, EPA proceeded with the review of the amendment based on the comments received.

The Defenders of Wildlife stated their continuing oposition to the registration and use of Compound 1080 Livestock Protection Collars. However, the Defenders of Wildlife commended the proposed Texas Compound 1080 Livestock Protection Collar program with particular reference to training in alternative predator control methods and vigorous monitoring provisions.

The remaining 26 comments all supported approval of the Texas Compound 1080 Livestock Protection Collar Certification amendment. Among those commenting in support of the amendment were United States Congressman Lamar Smith of the 21st Texas District; Texas Senator Bill Sims of the 25th District; Texas Congressman Dudley Harrison, Chairman of the Committee on Agriculture and Livestock; Pleas L. Childress, III, President of the Texas Sheep and Goat Raisers Association, and W. Bert Dennis, President of the Texas Animal Damage Control Association, Inc. Many of the remaining individuals commenting in favor of the amendment identified themselves as ranchers.

Copies of the plan amendment and comments on the amendment are available for inspection at the following locations during normal business hours:

1. Texas Department of Agriculture, Room 1034E, Tenth Floor, Stephen F. Austin Building, 17th and Congress Streets, Austin, TX 78711, Telephone: 512–463–0013.
2. Environmental Protection Agency, Region VI, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202, Telephone: 214–655–7240.
3. Environmental Protection Agency, Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: 202–557–3263.

The amendment of the Texas Department of Agriculture Certification Plan providing for the certification of Compound 1080 Livestock Protection Collar Applicators is approved.

Dated: April 8, 1988.

John S. Floeter,

Acting Deputy Regional Administrator, Region VI.

[FR Doc. 88–8513 Filed 4–19–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180776; FRL–3367–4]

Receipt of Application for Specific Exemption To use Oxyfluorfen; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") for use of the herbicide oxyfluorfen (goal) to control broadleaf weeds in horseradish in Wisconsin. 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 May 5, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180776," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, Crystal Mall 2 1921 Jefferson Davis Highway, Arlington VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." 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 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:

Jim Tompkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telepone number: Rm. 716C, Crystal Mall 2 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant ot 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 exemptions.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the herbicide oxyfluorfen (CAS 42874 03 3) available as Goal 1.6, EPA Reg. No. 707–174, to control broadleaf weeds in horseradish. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Wisconsin has requested authorization to apply 2.5 pints of Goal 1.6E herbicide (0.5 pounds active ingredient) per acre as a ground spray application on 700 acres of horseradish. Goal 1.6E is a selective herbicide recommended for preemergence control of certain broadleaf weeds. Goal 1.6E will be applied in a minimum of 40 gallons of water per acre.

According to the Applicant, weed control in horseradish fields in Wisconsin is mainly limited to mechanical means. The rising costs of fuel and labor in the past years has made the use of cultivation increasingly impractical. Cultivation at $4.50/acre/operation costs the grower $49.50/season for the normal eleven cultivations for between row weeds and $18.64/acre for the one hand-weeding for weed control within the row. In test plots, yields ranged from 1,500 lbs./acre with no weed control to 10,000 lbs./acre with proper weed control.

Oxyfluorfen was referred to Special Review in January 1980 because pesticide products containing oxyfluorfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3F1 mice. The Special Review process was completed on June 23, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118).

This notice does not constitute a decision by EPA on the application

itself. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specified exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)).

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 the emergency exemption requested by the Wisconsin Department of Agriculture, Trade and Consumer Protection.

Dated: April 7, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-8511 Filed 4-19-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180775; FRL-3367-3]

Receipt of Application for an Emergency Exemption From Wisconsin To Use Pyridate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") to use the herbicide pyridate (CAS 35512 33 9) to treat 7,000 acres of cabbage, a majority of which is grown for processing into sauerkraut, for post-emergent control of annual broadleaf weeds. 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 April 25, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180775" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#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. 236, 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:

Robert Forrest, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, 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 registration provision of FIFRA if he determines that emergency conditions exist which requires such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of pyridate, 0-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbononthioate, for post emergent control of broadleaf weeds in cabbage.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Pyridate is not currently registered in the United States. Pyridate is applied commercially in Europe for selective post-emergence broadleaf weed control in maize, cereals, peanuts, lucerne, brassicas and other crops.

The Applicant states that since the withdrawal of TOK herbicide from the market, hand-hoeing and cultivation has been the only means of post-emergent broadleaf weed control in direct seeded cabbage. This labor-intensive weeding operation has proven to be extremely costly, and has limited the acreage which can be effectively managed. Thinning and hand-hoeing of cabbage is primarily done by high school age students because the work is concentrated in one month. It is uneconomical for growers to provide housing and benefits for migrant workers. Employment of high school workers, necessitates close supervision and is limited by their reliability and availability.

Most Wisconsin commercial growers plant cabbage transplants because the cost of hand-weeding direct seeded cabbage is considered too expensive and difficult to manage. Direct seeding is not possible without some means of post-emergent broadleaf weed control. However, the cost of transplanting cabbage is more expensive than direct seeding ($180/acre vs. $85/acre for direct seeding).

An emergency situation exists, according to the Applicant, because the increased cost of production due primarily to increased labor costs makes production of direct seeded cabbage uneconomical without use of a post-emergent herbicide to control broadleaf weeds. However, no effective herbicides are registered for post-emergent broadleaf weed control in cabbage.

The Applicant proposes to make a single application of the product Lentagran (45% pyridate) in a minimum of 20 gallons of water per acre by ground application equipment at a maximum rate of 4 pounds formulation (1.8 lbs. active ingredient) per acre for post-emergent broadleaf weed control prior to the 2 true leaf stage or the 4 true leaf stage depending on weeds present.

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: April 5, 1988.

Edwin T. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-8512 Filed 4-19-88; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL 3367-5]

Water Quality Act of 1987; Interim Final Guidance Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the document "Interim Final Guidance on the Contents of a Governor's Nomination" for public comment. The document describes how EPA proposes to implement sections 317 and 320 of the Water Quality Act of 1987. Nominations of estuaries given priority consideration by Congress must be submitted to EPA by June 1, 1988, and must be consistent with this guidance.

DATES: Public comments on this interim final guidance must be received by the EPA Office of Marine and Estuarine Protection on or before May 20, 1988.

ADDRESSES: Copies of the interim final guidance can be obtained by writing Steve Glomb; c/o Office of Marine and Estuarine Protection, WH-556F; U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, DC 20460; or by telephoning him at (202) 475-7102. All comments on the guidance should be sent to Mr. Glomb at the same address.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Marine and Estuarine Protection, at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Water Quality Act Requirements

In 1987, the Clean Water Act was amended by Congress under the Water Quality Act (WQA), establishing the National Estuary Program (NEP). Under section 320 of the WQA, the governor of any state can nominate an estuary located wholly or partly within the state and request that a management conference be convened to develop a comprehensive conservation and management plan (CCMP) for the estuary. Such nominations should document the national significance of the estuary, the need for the conference, and the likelihood of success, based on a showing of public interest and the ability of the state to meet state cost-sharing requirements.

In response to a governor's nomination or on his own initiative, the EPA Administrator must determine if the attainment or maintenance of a desired level of water quality requires additional pollution abatement and control programs to supplement existing controls. The Administrator is authorized under section 320(a)(2)(A) to select such estuaries and to convene management conferences to develop comprehensive plans for managing such estuaries of national significance. The conferees are charged with balancing the conflicting uses in the estuary while restoring or maintaining its natural character.

Section 320(a)(2)(B) requires the EPA Administrator to give priority consideration to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Puget Sound, Washington; New York–New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; and Galveston Bay, Texas. Santa Monica Bay, California, was added to this list in the Fiscal Year 1988 Appropriations Act.

The seven purposes of a management conference, are stated in section 320(b) fo the WQA and summarized below.

1. Assess trends in water quality, natural resources, and uses of the estuary.
2. Identify the causes of environmental problems.
3. Evaluate the relationships between the pollutant loads and environmental effects.
4. Develop a comprehensive conservation and management plan.
5. Develop plans with States and other agencies to coordinate the implementation of the CCMP.
6. Monitor the effectiveness of actions taken pursuant to the plan.
7. Review all federal financial assistance programs and development projects for consistency with the CCMP.

The WQA requires a management conference to include a broad variety of interested parties. These parties include EPA, other federal agencies, State, interstate, and local governments, affected industries, public and private educational institutions, and the general public. Through a collaborative process, the management conference establishes program goals and objectives, determining desirable and allowable uses for the estuary and its various segments. Specific pollution control and resource management strategies, designed to meet each objective, are the core of the CCMP that will be developed. Strong public support and subsequent political commitments will be needed to carry out the actions agreed to in the CCMP.

Priority Considerations

There are three categories of estuaries that can be nominated for inclusion in the NEP—(1) estuaries currently in the program, (2) estuaries named in the WQA or the Fiscal Year 1988 Appropriations Act but not currently in the program, and (3) estuaries not named in the WQA. These categories will be evaluated one at a time, giving priority consideration, as EPA was instruced, to estuaries in the first two categories.

All six of the existing estuary programs from group one have already been convened as management conferences. The six estuaries in group two will be given an opportunity to participate in the NEP before EPA evaluates nominations from other estuaries not given priority status by Congress. Nominations for these estuaries in group two should be consistent with the guidance being made available today for the estuary to be added to the NEP. June 1, 1988, is the deadline for submission of these nominations.

Nominations for other estuaries and those that are not ready by the June 1 deadline should also be consistent with the guidance. In addition, this set of estuaries will be evaluated and ranked against criteria determining national significance. Expanded guidance discussing national significance criteria will be available in May 1988.

Contents of the Nomination

This notice announces the availability of interim final guidance that will assist states interested in nominating estuaries to the NEP. Following statutory requirements, the interim final guidance addresses "national significance," generally describing the need for a national demonstration program to provide technical assistance and outreach to other coastal areas. As such, the program will include a spectrum of geographic locations (to address biogeographic variety and to develop expertise nationwide), a wide range of environmental problems, and examples of restoration and maintenance of water quality that have national applicability. The interim final guidance also addresses demonstrating the need for a management conference and the likelihood of success of the potential estuary program.

To make these required demonstrations, a nomination must answer the following key questions:

- National Significance:

—What is the geographic scope of the estuary?
—Why is the estuary important to the nation?
—How can the lessons learned from this estuary be applied to other coastal

areas within the state or to other states?

• The Need for a Conference:

—What is the importance of the estuary on a local or regional scale?

—What are the major environmental problems facing the estuary?

—What is known about the cause and effect relationships and how do you propose to better identify the causes of environmental problems?

—What are the institutional arrangements for the estuary and how are they working?

• Likelihood of Success:

—What are state and local governments, and public and private institutions already doing for the estuary?

—What goals and objectives do you propose to set for the estuary and how do you propose to meet them?

—Who will participate in the management conference and how will it be organized?

—Is there public and political will, as well as financial capability, to support implementation of a Comprehensive Conservation and Management Plan?

Nominations will be evaluated by EPA based on how well they address these concerns. In addition, other programmatic and policy issues will be evaluated. For example, where a State is developing a State Clean Water Strategy (SCWS), the nomination should describe how the proposed an estuary program is integrated into its SCWS. A checklist is provided with the guidance to serve as an organizing framework for developing the nomination.

Paperwork Reduction Act

The Agency will submit an Information Collection Request (ICR) document describing the information requirements in the expanded guidance to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This ICR will be available for public comment and will document EPA's need for information and the cost to State respondents and the public in following the guidance and in meeting the requirements of Section 320 of the Water Quality Act of 1987.

A copy of the ICR, when available, may be obtained from: EPA; Information Policy Branch, Attn. Carla Levesque, PM-223; 401 M St., SW.; Washington, DC 20460; or by calling (202) 382-2740. The public may submit comments on the reporting requirements in the Interim Final Guidance announced today, as well as those in the forthcoming expanded guidance, to: EPA Information Policy Branch (address above); and Timothy Hunt, Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW.; Washington, DC 20503.

Date: April 11, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 88-8659 Filed 4-19-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 85-124; FCC 88-79]

Federal-State Joint Board Proceedings; Commission Appointed

AGENCY: Federal Communications Commission.

ACTION: Order appointing Commissioner Donald Vial of the California Public Utilities Commission to the Federal-State Joint Board in CC Docket 85-124.

SUMMARY: On February 25, 1988, the Commission adopted an Order appointing Commissioner Donald Vial of the California Public Utilities Commission to the Federal-State Joint Board in CC Docket 85-124. Commissioner Vial was nominated by the National Association of Regulatory Utility Commissioners to fill the vacancy created by the departure of Commissioner Louise V. McCarren of the Vermont Public Service Board. The CC Docket 85-124 Joint Board was convened to resolve certain issues relating to the measurement and verification of interstate and intrastate usage of Feature Group A and Feature Group B access services by interexchange carriers for access charge billing and cost separations purposes.

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

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision (FCC 88-79), adopted February 25, 1988, and released March 16, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Office (Room 230), 1919 M Street NW., Washington, DC. The complex text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-8531 Filed 4-19-88; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket 85-124 FCC 88-80]

Federal-State Joint Board Proceedings; Commissioner Appointed

AGENCY: Federal Communications Commission.

ACTION: Order appointing Commissioner James M. Fischer of the Missouri Public Service Commission to the Federal-State Joint Board in CC Docket 85-124.

SUMMARY: On February 25, 1988, the Commission adopted an Order appointing Commissioner James M. Fischer of the Missouri Public Service Commission to the Federal-State Joint Board in CC Docket 85-124. Commissioner Fischer was nominated by the National Association of Regulatory Utility Commissioners to fill the vacancy created by the departure of Commissioner Marvin R. Weatherly of the Alaska Public Utilities Commission. The CC Docket 85-124 Joint Board was convened to resolve certain issues relating to the measurement and verification of interstate and intrastate usage of Feature Group A and Feature Group B access services by interexchange carriers for access charge billing and cost separations purposes.

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

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision (FCC 88-80), adopted February 25, 1988, and released March 16, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Office (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-8532 Filed 4-19-88; 8:45 am]

BILLING CODE 6712-01-M

Bayboro Broadcasting et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Bayboro Broadcasting, Bayboro, NC.	BPH-860916MA	88-151
B. Theresa Schreiber, Bayboro, NC.	BPH-860918MU	.....
C. Thomas H. Campbell, Bayboro, NC.	BPH-860918MX	.....
D. Terry Freitag, Bayboro, NC.	BPH-8609180K	.....
E. James E. Hodges & Lewis Y. Parrish d.b.a. the Bayboro Co., Bayboro, NC.	BPH-860918MG (Dismissed)	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, D
2. Comparative, A–D
3. Ultimate, A–D

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–8626 Filed 4–19–88; 8:45 am]

BILLING CODE 6712-01-M

Media Investment Corp. et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city, and State	File No.	MM Docket No.
A. Media Investment Corp., Merced, CA.	BPCT-870326KL	88-162
B. Wade Axell, Merced, CA.	BPCT-870327KK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, A,B
Comparative, A,B
Ultimate, A,B
Environmental, A

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 88–8629 Filed 4–19–88; 8:45 am]

BILLING CODE 6712-01-M

Ying Hua Benns et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Ying Hua Benns, Greenfield, CA.	BPH-850711QP	88-142
B. Q Prime Inc., Greenfield, CA.	BPH-850712TI	.....
C. Trans-California Broadcasting Co., Greenfield, CA.	BPH-850712TJ	.....
D. Star Signal Corp., Greenfield, CA.	BPH-850712TK	.....
E. San Vincente Communications Corp., Greenfield, CA.	BPH-850712TM	.....
F. Buena Vista Broadcasting, Ltd., a California limited partnership, Greenfield, CA.	BPH-850712TN	.....
G. Doubledee Broadcast Group, Greenfield, CA.	BPH-850712TP	.....
H. BG Communications, a limited partnership, Greenfield, CA.	BPH-850712TQ	.....
I. Armida Medina Cabello, Greenfield, CA.	BPH-850712TR	.....
J. Richard S. & Susan B. Bushell, joint venturers, Greenfield, CA.	BPH-850715MV	.....
K. Wayne R. Stakey, Greenfield, CA.	BPH-850201MC (Previously dismissed)	.....
L. Greenfield Community Broadcasting, Inc., Greenfield, CA.	BPH-850712TL (Previously dismissed)	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, F
2. Comparative, A–J
3. Ultimate, A–J

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M

Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–8627 Filed 4–19–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA–REP–5–IL–7]

The Illinois Radiological Emergency Response Plan Site-Specific for the Braidwood Nuclear Power Station

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Illinois formally submitted its plans relating to the Braidwood Nuclear Power Station to the Director of FEMA Region V on January 9, 1987, for FEMA review and approval. On August 21, 1987, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in the Regional Director's evaluation was a review of the State and local plans around the Braidwood Nuclear Power Station; evaluations of joint exercises conducted on November 6, 1985 and March 18, 1987, in accordance with section 350.9 of the FEMA rule; and a report of the public meeting held on May 20, 1987, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the Braidwood Nuclear Power Station, are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The public alert and notification system was approved by FEMA on August 5, 1987.

FEMA will continue to review the status of offsite plans and preparedness associated with the Braidwood Nuclear Power Station in accordance with the FEMA rule.

For further details with respect to this action, please refer to Docket File FEMA-REP–5–IL–7.

Dated: April 13, 1988.

For the Federal Emergency Management Agency.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 88–8646 Filed 4–19–88; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200106.

Title: Puerto Nuevo Terminal Use Agreement.

Parties:

City Marine Terminal, Inc. (City Marine)

Sea-Land Service, Inc. (Sea-Land)

Synopsis: The proposed agreement provides Sea-Land with exclusive use of four acres of improved land at City Marine's terminal located in the Puerto Nuevo port area of Puerto Rico.

Agreement No.: 224–200107.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority

C.C.C. of Georgia, Inc. (CCC)

Synopsis: The proposed agreement provides CCC the use of Port land in addition to a consolidated rate based upon an agreed through-put rate per container. The consolidated rate includes wharfage, dockage and land use. All other charges are to be assessed pursuant to the Port's tariff.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 15, 1988.

[FR Doc. 88–8649 Filed 4–19–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service; Agency for Toxic Substances and Disease Registry Superfund Amendments and Reauthorization Act of 1986; Delegation of Authority

Notice is hereby given that in furtherance of the authority delegated to me by the President by Executive Order 12580, dated January 23, 1987, I have delegated to the Assistant Secretary for Health, with the authority to redelegate, the following authorities under the Comprehensive Environmental Response, Compensation, and Liabiity Act of 1980 (42 U.S.C. 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as amended hereafter:

Sections 104(b)(1) [first sentence], 104(d), 104(e) [with the exception of 104(e)(7)(C), 104(f), 104(g), 104(h), 104(i)(11), 104(j), nad 113(k) [with the exception of 113(k)(2)]. The exercise of authority under section 104(h) shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

In addition, this delegation includes authority to ratify actions taken on behalf of the Public Health Service under the Superfund Amendments and Reauthorization Act of 1986, as amended hereafter, to the extent those actions are otherwise in accordance with applicable law.

Dated: April 7, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–8643 Filed 4–19–88; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Health Resources and Services Administration and Indian Health Service; Part D, Subparts II and III of Title III of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981 (46 FR 10016) by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated all of the authorities under Title III, Part D, Subparts II and III of the Pubic Health Service (PHS) Act, as amended, as indicated below: (1) To the Administrator, Health Resources and Services Administration, with authority to redelegate, all of the authorities under Title III, Part D, Subparts II and III of the PHS Act, as amended, excluding the authorities delegated to the Director, Indian Health Service; (2) to the Director, Indian Health Service, the authorities under section 3381 (42 U.S.C. 254r) of the PHS Act, as amended.

This delegation supersedes the April 12, 1982, delegation vested in HRSA by the Reorganization Order of September 1, 1982, as it pertains to sections 331, 332, 333, 334, 335, 336, 336A, 337, 338, 338A, 338B, 338C, 338D, 338E, 338F, 338G; and the May 12, 1983, delegation for section 339.

Provision was made for all previous delegations and redelegations under Title III within PHS to continue.

The above delegation was effective on April 11, 1988.

Date: April 11, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-8625 Filed 4-19-88; 8:45 am]

BILLING CODE 4150-15-M

Office of the Secretary

Delegation of Authority to the Inspector General

By the authority vested in me as Secretary, I hereby delegate to the Inspector General, with authority to redelegate, and to authorize further redelegation, the following authorities:

- The authority under section 1128A as amended, including but not limited to my authority to make determinations concerning false or improper claims in the Medicare, Medicaid or Maternal and Child Health Services Block Grant programs, to propose civil money penalties, assessments and exclusions, and to authorize actions to enjoin activities described in section 1128A(k.).
- The authorities for controlling fraud and abuse in the health care financing programs under sections 1128, 156(b) and 1866(b)(2)(C) and 1866(c)(1) for actions taken under 1866(b)(2)(C).
- The authority under section 192(a)(2) to obtain access to documents.

Excluded from this delegation is the authority to conduct hearings and to issue regulations.

This delegation supersedes the earlier delegations of authority dated April 18, 1983 and July 27, 1983. However, this delegation does not affect any action taken pursuant to those earlier delegations.

This delegation is effective immediate.

Date: April 7, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-8642 Filed 4-19-88; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 88M-0093]

Armstrong Laboratories, Inc.; Premarket Approval of Armstrong Sterile Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Armstrong Laboratories, Inc., West Roxbury, MA, for premarket approval, under the Medical Device Amendments of 1976, of Armstrong Sterile Saline Solution for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by May 20, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fisher Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On October 2, 1987, Armstrong Laboratories, Inc., West Roxbury, MA 02132, submitted to CDRH an application for premarket approval of Armstrong Sterile Saline Solution. The device is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses.

On January 22, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 26, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of Armstrong Sterile Saline Solution states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of

material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the person who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 30, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 11, 1988.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88–8662 Filed 4–19–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Adminstration

National Disaster Medical System; Medical Manpower Component Establishment

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice: Establishing the medical manpower component of the National Disaster Medical System.

SUMMARY: This notice announces the creation of the medical manpower component within the Health Resources and Services Administration (HRSA), Department of Health and Human Services/Public Health Service (HHS/PHS) as a part of the National Disaster Medical System (NDMS).

The NDMS is an organized resource that may be activated to serve national needs in the event of disasters or other major emergencies requiring extraordinary medical services. The manpower component will contain volunteer medical response personnel and technical staff that will be made available in situations requiring substantial medical services from outside the area affected by the disaster or emergency. The manpower component of NDMS is being established by HRSA/HHS/PHS in cooperation with the Department of Defense (DoD), Federal Emergency Management Agency (FEMA), and the Veterans Administration (VA).

FOR FURTHER INFORMATION CONTACT: Mr. John D. Reardon, Director, Office of Emergency Preparedness, HRSA, Parklawn Building, Room 13A–22, 5600 Fishers Lane, Rockville, Maryland, 20857, or call 301/443–6580 (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: HHS/PHS, DoD, FEMA, and VA signed an agreement in September 1987 to assure that the Nation will have an effective capability to meet essential civilian disaster needs and assist during national security emergencies with the establishment of the NDMS.

The NDMS is designed to fulfill three objectives;

- Provide a medical response to a disaster area in the form of medical response units or teams and medical supplies and equipment.
- Evacuate patients that cannot be cared for in the affected area to designated locations elsewhere in the Nation; and
- Provide hospitalization in a national voluntary network of non-Federal acute care hospitals that have agreed to accept patients in the event of a national emergency.

The system is designed to care for the victims of any incident that exceeds the medical care capability of the appropriate Federal, State, or regional medical care system. It may be used in a variety of emergency catastrophic events such as earthquakes, tidal waves, volcano eruptions, industrial accidents, or casualties returning to the U.S. from an overseas conventional military conflict.

The NDMS components are:

1. Medical Manpower Component

This component will be administered by HRSA, HHS/PHS and will consist of volunteer medical response units or teams.

Personnel for these medical response units or teams will be recruited from non-Federal sources as volunteers and trained by local sponsoring institutions. A non-Federal organization sponsoring a medical response unit or team may be a licensed hospital, a State-approved non-hospital health agency, a disaster service agency, or a non-profit corporation capable of providing disaster health services.

2. Evacuation Component

This component will be administered by the DoD. It is founded on the aeromedical evaluation system of the Military Airlift Command, and will be augmented by civilian passenger aircraft, passenger rail services, and other means of patient transport.

3. Hospital Beds Component

This component will be administered by DoD and the VA. DoD is the lead agency for this component. The hospital bed component of NDMS will comprise approximately 100,000 precommitted non-Federal hospital beds in about 72 metropolitan areas of the country.

Authorities

The medical manpower component of NDMS is established pursuant to the combined authorities of section 311(c) of the Public Health Service Act (42 U.S.C. 243(c)), Executive Order 11490, and the Disaster Relief Act of 1974 (Pub. L. 93–288). HHS/PHS, DoD, or FEMA, under their emergency authorities, may request activation of the NDMS and deployment of the medical response units or teams to meet essential civilian or defense health care needs. Each Federal department or agency will direct and control its own program resources while participating in the NDMS, in accordance with the stated mission of the agency and its legislative authorities.

Activation

In the event of a major disaster, the Governor of an affected State may request Federal assistance under the authority of the Disaster Relief Act of 1974. The President may make a declaration of a major disaster or an emergency. This Presidential declaration may include the activation of NDMS when appropriate.

The NDMS may also be activated by HHS/PHS upon request of the appropriate State or local authority in situations warranting Federal assistance, under authority provided by the Public Health Service Act.

Lastly, in a national security emergency, the Secretary of Defense would have authority to activate the system.

When so activated, the medical response units or teams will supplement medical services provided by Federal, State, regional, and local medical resources; and allocate skilled and trained professionals to the highest priority needs.

Establishment and Operation of the Manpower Component

The medical manpower component of NDMS will be developed by non-Federal sponsoring organizations that agree to make the volunteer medical response units or teams available for local or State service in the event of a local disaster, and for Federal service in national emergencies. Each sponsor will recruit, train, and maintain its medical response units or teams in accordance with the following guidance:

—Under non-emergency conditions, each volunteer medical response unit or team will function under the control and supervision of its non-Federal sponsoring organization.

—In the event of a local or State emergency, the volunteer medical response units or teams should be made available by its sponsor to the State or local agency responsible for disaster medical services, under the terms and conditions of applicable State law and of agreements negotiated between the sponsor and the appropriate State and local governments.

—In the event of a disaster or a national security emergency and the determination of the HHS/PHS that it is in the interest of the United States, the volunteer medical response units or teams will be disengaged from their sponsors and those volunteer unit or team members will become PHS employees under the emergency powers granted to the PHS to provide appropriate medical services at the disaster sites.

When activated for Federal service, the volunteer medical response units or teams as PHS employees will function under the management and supervisory control of Federal officials. While in Federal service, they will have the same protection against personal liability as other PHS employees for actions taken within the scope of their Federal employment. They may be provided representations by the Department of Justice if they are sued in their individual capacities, request Department of Justice representation, and their request is determined by the Department of Justice to meet the requirements of its regulations concerning the representation of Federal employees. See section 224 of the Public Health Service Act, 42 U.S.C. 233. In addition, individual medical response unit or team members working as PHS employees and deployed to a State in which they are not licensed or certified to practice their profession will not be subject to the licensure/certification requirements of that particular State.

Date: March 15, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-8663 Filed 4-19-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48140-R has been received covering the following lands:

Copper River Meridian, Alaska

T. 11 N., R. 4 W.,
Sec. 30 N½SE¼.
(80 acres.)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from December 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48140-R as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1987, subject to the terms and conditions cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

Dated: April 11, 1988.

[FR Doc. 88-8600 Filed 4-19-88; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS), 30 CFR Part 250 (4 submissions—see individual titles below)

Abstract: Respondents submit the following forms to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations:

1. Form MMS-331C, Application for Permit to Drill, is used to obtain permission to initiate the drilling of a well and is the first significant information placed in a well file.

2. Form MMS-331, Sundry Notices and Reports on Wells, is used to obtain prior approval for all intervening actions between the initial drilling and the subsequent abandonment of a well, including deepening and plugging back. It is used as a subsequent report of all operations other than completion, recompletion, or abandonment.

3. Form MMS-330, Well (Re)Completion Report, is used to report when a well is completed or recompleted in a given interval stating the condition of the wellbore until such time that the well is recompleted or abandoned.

4. Form MMS-332, Notice of Intent/Report of Well Abandonment, is used to obtain prior approval for, and subsequently to report, the abandonment of a well. It will be the last significant information placed in a well file since it results in the file being closed.

These forms are necessary to enable MMS to ensure safety of operations, protection of the human, marine, and coastal environments, conservation of the natural resources in the OCS, prevention of waste, and protection of correlative rights with respect to oil and gas operations in the OCS.

Bureau Form Number:

1. Form MMS–331C, Application for Permit to Drill

Annual Responses: 1,130
Annual Burden Hours: 565

2. Form MMS–331, Sundry Notices and Reports on Wells

Annual Responses: 5,566
Annual Burden Hours: 2,783

3. Form MMS–330, Well (Re)Completion Report

Annual Responses: 2,500
Annual Burden Hours: 2,500

4. Form MMS–332, Notice of Intent/ Report of Well Abandonment

Annual Responses: 1,650
Annual Burden Hours: 825
Frequency: On occasion
Description of Respondents: OCS oil and gas lessees
Bureau Clearance Officer: Dorothy Christopher, (703) 435–6213.

Date: November 17, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–8601 Filed 4–19–88; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf (OCS) Advisory Board Scientific Committee (SC) Notice of Vacancies and Requests for Nominations

The Minerals Management Service (MMS) is seeking interested and qualified individuals to serve on its OCS Advisory Board SC. The SC is chartered, under the Federal Advisory Committee Act, to advise the Director of the MMS on the appropriateness, feasibility, and scientific value of the OCS Environmental Studies Programs (ESP) and environmental aspects of the offshore oil and gas program. The ESP, which was authorized by the OCS Lands Act as amended (section 20), is administered by the MMS and covers a wide range of field and laboratory studies in biology, chemistry, and physical oceanography, as well as studies of the social and economic impacts of OCS oil and gas development. The work is conducted through award of competitive contracts and interagency and cooperative agreements. The SC reviews the relevance of the information being produced by the ESP and may recommend changes in its scope, direction, and emphasis.

The SC consists of distinguished scientists in appropriate disciplines of the biological, physical, chemical, and socioeconomic sciences. The selection is based on an attempt to achieve a representative distribution of all subjects, as well as geographic balance with respect to areas of research experience. Demonstrated knowledge of the issues related to OCS oil and gas development is essential. Selection is made by the Department of the Interior on the basis of these factors.

Interested individuals should send a letter of interest and resume, within 30 days, to: Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Room 4230 (MS-644), Minerals Management Service, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240 (telephone (202) 343–7744).

John B. Rigg,

Associate Director for Offshore Minerals Management.

Date: April 15, 1988.

[FR Doc. 88–8640 Filed 4–19–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Availability of Draft Environmental Impact Statement for Lake Clark National Park and Preserve Alaska

ACTION: Wilderness Recommendation Lake Clark National Park and Preserve.

In the **Federal Register** of Friday April 1, 1988, Vol. 53, No. 63, page 10571, it was indicated that comments must be received by July 8, 1988 to be included in the development of the final EIS. The correct date is July 18, 1988.

In addition, there is scheduled an additional public meeting in Kenai at the NPS office, 405 Overland Avenue at 4 p.m. and 7 p.m. on June 14, 1988. The public is invited to review and comment on the Section 810 analysis separately at the public meeting. The Section 810 analysis is included in the Draft EIS.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Region, National Park Service, 2525 Gambell Street, Anchorage, Alaska, 99503; (907) 257–2654.

Date: April 15, 1988.

James W. Stewart,

Acting Associate Director, Planning and Development.

[FR Doc. 88–8647 Filed 4–19–88; 8:45 am]

BILLING CODE 4310–70–M

[DES 88–20]

Availability of Draft Environmental Impact Statement for Wrangell-St. Elias National Park and Preserve, Alaska

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Wrangell-St. Elias National Park and Preserve, Alaska and the holding of public hearings and public meetings.

For Wrangell-St. Elias National Park and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all suitable lands within the study area as wilderness. Alternative 2, the proposed action, recommends about 273,000 acres, or just under 9 percent of the study area lands, for wilderness designation. In addition, about 109,000 acres of existing wilderness would be deleted from wilderness.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end July 18, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, AK 99503. Comments must be received by July 18, 1988, to be considered in the development of the final EIS.

Two formal hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Lake Clark National Park and Preserve and Gates of the Arctic National Park and Preserve draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, June 6, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing has been tentatively scheduled for Tuesday, June 7 at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive. The actual date and time will be verified in the local newspapers.

In addition, 8 public meetings will be held on Wrangell-St. Elias National Park and Preserve Wilderness DEIS. A section 810 review will be conducted as part of the meetings. They will be in Fairbanks on Tuesday, June 7, Juneau on

Wednesday, June 8, Yakutat on Thursday, June 9, Glennallen on Monday, June 13, Tok on Tuesday, June 14, McCarthy on Wednesday, June 15, Slana on Thursday, June 16 and Chitina on Friday, June 17. The exact time and locations will be announced in local news media.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654. The headquarters at Glennallen, Alaska, phone (907) 882–5235 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC, 18th and C Streets, NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Date: April 13, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88–8648 Filed 4–19–88; 8:45 am]

BILLING CODE 4310–70–M

Availability of Environmental Impact Statement; Yellowstone National Park

ACTION: Notice of Availability of the Final Environmental Impact Statement and Development Concept Plan, Fishing Bridge Developed Area, Yellowstone National Park, Wyoming-Montana-Idaho.

SUMMARY: This notice announces the availability of a final environmental impact statement (FEIS) and Development Concept Plan (DCP) for the Fishing Bridge Developed Area, Yellowstone National Park.

DATES: The 30-day no-action period following the Environmental Protection Agency's notice of availability of the FEIS will end May 25, 1988.

ADDRESSES: Public reading copies of the FEIS will be available for review at the following locations:

Office of the Superintendent, Yellowstone National Park, Wyoming, Telephone: (307) 344–7381

Branch of Compliance, Rocky Mountain Regional Office, National Park Service, 12795 West Alameda Parkway, Lakewood, Colorado 80215, Mailing Address: P.O. Box 25287, Telephone (303) 969–2828

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 343–6843

SUPPLEMENTARY INFORMATION: The FEIS/DCP analyzes seven alternatives to reduce conflicts between the threatened grizzly bears and humans at the Fishing Bridge developed area in Yellowstone National Park. The alternatives attempt to contribute to the grizzly bear recovery effort while still providing appropriate visitor services. The FEIS/DCP evaluates the impacts of removing some or all of the camping and commercial support facilities at Fishing Bridge. The alternatives are: Alternative A to remove and replace elsewhere only the NPS campground, keeping the RV park and most support facilities: Alternative B to remove and replace all camping facilities and some support facilities: Alternative C to remove all camping and support facilities, and replace part of them: Alternative D to remove and replace 160 NPS campsites, fence the remaining campsites, and retain all support facilities: Alternative E to remove all camping and support facilities without replacement elsewhere: the No Action Alternative: and lastly, the Proposed Action. The proposed action is similar to Alternative A, but replacement of the NPS campground would be deferred until visitor demand warrants. The FEIS/DCP in particular evaluates the environmental consequences of the proposed action and the other alternatives on threatened and endangererd species, other natural resources and values, visitor use, concessioners, and communities near Yellowstone National Park.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Iobst at Yellowstone National Park at the above address, telephone (307) 344–7381: or Ms. Christine Turk, Denver Service Center, Central Team, National Park Service, at the above address, telephone (303) 969–2310.

L. Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 88–8669 Filed 4–19–88; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations No. 731–TA–378 (Final) and No. 701–TA–287 (Final)]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the final antidumping investigation and in connection with the final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–378 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of wrought rods of aluminum, the foregoing which are electically conductive and contain not less than 99 percent of aluminum by weight, provided for in item 618.15 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). The Commission has already instituted a final countervailing duty investigation of the same product. Further, the Commission hereby gives notice of the public hearing that will be held in connection with these investigations. Commerce will make its final LTFV and subsidy determinations in these investigations on June 22, 1988, and the Commission will make its final injury determinations by August 5, 1988 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen Vastagh (202–252–1180), 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 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—This final antidumping investigation is being instituted as a result of an affirmative preliminary

determination by the Department of Commerce that imports of certain electrical conductor aluminum redraw rod from Venezuela are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673) (53 FR 3614, February 8, 1988). The investigation was requested in a petition filed on July 14, 1987, by counsel for Southwire Co., Carrollton, GA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 33300, September 2, 1987).

The Department of Commerce has also found, in a preliminary determination, that imports of certain electrical conductor aluminum redraw rod from Venezuela are subsidized by the government of Venezuela (52 FR 38113, October 14, 1987). Based upon the request of the petitioner, the Department of Commerce extended the deadline date for the final subsidy determination to correspond to the date of the final antidumping duty determination of the same product (52 FR 42703, November 6, 1987). The Commission has instituted a final countervailing duty investigation but has not scheduled a public hearing in connection therewith (52 FR 43404, November 12, 1987). Based upon the request of SURAL, a respondent-exporter accounting for a significant proportion of exports of the merchandise under investigation, the Department of Commerce postponed the final antidumping and subsidy determinations until not later than June 22, 1988 (53 FR 9675, March 24, 1988). The Commission thus schedules herewith a public hearing in connection with the final antidumping investigation to coincide with the hearing to be held in connection with the final countervailing duty investigation of the same product.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the 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 Secretry will not accept a document for filing without a certificate of service.

Staff report. A public version of the prehearing staff report in these investigations will be placed in the public record on June 10, 1988, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 23, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 14, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 17, 1988, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 20, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 30, 1988. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 30, 1988. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 12, 1988.

[FR Doc. 88-8694 Filed 4-19-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-278]

Certain Programmable Digital Clock Thermostats; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Computime Limited.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial

determination in this matter was served upon the parties on April 12, 1988.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 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.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202–252–1805.

By order of the Commission.
Issued: April 12, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–8695 Filed 4–19–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–389 (Preliminary)]

3.5" Microdisks and Media Therefor From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of 3.5" microdisks and media therefor, provided for in item 724.45 of the Tariff Schedules of the United States,[3] that are alleged to be sold in the United States at less than fair value (LTFV).[4]

Background

On February 26, 1988, a petition was filed with the Commission and the Department of Commerce by Verbatim Corp., Charlotte, NC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 3.5" microdisks and media therefor from Japan. Accordingly, effective February 26, 1988, the Commission instituted preliminary antidumping investigation No. 731–TA–389 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 9, 1988 (53 FR 7581). The conference was held in Washington, DC, on March 21, 1988 and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 11, 1988. The views of the Commission are contained in USITC Publication 2076 (April 1988), entitled "3.5" Microdisks and Media Therefor from Japan: Determination of the Commission in Investigation No. 389 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission

Kenneth R. Mason,

Secretary.

Issued: April 13, 1988.

[FR Doc. 88–8696 Filed 4–19–88; 8:45 am]

BILLING CODE 7020–02–M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler and Vice Chairman Brunsdale did not participate.

[3] 3.5" microdisks and media therefor are defined in the Commission's **Federal Register** notice as "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."

[4] Commissioner Cass determines that there is a reasonable indication that industries in the United States are materially injured by reason of allegedly LTFV imports of, respectively, double-density 3.5" microdisks and media therefor, and high-density 3.5" microdisks and media therefor.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; City of Geneva, OH, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. City of Geneva, Ohio, et al.*, Civil Action No. C87–973Y, was lodged with the United States District Court for the Northern District of Ohio on April 4, 1988. The complaint filed by the United States alleged that Defendant City of Geneva violated section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a) and Defendant City of Geneva's National Pollutant Discharge Elimination System ("NPDES") permit by failing to comply with effluent limits for certain parameters as required by the NPDES permit.

The proposed Consent Decree establishes a compliance schedule under which Defendant City of Geneva will construct dechlorination equipment and nitrification facilities. The proposed Consent Decree also requires Defendant City of Geneva to meet, at a minimum, interim effluent limits until August 15, 1988 at which time Defendant City of Geneva must meet final effluent limits contained in its NPDES permit.

In adition, the proposed Consent Decree requires Defendant City of Geneva to pay a civil penalty of $30,000.

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 of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Geneva, Ohio, et al.*, D.J. Reference No. 90–5–1–1–2785.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting

a copy, please enclose a check in the amount of $2.00 (ten 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. 88-8603 Filed 4-19-88; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act; Signal Energy Systems, Inc.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is herby given that a consent decree in *United States v. Signal Energy Systems, Inc.*, Civil Action No. 88-0333 LKK—EM, was lodged in the United States District Court, Eastern District of California. The Complaint in this action sought injunctive relief and civil penalties for violation of the Clean Air Act 42 U.S.C. 7401, *et seq.* Specifically Signal Energy Systems, Inc. was charged with commencing construction of biomass-fired boiler for an electricity generating plant in Shasta County, California, without an effective Prevention of Significant Deterioration permit. The proposed Consent Decree requires Signal to install an ammonia injection system for reduction of NO_x emissions and to pay a civil penalty of $100,000.

After the requisite Federal Register Notice is published, the time period for comments has run, and the comments, if any, have been evaluated, the Court will be further advised as to any action which may be required by the Court at that time. During the pendency of the Register Notice comment period under 28 CFR 50.7, no action is required of the Court.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Signal Energy Systems, Inc.*, D.J. Ref. No. 90-5-2-1-1107.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of California, 3305 Federal Bldg., 650 Capitol Mall, Sacramento, California, and at the Federal Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1736(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $2.10 (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. 88-8604 Filed 4-19-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 12, 1988 a proposed Consent Decree in U.S. v. Mid-Iowa Insulation Corporation and Des Moines Independent Community School District, Civil Action No. 86-335-B, was lodged with the United States District Court for the Southern District of Iowa. The proposed Consent Decree concerns violations of the asbestos National Emission Standards for Hazardous Air Pollutants ("asbestos NESHAP"), 40 CFR Part 61.140, *et seq.*, and the Clean Air Act, 42 U.S.C. 7401, *et seq.* The proposed Consent Decree requires defendants, Mid-Iowa Insulation Corporation and the Des Moines Independent Community School District, to comply with the requirements of NESHAP for asbestos in 40 CFR 61.140, *et seq.* The Consent Decree provides for a civil penalty of $5000 ($2500 from the School District; $2500 from Mid-Iowa Insulation), a special compliance program to prevent future violations, a contractor debarment/suspension provision, and a general prohibitory injunction against future violations of the asbestos NESHAP. The Consent Decree will terminate in two years provided that the defendants have paid the civil penalty.

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 of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *U.S. v. Mid-Iowa Insulation Corporation and Des Moines Independent Community School District*, D.J. Ref. No. 90-5-2-1-927.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Southern District of Iowa, 115 U.S. Courthouse, Des Moines, Iowa 50309 and at the Region VII, office of the United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

The Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-8602 Filed 4-19-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 11-88]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Procurement Executive (OPE), Justice Management Division, is establishing a system of records entitled "Delegations of Procurement Authority," Justice/JMD-018.

The OPE is establishing a new system of records to support its Contracting Officer Standards Program which will provide Department-wide training and experience standards for appointing contracting officers.

5 U.S.C. 552a (e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the proposed system. Therefore, please submit any comments by May 20, 1988. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, Patrick Henry Building, 601 D Street, NW, Washington, DC 20530.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to OMB and the Congress.

The system description is reprinted below.

Dated: April 4, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD-018

SYSTEM NAME:

Delegations of Procurement Authority, Justice/JMD-018.

SYSTEM LOCATION:

Office of the Procurement Executive, Department of Justice, Patrick Henry Building, Room 6406, 601 D Street, NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED:

All Department of Justice procurement personnel in the GS/GM 1102 and other series who are actively engaged in the acquisition process and who are or will be designated as contracting officers, or are authorized to obligate the Government contractually.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual delegations of procurement authority files will contain information on the employees grade/series, job title, employing bureau location, education, procurement experience and procurement training, type of delegation, level of signatory authority, effective date of entry into the program and experience code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 507, 509 and 510; 41 U.S.C. 257; 5 U.S.C. 301; 28 CFR 0.75(d) and 0.75(j); and Executive Order 12352.

PURPOSE OF THE SYSTEM:

Individual delegations of procurement authority files will be used to support a newly established Contracting Officer Standards Program which will serve as a basis to establish Department-wide training and experience standards for issuing contracting officer delegations and to ensure the standards are met. In addition, the files will be used by the Procurement Executive to manage and enhance career development of the Department's procurement work force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the Department is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Department to be arguably relevant to the litigation: The Department, or any of the Department's components or its subdivisions; any Department employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the Department determines that the litigation is likely to affect it or any of the Department's components or its subdivisions.

(2) Records or information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the spcific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(3) Records or information may be disclosed as is necessary to respond to congressional inquiries on behalf of constituents.

(4) Records may be disclosed to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of Title 44 U.S.C. 2904 and 2906.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals of paper records are kept in standard file cabinets. Duplicates of original paper records will be stored electronically in the Department's main frame computer.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Paper records are stored in metal filing cabinets and electronic records are stored on the Department's main frame computer. Access to the Patrick Henry Building is protected by 24-hour guard service and is restricted to employees with official identification. Access to records is restricted to authorized personnel with official and electronic identification.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the Department at which time paper records are destroyed and electronic records erased.

SYSTEM MANAGERS AND ADDRESS:

The system manager is the Procurement Executive, Justice Management Division, Department of Justice, Patrick Henry Building, Room 6406, 601 D Street, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Direct inquiries to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/ Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark the letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate date(s) of the record(s); and, provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, attention FOI/PA Officer; and, provide a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in the system is collected from the individual, training personnel, and general personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-8605 Filed 4-19-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 12-88]

Privacy Act of 1974; Amended System of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Office of the Pardon Attorney (OPA), Department of Justice, is amending a system of records entitled "Executive Clemency Files (JUSTICE/ OPA-001)."

The OPA is amending the system primarily to include two new routine uses, identified below as "g" and "h," and to modify routine use "f." The disclosure of records as described by these routine uses will permit (1) the formulation of informed comments and recommendations by present and former judicial and law enforcement authorities regarding specific clemency applications (2) the execution of appropriate actions by sentencing authorities subsequent to

Presidential clemency decisions, and (3) a sharing by Federal, State, local and foreign agencies of information which is necessary and relevant to Executive clemency review or other matters of law enforcement. Other factual and editorial changes also have been made to more accurately describe the system. Significant changes have been italicized for public convenience.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses. Accordingly, please submit any comments by May 20, 1988, to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

The system description, as amended, is reprinted below.

Dated: April 5, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/OPA-001

SYSTEM NAME:

Executive Clemency Files.

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, *Suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or been granted Executive clemency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the individual petitions for Executive clemency (Forms OPA–6 or OPA–13) and accompanying oath and character affidavits (Form OPA–11), investigatory material, evaluative reports, official and other correspondence, both solicited and unsolicited, and inter-agency and intra-agency correspondence and memoranda relating to individual petitions for clemency. The system includes Presidential Clemency Board files transferred to the OPA upon termination of the Board on September 15, 1975.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with the United States Constitution, Article II, Section 2; Executive Order of the President dated June 16, 1893; *Order of the Attorney General No. 1011–83, 48 FR 22290 (1983),* as codified in 28 CFR 1.1 *et seq.; Order of the Attorney General No. 1012–83, 48 FR 22290 (1983), as codified in 28 CFR 0.35 and 0.36;* E.O. 11878 dated September 10, 1975; *and 44 U.S.C. 3101.*

PURPOSE OF THE SYSTEM:

Executive clemency files are maintained by the Attorney General or his designee to investigate each petition for Executive clemency, to review each petition and the information developed by the investigation and to determine whether, in his judgment, the request for clemency is of sufficient merit to warranty a recommendation for favorable action by the President. The information also is used by Federal parole authorities and other Department of Justice employees to assist them in the performance of their official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the system may be used as follows: (a) To provide information to the President and memeber of his staff to facilitate the consideration of the Attorney General's reommendation regarding each petition for Executive clemency; (b) to prepare notices to the public of the name of each grantee of clemency, date of Presidential action, nature of clemency granted, nature of grantee's offense, date and place of sentencing, description of sentence imposed, and names of character affiants and interested parties; to disclose similar information to that specified above with respect to clemency denials of general public interest if the disclosure does not constitute an unwarranted invasion of privacy; (c) to prepare bound and indexed volumes containing photocopies of the official warrant of clemency granted each recipient of clemency as a public and official record of Presidential action; (d) upon specific request, to advise the requester whether a named person has applied for, been granted or denied clemency, the date thereof, and the nature of the clemency granted or denied; (e) upon specific request, to make closed files available for historical research purposes when in the public interest and in conformity with Department of Justice policy; (f) to provide information which indicates a violation or apparent violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether Federal, State, local or foreign; *or to provide information either in connection with the solicitation of information necessary and relevant to Executive clemency review or to assist these agencies, where appropriate, in performing their law enforcement responsibilities in situations other than those involving a violation or apparent violation of law, e.g., state parole or clemency review; (g) to provide information to present and former law enforcement and judicial authorities to permit the formulation of comments and recommendations regarding individual clemency matters arising from cases with which they may be familiar; (h) to provide information to assist sentencing authorities in executing appropriate actions subsequent to Presidential clemency decisions;* (i) to release information in a proceeding before a court or adjudicative body before which the OPA is authorized to appear when (1) one of the following is a party to or has an interest in the litigation: i. the OPA; ii. any employee of the OPA in his or her official capacity; iii. any employee of the OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or, iv. the United States where the OPA determines that it is likely to be affected by the litigation; and (2) the records, or information derived therefrom, are determined by the OPA to be arguably relevant to the litigation; (j) to disseminate information to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (k) to make information available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and (l) to make records available to the National Archives and Record Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information in the system is maintained in its original form (i.e., paper letters, notes and memoranda) and stored in locked file cabinets in the OPA and in the Federal Records Center in Suitland, Maryland.

RETRIEVABILITY:

Information is retrieved by using a name index to obtain the case file number assigned to each applicant for Executive clemency.

SAFEGUARDS:

Information contained in the system is protected in accordance *with Department of Justice security regulations for Privacy Act systems of records.* Files are maintained in the OPA or in the Federal Records Center, are not commingled with other Department of Justice records, *and are made available only in accordance with the aforementioned routine uses. When not in the custody of an appropriate official, records are stored in a central file room protected by an intrusion alarm.*

RETENTION AND DISPOSAL:

Records are stored in the OPA and closed cases generally are transferred to the Federal Records Center in Suitland, Maryland when five years old. Except for clemency reports which are furnished to the President in connection with clemency application, Presidential responses, warrants or other documents signifying the President's action in a clemency case, and cases which may be designated by the Pardon Attorney as having significant public interest, records are destroyed after 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Pardon Attorney, Office of the Pardon Attorney, Department of Justice, *Suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.*

NOTIFICATION PROCEDURE:

Address inquiries to the Pardon Attorney, Department of Justice, *Suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryand 20815.*

RECORD ACCESS PROCEDURES:

While the Attorney General has exempted Executive Clemency files from the access provisions of the Privacy Act, requests for discretionary releases of records shall be made in writing to the system manager listed above with the envelope and letter clearly marked "Privacy Access Request." Include in the request the general subject mater of the document. Provide full name, current address, date and place of birth, signature (which must be notarized) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted Executive Clemency files from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records should be directed to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are the OPA staff, individual applicants for clemency *and their representatives,* Federal Bureau of Investigation or other official investigatory reports, Bureau of Prisons records, Armed Forces reports, probation of parole reports, and reports from individuals or non-Federal organizations, both solicited and unsolicited.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 88–8606 Filed 4–19–88; 8:45 am]
BILLING CODE 4410–01–M

[AAG/A Order No. 13–88]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the Office of the Pardon Attorney (OPA), Department of Justice, is publishing a system of records entitled "Miscellaneous Correspondence File (JUSTICE/OPA–002)."

The purpose of the system of records is to maintain, locate and track for a reasonable period of time all miscellaneous incoming and outgoing correspondence, permit the preparation of necessary responses, and to have available any information which may assist in formulating policy and/or considering potential candidates for Executive clemency.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. However, the Department has requested a waiver of the 60-day requirement. Therefore, please submit any comments by May 20, 1988. The public, OMB, and Congress are invited to submit written comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: April 6, 1988.

Harry H. Flickinger

Assistant Attorney General for Administration.

JUSTICE/OPA-022

SYSTEM NAME:

Miscellaneous Correspondence File.

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the named subjects of OPA incoming nad outgoing correspondence, but who have not formally applied for or received Executive clemency. Also, individuals who have corresponded with the OPA, either directly or by referral, but whose correspondence either may or may not pertain to a particular named individual, including the correspondent, or whose correspondence does not contain a request for information under the Freedom of Information/Privacy Acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

the system contains miscellaneous correspondence originated by OPA and received by OPA, either directly or by referral, excluding corresondence pertaining to (1) individuals who have formally applied for or received Executive clemency and (2) individuals who have made formal requests for records under the Freedom of Information/Privacy Acts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with the United States Constitution, Article II, Section 2; Executive Order of the President dated June 16, 1893; Order of the Attorney General No. 1011–83, 48 FR 22290 (1983), as codified in 28 CFR 1.1 *et seq.;* Order of the Attorney General No. 1012–83, 48 FR 22290 (1983), as codified in 28 CFR 0.35 and 0.36; E.O. 11878 dated September 10, 1975; and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

Records in the system are used by employees in the performance of their duties for reference and informational purposes to facilitate efficient, accurate

and consistent responses to oral and written inquiries, particularly successive inquiries, and to provide access for a reasonable period of time to any relevant and necessary information which may assist in formulating policy and/or in considering potential candidates for Executive clemency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the system may be used as follows: (a) To provide information to the President and members of his staff which may be of political, policy or official interest and/or which may assist them in formulating policy decisions regarding the exercise of Executive clemency; (b) to release information in a proceeding before a court or adjudicative body before which the OPA is authorized to appear when (1) one of the following is a party to or has an interest in the litigation: i. The OPA; ii. any employee of the OPA in his or her official capacity; iii. any employee of the OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or, iv. the United States where the OPA determines that it is likely to be affected by the litigation; and (2) the records, or information derived therefrom, are determined by the OPA to be arguably relevant to the litigation; (c) to disseminate information to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (d) to make information available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; (e) to make records available to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is maintained in its original form (i.e., paper letters, notes and memoranda) and stored in locked file cabinets in the OPA.

RETRIEVABILITY:

Information is retrieved by the name of the individuals covered by the system.

SAFEGUARDS:

Information in the system is protected in accordance with Department of Justice security regulations for Privacy Act systems of records. Records are maintained in the OPA and are not commingled with other Department of Justice records. When not in the custody of an appropriate official, records are stored in a central file room protected by key locks and an intrusion alarm.

RETENTION AND DISPOSAL:

Records are destroyed at the end of the calendar year following the calendar year in which they were received (incoming correspondence). If an individual covered by the system formally applies for or receives Executive clemency, all records pertaining to that individual will be transferred immediately to the Executive Clemency Files (JUSTICE/OPA–001).

SYSTEM MANAGER(S) AND ADDRESSES:

Pardon Attorney, Office of the Pardon Attorney, Department of Justice, Suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

NOTIFICATION PROCEDURE:

Address inquiries to the Pardon Attorney, Department of Justice, Suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

RECORD ACCESS PROCEDURES:

Requests for records in the system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request" and shall be addressed to the system manager listed above. Include in the request the general subject matter and date of correspondence. Provide full name, current address, date and place of birth, signature (which must be notarized) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Requests to contest or amend records shall be addressed in writing to the system manager and shall state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information are the individuals covered and the OPA staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–8607 Filed 4–19–88; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 14–88]

Privacy Act of 1974; Proposed System or Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C 552a, notice is given that the Office of the Pardon Attorney (OPA), Department of Justice, proposes to establish a new system of records entitled "Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA–003)."

The purpose of the proposed system of records is to maintain all FOI/PA requests received for OPA records and the responses to those requests. The system also will assist the OPA in compiling its contribution to the Department of Justice annual FOI/PA statistical reports.

Title 5 U.S.C. 552(e) (4) and (11) provide that the public be given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, please submit any comments by May 20, 1988. The public, OMB, and the Congress are invited to submit written comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to the OMB and the Congress.

The system description is printed below.

Dated: April 6, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/OPA–003

SYSTEM NAME:

Freedom of Information/Privacy Acts (FOI/PA) Request File

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, Suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests pursuant to the FOI/PA (5 U.S.C. 552 and 552a) for copies of records in the custody of the OPA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the FOI/PA requests and a copy of the outgoing response advising the requester of the disposition of the request. The system includes copies of the requested records which have not been released either in whole or in part. In addition, it also contains copies of memoranda addressed to the Office of Information and Privacy prepared in connection with any administrative appeals of the Pardon Attorney's determination, and copies of the pleadings filed in connection with any judicial appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with the United States Constitution, Article II, Section 2; Executive Order of the President dated June 16, 1893; Order of the Attorney General No. 1011–83, 48 FR 22290 (1983), as codified in 28 CFR 1.1 *et seq.;* Order of the Attorney General No. 1012–83, 48 FR 22290 (1983), as codified in 28 CFR 0.35 and 0.36; E.O. 1187 dated September 10, 1975; and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

The FOI/PA Request File is maintained to facilitate complete, accurate and consistent responses to written FOI/PA requests and to expedite response time. The system also assists the OPA in compiling its contribution to the Department of Justice annual FOI/PA statistical reports and enables it to readily determine that portion of its resources devoted to FOI/PA processing. The FOI/PA Request File also aids in processing administrative and judicial appeals of access and amendment denials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the system may be used as follows: (a) To release information in a proceeding before a court or adjudicative body before which the OPA is authorized to appear when (1) one of the following is a party to or has an interest in the litigation: i. The OPA; ii. any employee of the OPA in his or her official capacity; iii. any employee of the OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or iv. the United States where the OPA determines that it is likely to be affected by the litigation; and (2) the records, or information derived therefrom, are determined by the OPA to be arguably relevant to the litigation; (b) to make available information to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (c) to provide information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; (d) to release records to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information in the system is maintained in its original form (i.e., paper letters, notes and memoranda) and stored in locked file cabinets in the OPA.

RETRIEVABILITY:

Records are retrieved by the name of the individual submitting the FOI/PA request.

SAFEGUARDS:

Records in the system are protected in accordance with Department of Justice security regulations for Privacy Act systems of records. Records are maintained in the OPA and are not commingled with other Department of Justice records. When not in the custody of an appropriate official, records are stored in a central file room protected by key locks and an intrusion alarm.

RETENTION AND DISPOSAL:

Records in the system are retained according to General Records Schedule (GRS) No. 14, Informational Services Records, which contains the mandatory records disposition standards for FOI/PA requests as promulgated by the National Archives and Records Administration. GRS 14, item 16a(3)(a) requires that denied requests not appealed be retained for six years and item 17a requires that appealed requests be retained for six years after final agency determination or three years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Pardon Attorney, Office of the Pardon Attorney, Department of Justice, Suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

NOTIFICATION PROCEDURE:

Address inquires to the Pardon Attorney, Department of Justice, Suite 490, Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

RECORD ACCESS PROCEDUREE:

While the Attorney General has exempted the FOI/PA Request File from the access provisions of the Privacy Act, requests for discretionary releases of records shall be made in writing to the system manager listed above with the envelope and letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document. Provide full name, current address, date and place of birth, signature (which must be notarized) and return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted the FOI/PA Request File from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records should be directed to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the propsoed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are the FOI/PA requester and the OPA staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 88–8608 Filed 4–19–88; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 16–88]

Privacy Act of 1974; Modified System of Records

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Justice Management Division (JMD), Department of Justice, proposes to modify a system of records last published in the **Federal Register** on December 11, 1987 (52 FR 47264), and entitled "Department of Justice Payroll

System (JUSTICE/JMD–003)." JMD will modify the system to (1) add new routine uses pursuant to subsection (b)(3) of the Privacy Act, (2) reflect a relatively new Privacy Act disclosure authority, subsection (b)(12), provided for by the Debt Collection Act (DCA) of 1982, and (3) set forth other disclosure provisions which are authorized by subsection (b)(1) of the Privacy Act.

Specifically, pursuant to subsection (b)(3), JMD adds a routine use to permit disclosure of records to a court or other adjudicative body before which the Department of Justice is authorized to appear. In addition, as provided for by the DCA, JMD sets forth other routine uses to permit disclosures that will assist in its debt collection efforts, and outlines the general disclosure authority of subsection (b)(12) which permits the release of information to consumer reporting agencies. Finally, JMD includes in its notice another Privacy Act disclosure authority, subsection (b)(1). Subsection (b)(1) permits disclosure to the United States Attorneys and the Department's Civil Division for advice, litigation and enforcement purposes. Editorial changes have also been made. All changes to the system notice have been italized for public convenience.

Title 5, United States Code, Sections 552(e)(4) and (11), require that the public be given 30 days in which to comment on new routine uses of information in the system. Accordingly, please submit any comments by May 20, 1988, to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402 D Street NW., Washington, DC 20530.

The system description, as amended, is reprinted below.

Dated: April 11, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD–003

SYSTEM NAME:

Department of Justice Payroll System.

SYSTEM LOCATION:

Categories of records within the Payroll System of Records are kept at the following locations: (1) Justice *Employee Data Service: 601 D Street NW., Washington, DC 20530;* (2) Justice Computer Service; 425 I Street, NW.; Washington, DC 20530; (3) at various time and attendance recording and processing stations around the world; (4) at computerized record off-site backup facilities; and (5) at various Federal Records Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current DOJ employees with the exception of those employed within the FBI and; (2) Many past DOJ employees with the exception of those that served within the FBI.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Payroll Master Employee Records: These are machine-readable and microfiche records containing information on current pay and leave status for individuals serviced by the automated payroll accounting system.

B. Bond, Allotment and Check Mailing Records: These are machine-readable and microfiche records containing information on Savings Bond deductions, savings account allotments, and net check mailing requested by the employee.

C. History of Earning Records: These are machine-readable and microfiche records containing information on earnings, leave and other pay related activities.

D. Automated Retirement Records: These are machine-readable records containing information relevant to the Civil Service Retirement System *and the Federal Employees Retirement System.* These records will be used to automatically generate "Individual Retirement Records" (SF–2806) *or "Individual Retirement Records (Federal Employees Retirement)" (SF–3100)* upon an employee's separation.

E. Revised Social Security Numbers Records: These are machine-readable records containing the new and old social security number for employees whose current social security number is different from that previously entered into the automated system.

F. Employee Pay Records: These are manila folders containing source documents, correspondence and other papers in support of an active employee's pay, leave and allowances.

G. Active Retirement Records: These are manual records maintained on active employees to facilitate timely compliance with the requirements of the Civil Service Retirement System *or Federal Employees Retirement Service.* Upon separation, the original SF–2806 *or SF–3100* is forwarded to the *Office of Personnel Management* and a copy is filed in the Employee Pay Record (F above). This category of records will eventually be replaced by the automated retirement records (D above).

H. Former Employee Pay Records: These records are the Employee Pay Records (F above) for employees that have been separated, transferred or retired. In addition to information contained in the Employee Pay Records, these records include information related to the retirement, separation or transfer. These records are destroyed two years after separation of employee.

I. Employee Death Records: These records are the Employee Pay Records (F above) for employees that died while on active duty with Department of Justice. In addition to information contained in the Employee Pay Records, these records include information related to the employee's death and the settlement of pending pay and allowances.

J. Returned Check Records: These records are a manual log for recording and controlling checks issued to employees that were returned to the Justice Employee Data Service because they were undelivered, erroneous or cancelled prior to conversion to cash.

K. Time and Attendance Report: These microfilm records of Form DOJ–296 contain information on an employee's attendance and use of leave in a particular pay period. They are also used to indicate leave adjustments and balances.

L. Indebtedness Records: These records include source documents, correspondence and other papers containing information regarding the Government's claims of debt against individuals covered by the system. These records are supplemented by hard copy, machine-readable or microfiche records necessary to establish the identity and address of the individuals, including in certain cases the taxpayer's mailing address provided by the Internal Revenue Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The head of each executive agency is responsible for establishing and maintaining an adequate payroll system, covering pay, leave, and allowances, as a part of the system of accounting and internal control of the Budget and Accounting Procedures Act of 1950, as amended, 31 U.S.C. 66, 66a, and 200(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose(s): The purpose of each use of categories of records within the DOJ Payroll System of Records is to enable the administration of the payroll function and related financial matters in accordance with applicable laws and regulations and to comply with the requirements of the Comptroller General.

SYSTEM USES:

A. Authorize, prepare and document payment to all Department employees

covered by the DOJ Payroll System entitled to be paid, with consideration given to all authorized deductions from gross pay.

B. Specify and document proper disposition of all authorized deductions from gross pay.

C. Prepare adequate and reliable payroll reports needed for (1) management, (2) budget, (3) support of payments, (4) the conduct and accounting of payroll related employee services, (5) control and documentation of payroll system operation, and (6) to meet external reporting requirements.

D. Support effective communications and payroll matters between the Department of Justice and its present and former employees.

E. Support proper coordination of pay, leave and allowance operations with personnel functions and other related activities.

F. Support adequate control over all phases and segments of the payroll system including leave accounting.

G. Support appropriate integration of the payroll system with the Departmental accounting systems.

H. *Provide to* the State, City, or other local jurisdiction which is authorized to tax the employee's compensation *a copy of an employee's record, including the employee's Department of the Treasury Form W–2 and Tax Statement.* The record will be provided in accordance with a withholding agreement between the State, City, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 516, 5517, and 5520 or in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the System Manager listed below. The request must include a copy of the applicable statute authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both. However, the social security numbers will only be provided to state or local taxing authorities which meet the criteria of the Privacy Act.

I. Provide permanent record of actions taken pertinent to the administration of pay leave and allowances.

J. Support legal investigations of suspected fraud.

K. Disseminate a record, or any facts derived therefrom, in a proceeding before a court or adjudicative body before which the Department of Justice is authorized to appear when i. the Department, or any subdivision thereof, or ii. any employee of the Department in his or her official capacity, or iii. any employee of the Department in his or her individual capacity where the Department of Justice has agreed to represent the employee, or iv. the United States where the Department determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has any interest in litigation and such reports are determined by the Department to be arguably relevant to the litigation.

L. Release of information to the Internal Revenue Service (IRS). Information contained in the system may be disclosed to the IRS to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

M. Release of information to consumer reporting agencies. Information directly related to the identify of debtors and the history of claims contained in the system or records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt. Addresses of taxpayers obtained from the IRS will be disclosed to consumer reporting agencies only for the purpose of allowing such agencies to prepare a commercial credit report on the taxpayer for use by the Department.

N. Release of information about debtors to the U.S. Treasury or other Federal employers in order to effect salary or administrative offsets. Information contained in the system of records may be disclosed to an employer in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection Act have been taken.

O. Release of information to debt collection agencies. Information contained in the system of records may be disclosed to a person or organization with whom the head of the agency has contracted for collection services to recover indebtedness owed to the United States. Addresses of taxpayers obtained from the IRS will also be disclosed, but only where necessary to locate such taxpayer to collect or compromise a Federal claim.

P. Release of information to United States Attorneys or the Civil Division. Information contained in the system of records may be disclosed to United States Attorneys or the Civil Division for advice, litigation or enforced collection.

CATEGORIES OF USERS:

Records are accessed by users on a need or right to know basis. A category of users may have potential access under more than one use above.

A. Present or former employees serviced by the DOJ Payroll System.

B. Justice Employees data Service Staff.

C. Department of the Treasury disbursing offices.

D. Department of Justice budget and accounting offices.

E. Department of Justice personnel offices.

F. Employee supervisors.

G. Employee administrative offices.

H. Federal, state and local taxing authorities.

I. Federal Employees Health Benefits carriers.

J. Employee organization offices participating in dues allotment program.

K. Financial organizations participating in savings account allotment program.

L. Financial organizations participating in net pay to checking account program.

M. State human resource offices administering unemployment compensation programs.

N. General Accounting Office and internal audit staffs.

O. Federal, state or local law enforcement agencies (in support of legal investigations of suspected fraud).

P. Other Federal agencies requiring information as specified in applicable laws or regulations, e.g., *Office of Personnel Management.*

Q. Heirs, executors and legal representatives of beneficiaries.

R. State and local courts of competent jurisdiction for the enforecement of child support and/or alimony pursuant to 42 U.S.C. 659.

S. Consumer reporting agencies as defined by 15 U.S.C. subsection 1681a(f) or 31 U.S.C. subsection 3701(a)(3)(B).

T. Debt collection agents, for purposes of collecting Federal claims against taxpayers.

U. Department of Justice law enforcement or litigative organizations for advice or for purposes of litigation or enforced collection pertaining to Federal debt claims.

Release of Information to the News Media. Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an

unwarranted invasion of personal privacy.

Release of Information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records. Administration (NARA) and the General Services Administration (GSA). A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various categories of records are stored on different mediums. Categories A, B, and E are on magnetic discs. Category C is on magnetic tape and microfiche. Category D is on magnetic tape. All other records are maintained in paper form.

RETRIEVABILITY:

Categories of records on magnetic media are retrievable by employee social security number which is maintained to comply with Internal Revenue requirements. Records in paper form and microfiche are retrievable by employee name and social security number.

SAFEGUARDS:

The principal current safeguard for payroll records is guard force screening of individuals entering buildings within which records are kept. More stringent security practices and procedures are under development.

RETENTION AND DISPOSAL:

Payroll records retention and disposal are in accordance with General Records Schedule 2 promulgated by the General Services Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance Staff, Justice Management Division; U.S. Department of Justice, 601 D Street, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

A request for notification of the existence of records upon an individual shall be made in writing with the envelope and the letter clearly marked 'Privacy Notification Request'. Include in the request the name of the system of records, the individual's full name and social security number while employed with the Department of Justice, the name of the organization within which the individual is either a current or former employee. The requestor shall include a return address for the notification response.

RECORD ACCESS PROCEDURES:

Address access requests to the System Manager.

A request for access to records from this system shall be made in writing with the envelope and the letter clearly marked 'Privacy Access Request'. Include in the request the name of the system of records, the legal name and social security number of the subject individual and the name of the organization within which the individual is either a current or former employee. The requestor shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Individual desiring to contest or amend information should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information contained within the DOJ Payroll System of Records is obtained from the following sources:

A. Subject Individual: Information collected from the subject individual generally consists of that necessary to administer allotments, deductions or other services requested by the individual.

B. Personnel Office: Information collected from the personnel office generally consists of employment status information which provides the legal basis upon which valid payments are computed.

C. Time and Attendance Clerk: Information collected from this clerk generally consists of an accounting of the individual's presence or absence from the duty station and the usage of leave.

D. Supervisor or Administrative Officer: Information collected from these officers generally consists of leave authorizations and information concerning the individual's duty station.

E. Financial Institutions or Employee Organizations: Information collected from institutions or organizations generally consists of that necessary to insure the timely and accurate forwarding to the institution or organization of monies allotted to an account at the institution or organization by the subject individual.

F. Previous Federal Employer: Information collected from the previous employer within the Federal government generally consists of leave status information at the time of separation.

G. Other Federal Agencies: Information collected from other Federal agencies generally consists of program information necessary to properly administer pay, leave, and allowance. *Information collected from IRS may include taxpayer mailing addresses which are necessary to locate debtors.*

H. Other Officials: Information collected from other officials consists of that necessary to administer the payroll function. This may include authorization for special payments, death certificate or other documents as necessary.

I. Consumer Reporting Agencies and Debt Collection Agencies: Information provided to assist in collecting debts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-8610 Filed 4-19-88; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-88-52-C]

Four "L" Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Four "L" Coal Company, Route 2, Box 390, Rockhold, Kentucky 40759 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15197) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time beween trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 20, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 11, 1988.

[FR Doc. 88–8591 Filed 4–19–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–51–C]

Raven Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Raven Mining Company, Route 2, Box 340–B, Rockholds, Kentucky 40759 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15–16301) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 20, 199. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 11, 1988.

[FR Doc. 88–8592 Filed 4–19–88; 8:45 am]

BILLING CODE 4510–43–M

National Foundation on the Arts and the Humanities

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on May 6, 1988 from 9:00 a.m. to 5:15 p.m., and on May 7, 1988 from 9:00 a.m.-5:00 p.m. and on May 8, 1988, from 9:00 a.m.-1:00 p.m. in the King Louis IX Ballroom of the Omni International Hotel, One St. Louis Union Station, St. Louis, MO 63103.

A portion of this meeting will be open to the public on Friday, May 6, from 9:00 a.m.-5:15 p.m. and on Saturday, May 7, from 9:00 a.m.-5:00 p.m. The topics for discussion will include Program Review and Guidelines for the Dance Program, State Programs, Literature Program, Folk Arts Program, Expansion Arts Rural Initiative, and Music Recording/ Training/Services and Centers; a presentation by the Congressional Arts Caucus; State of the Arts Report; A

study of the American Jazz Recording Industry; and FY 1990 Budget Planning and Priorities.

The remaining sessions on May 8, from 9:00 a.m.-1:00 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

April 13, 1988.

[FR Doc. 88-8611 Filed 4-19-88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Physics; Meeting

The National Science Foundation announces the following meetings:

Name: Advisory Committee for Physics.

Date and Time: May 2, 1988; 8:30 a.m. to 10:15 a.m. (Open); 10:15 a.m. to 12:15 p.m. (Closed); 2:00 p.m. to 6:00 p.m. (Open).

May 3, 1988; 8:30 a.m. to 10:30 a.m. (Closed); 10:45 a.m. to 5:00 p.m. (Open).

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part Open.

Contact Person: Dr. Gerard M. Crawley, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20050, (202) 357-7985.

Purpose of Committee: To provide advice and recommendations concerning support for research in physics.

Agenda: May 2, 1988, 8:30 a.m.-6:00 p.m.—Discussion of FY88 and FY89 Budgets, Long Range Plans, and the Oversight Review of all Physics programs viz. Elementary Particle Physics, Nuclear Physics, Intermediate Energy Nuclear Physics, Atomic, Molecular and Plasma Physics, Theoretical Physics, and Gravitational Physics.

May 3, 1988, 8:30 a.m.-5:00 p.m.—Discussion of the Report from the Cosmology Subcommittee, discussion of the Physics Education Workship, and to continue discussions of previous day.

Reason for Closing: The meeting will consist of a review of grants and declinations in which the Subcommittees will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer documentation pertaining to applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 13, 1988.

[FR Doc. 88-8660 Filed 4-19-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.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 March 28, 1988 through April 8, 1988. The last biweekly notice was published on April 6, 1988 (53 FR 11361).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration 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 May 20, 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of 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.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: December 2, 1986 as supplemented Febuary 24, 1988.

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for Arkansas Nuclear One, Units 1 and 2 to reflect recent changes to that regulation. The proposed amendment would modify paragraphs 2.c.(4) and 2.D of Facility Operating License Nos. DPR-51 and NPF-6 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, with additional information on Febuary 24, 1988, 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 amendment 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

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." For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Percell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Boston Edison Company, Docket No. 50-293, Pilgrim, Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: January 25, 1988

Description of amendment request: The amendment would revise the Technical Specifications (TS) to remove misleading references to an average power range monitor (APRM) down scale scram function.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

(1) Operation of the Pilgrim Nuclear Power Station (PNPS) in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would clarify the intent of the original Technical Specifications by clearly defining the scram functions needed to be operable in each mode of operation. The allowable bypasses assure that the single failure criteria are satisfied for the required scram functions of the intermediate range monitor (IRMs) and APRMs. The proposed changes do not involve modifications to the reactor protection system (RPS) wiring or circuitry thus, by design, overlap between the (IRMs) and APRMs is assured. The removal of the Technical Specification requirement for weekly testing of the APRM downscale contact to a half-scram is justified because this contact provides no RPS safety function considered in the PNPS safety analysis. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of PNPS in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

For the reasons stated in Item 1, above, the proposed change will not create the possibility of a new or different kind of accident.

(3) Operation of PNPS in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Because the proposed change does not involve changes to the plant or associated analyses, this change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, based on this review, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Richard Wessman, Director

Commonwealth Edison Company, Docket Nos. 50-373, and 50-374, LaSalle County Station Unit Nos. 1 and 2, LaSalle County, Illinois

Date of amendment request: March 9, 1988

Description of amendments request: The proposed amendments to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle Units 1 and 2 Technical Specifications surveillance requirements of Section 4.0.2.b that would occur during Cycle 3 for Unit 1 and during Cycle 2 for Unit 2. These amendments will defer specified surveillance until refueling and thus allow continued operation of Unit 2 until the scheduled refuel date of October 17, 1988. They will also allow restart and operation of Unit 1 until the Unit 2 surveillances can be performed during the Unit 2 outage that affect Unit 1. These amendments are a one-time request as a result of significant change in the scheduled refuel outages.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the 3.25 surveillance interval extension criteria of Technical Specification 4.0.2 was not considered in the evaluation of the probability or severity of events analyzed in the Accident Analysis (UFSAR Chapter 15). The 18-month interval was originally chosen to correspond to expected operating cycle length such that these surveillances would be performed during the shutdown period. Since no technical basis is specified for the 18-month interval other than conformance with expected operating cycle length, deleting the 3.25 requirement on a one-time basis does not involve a significant decrease in the effectiveness of the monitoring provision. Generic Letter 83-27 indicates that this is acceptable to the staff "...for plant specific conditions where adequate justification is given."

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the refuel surveillance interval will still be constrained by the maximum 1.25 interval extension criteria of Technical Specification 4.0.2.

3. Involve a significant reduction in the margin of safety because deletion of the requirement "any three consecutive intervals must not exceed 3.25 times the interval" from the refueling interval will not significantly effect equipment

reliability. The current criteria allows a 22.5-month interval for as many as two intervals during a three interval period. Deletion of the 3.25 criteria will allow all three intervals to be 22.5 months long and provide consistency of operating cycles.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney to licensee: Joseph Gallo, Esq., Hopkins and Sutter, 1050 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller

Dairyland Power Cooperative, Docket No. 50-409, LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin

Date of amendment request: September 30, 1987 as revised February 22, 1988

Description of amendment request: The licensee proposes that License No. DPR-45 for the LaCrosse Boiling Water Reactor (LACBWR) be amended to revise the Technical Specifications (TS).

License No. DPR-45 has been changed to possession-only status by a previous amendment. The proposed TS changes would remove most of the requirements for operational or refueling conditions, since the reactor is permanently shutdown and defueled. In some cases specifications with nonapplicable operational conditions are modified or left unchanged since they interact with requirements which are still applicable in the shutdown or defueled condition.

The possession-only license does not permit operational conditions of power operation, startup, hot shutdown, or refueling. Therefore, the license proposes to delete specifications for these conditions.

The licensee proposes to delete TS definitions and requirements related to core alteration, critical power ratio, cooling system leakage, limiting control rod pattern, linear heat generation rate, partial scram, physics tests, pressure boundary leakage, shutdown margin and thermal power. These definitions and requirements are all related to reactor operation and are no longer applicable with no fuel in the reactor and reactor operations not permitted.

The licensee proposes to remove Safety Limits and Limiting Safety System Settings, and associated bases. These limits and trip setpoints were included to maintain the integrity of the fuel cladding, pressure vessel, and primary piping during abnormal reactor operating conditions and are not applicable since the reactor is no longer operable or fueled.

The proposed TS would delete requirements for control room operator direction of operations with fuel in the reactor and reactor operational instructions in the event of a tornado or high river water level. These operator requirements are not applicable with the reactor permanently shutdown.

The proposed TS would delete limiting conditions for operation (LCOs) that are applicable to reactor operations such as surveillance requirements for the reactor cooling system and associated valves, the electrical supply system for reactor safety systems, and the post reactor accident instrumentation. These TS requirements are not applicable when reactor operation is not permitted.

A new TS is proposed to specify additional requirements for the backup water supply for the Fuel Element Storage Well. This is an additional and more conservative requirement for this water supply. The licensee also proposes added TS requirements for Shift Supervisor authorization to perform any maintenance and for leak testing of the containment freight door after each opening. These requirements are also more conservative than the existing TS.

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 and/or maintenance of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes in accordance with the standards of 10 CFR 50.92(c) and determined that the proposed amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The majority of changes and deletions are items that are related to reactor operations and are no longer applicable. These changes and deletions cannot affect the probability or consequences of any type of accident with the reactor permanently shutdown. Other changes which add additional requirements are more conservative and cannot increase the probability or consequence of any type of accident.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. Since this proposed amendment consists of deletion of requirements that do not apply with the reactor permanently shutdown or involves the addition of new requirements it does not affect the probability of any kind of accident. No new mode of operation is created by any of the changes in this package, and so the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) involve a significant reduction in a margin of safety. Since the revisions proposed by this amendment consist of deleting requirements that do not apply or are not necessary with the reactor permanently shutdown and defueled, or consist of additional more conservative TS requirements the margin of safety will not be reduced.

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: LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Attorney for licensee: Kevin Gallen, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 11, 1988

Description of amendment request: The proposed amendment would revise Sections 3.0 and 4.0 of the Catawba Nuclear Station Units 1 and 2 Technical Specifications (TS) to incorporate the changes recommended in NRC's Generic Letter 87-09, "Section 3.0 and 4.0 of Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operations and Surveillance Requirements." In this letter the NRC has concluded that certain recommended modifications to TSs 3.0.4, 4.0.3 and 4.0.4 would clarify their intent and resolve three problems

associated with the existing requirements, as follows: (1) TS 3.0.4 would be revised to remove unnecessary restrictions on operational mode changes in those cases where conformance with Action Statement requirements provides an acceptable level of safety for continued operation for an unlimited period of time; (2) TS 4.0.3 would be revised to include a 24-hour delay before implementing TS Action Statement requirements due to a missed surveillance, in those cases where the required restoration time is less than 24 hours; and (3) TS 4.0.4 would be revised to assure that its Surveillance Requirements do not prevent the plant's passage through or to Operational Modes as required to comply with TS Action Statement requirements.

The proposed amendment would also add the following TS 4.0.6 to the Catawba TSs:

Surveillance Requirements shall apply to each unit individually unless otherwise indicated as stated in Specification 3.0.5 for individual specifications or whenever certain portions of a specification contain surveillance parameters different for each unit, which will be identified in parentheses or footnotes.

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 as follows:

(1) The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. The change to Specification 3.0.4 will allow mode changes while the Unit is in an ACTION Statement which does not prohibit power operation. Exception to 3.0.4 has already been taken in many of the individual ACTION statements. Incorporating the proposed change into 3.0.4 will ensure that exceptions will be consistently applied when justified. Deletion of the individual exceptions will have no impact upon the requirements in the Specifications since the exception to 3.0.4 will not be contained within 3.0.4.

The change to Specification 4.0.3 will allow delay of compliance with ACTION requirements for up to 24 hours when a surveillance has been missed. This is not significant in that surveillances normally verify system or component operability as opposed to discovering inoperability.

Without the 24 hour delay it is very likely that a missed surveillance would force the Unit to be placed in a shutdown condition. Avoidance of this thermal cycling is beneficial and far outweighs any disadvantages associated with the additional 24 hours in which to perform a missed surveillance.

The change to Specification 4.0.4 will not result in a change to the design or operation of the facility and is administrative in nature. This change will not result in an increase in the probability or consequences of an accident.

The addition of Specification 4.0.6 to the Catawba Technical Specifications provides clarification to the requirements outlined in the Specifications and will not increase the probability or consequences of an accident.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to 3.0.4 will allow the plant to continue operation in an ACTION statement which already allows continued operation. As such, no new modes of operation are being introduced by this change.

The change to 4.0.3 would allow the plant to continue operation for an additional 24 hours after discovery of a missed surveillance. Missing a surveillance does not mean that a component or system is inoperable. In most cases surveillances demonstrate the continued operability of the components and systems. All systems and components currently required to be verified operable by Technical Specification requirements will continue to be maintained operable. This change will not affect the design of the plant and will not allow the plant to be operated outside the currently allowed modes of operation.

The change to 4.0.4 will alleviate a contradiction with the specifications. This change is administrative in nature and does not affect any of the accident analyses.

The addition of 4.0.6 to the Catawba Specifications is also administrative in nature and does not affect any of the accident analyses.

(3) The proposed amendments will not involve a significant reduction in a margin of safety.

The change to Specification 3.0.4 will allow mode changes in ACTION statements that do not require plant shutdowns. Exceptions to 3.0.4 are already contained within many of the applicable ACTION statements. Incorporating the exception to 3.0.4 will ensure consistent application of the exception.

The change to 4.0.3 will allow up to 24 hours to perform a missed surveillance. In most cases this will eliminate the need for a plant shutdown. The overall effect is a net gain in plant safety due to avoidance of unnecessary shutdowns due to missed surveillances. The change to 4.0.4 is administrative in nature and therefore does not affect any margin of safety.

The addition of 4.0.6 to Catawba's Specifications is also administrative and does not affect any margin of safety.

The NRC in issuing Generic Letter 87-09 recommended these changes and concluded that they would result in improved Technical Specifications.

The staff has reviewed the licensee's no significant hazards analysis given above. Based on this review and the consistency of the proposed changes with those recommended in Generic Letter 87-09, the staff proposes to determine that the proposed amendments meet the three 10 CFR 50.92(c) standards and do not involve a 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: Lawrence Crocker, Acting

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: January 11, 1988

Description of amendment request: The proposed amendments would revise Sections 3.0 and 4.0 of the McGuire Nuclear Station Units 1 and 2 Technical Specifications (TS) to incorporate the changes recommended in NRC's Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." In this letter the NRC has concluded that certain recommended modifications to TSs 3.0.4, 4.0.3 and 4.0.4 would clarify the intent of these TSs and would resolve three problems associated with the existing requirements, as follows: (1) TS 3.0.4 would be revised to remove unnecessary restrictions on operational mode changes in those cases where conformance with Action Statement requirements provides an acceptable level of safety for continued operation for an unlimited period of time; (2) TS 4.0.3 would be revised to provide a 24-hour delay before implementing TS Action Statement requirements due to a missed surveillance, in those cases where the required restoration time is less than 24 hours; and (3) TS 4.0.4 would be revised to assure that its Surveillance Requirements do not prevent the plant's passage through or to Operational Modes as required to

comply with TS Action Statement 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 as follows:

(1) The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident.

The change to Specification 3.0.4 will allow mode changes while the Unit is in an ACTION Statement which does not prohibit power operation. Exception to 3.0.4 has already been taken in many of the individual ACTION statements. Incorporating the proposed change into 3.0.4 will ensure that exceptions will be consistently applied when justified. Deletion of the individual exceptions will have no impact upon the requirements in the Specifications since the exception to 3.0.4 will not be contained within 3.0.4.

The change to Specification 4.0.3 will allow delay of compliance with ACTION requirements for up to 24 hours when a surveillance has been missed. This is not significant in that surveillances normally verify system or component operability as opposed to discovering inoperability. Without the 24 hour delay it is very likely that a missed surveillance would force the Unit to be placed in a shutdown condition. Avoidance of this thermal cycling is beneficial and far outweighs any disadvantages associated with the additional 24 hours in which to perform a missed surveillance.

The change to Specification 4.0.4 will not result in a change to the design or operation of the facility and is administrative in nature. This change will not result in an increase in the probability or consequences of an accident.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to 3.0.4 will allow the plant to continue operation in an ACTION statement which already allows continued operation. As such, no new modes of operation are being introduced by this change.

The change to 4.0.3 would allow the plant to continue operation for an additional 24 hours after discovery of a missed surveillance. Missing a surveillance does not mean that a component or system is inoperable. In most cases surveillances demonstrate the continued operability of the components and systems. All systems and components currently required to be verified operable by Technical Specification requirements will continue to be maintained operable. This change will not affect the design of the plant and will not allow the plant to be operated outside the currently allowed modes of operation.

The change to 4.0.4 will alleviate a contradiction with the specifications. This change is administrative in nature and does not affect any of the accident analyses.

(3) The proposed amendments will not involve a significant reduction in a margin of safety.

The change to Specification 3.0.4 will allow mode changes in ACTION statements that do not require plant shutdowns. Exceptions to 3.0.4 are already contained within many of the applicable ACTION statements. Incorporating the exception to 3.0.4 will ensure consistent application of the exception.

The change to 4.0.3 will allow up to 24 hours to perform a missed surveillance. In most cases this will eliminate the need for a plant shutdown. The overall effect is a net gain in plant safety due to avoidance of unnecessary shutdowns due to missed surveillances. The change to 4.0.4 is administrative in nature and therefore does not affect any margin of safety.

The NRC in issuing Generic Letter 87-09 recommended these changes and concluded that they would result in improved Technical Specifications.

The staff has reviewed the licensee's no significant hazards analysis given above. Based on this review and the consistency of the proposed changes with those recommended in Generic Letter 87-09, the staff proposes to determine that the proposed amendments meet the three 10 CFR 50.92(c) standards and do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28233

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Lawrence P. Crocker, Acting

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: April 15, 1987

Description of amendment request: This change would revise surveillance requirement 4.5.2.f to permit testing of high and low pressure injection pumps and valves in Modes 3, 4, and 5, in addition to Mode 6 as presently required. The licensee's original commitments to provide low temperature overpressurization (LTOP) protection included testing the high pressure injection (HPI) pumps only in Mode 6. Subsequently, the commitments were revised to allow testing of HPI pumps and valves in other shutdown modes provided LTOP protection is maintained. The change request describes the administrative controls incorporated to assure maintenance of LTOP protection. Tests have been performed in the past in conformance with these controls, but not counted as satisfying the TS requirement.

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 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 proposes that this amendment does not involve a significant hazards consideration. The actuation test will be performed per other established requirements, such as Technical Specification 4.0.4 and FPC commitment providing LTOP protection, and is consistent with the Standard Technical Specifications (NUREG-0103), which specify this test during shutdown (i.e., Modes 3, 4, 5, and 6).

Based on the above, FPC finds the amendment will not:

1. Involve a significant increase in the probability or consequence[s] of an accident previously evaluated because the test will continue to be performed and thus assure equipment operability. This change does not increase the probability or consequence[s] of [an LTOP] event because preventative measures will be taken per our commitments described [in the change request] and in LER 84-23.

2. Create the possibility of a new or different kind of accident from and accident previously evaluated because it does not require a physical modification to the plant. Test configuration should be similar to that used currently with some additional restrictions.

3. Involve a significant reduction in the margin of safety because setpoints and response times will not be affected.

We agree with the licensee's proposed finding, and would add to criterion 3 the comment that there would not be a significant reduction in the margin of safety since the tests permitted by the proposed change would not differ significantly from others previously performed in the past.

Therefore, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

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: February 4, 1988

Description of amendment request: The proposed amendment would revise Technical specification (TS) 3/4.3.3.9, "Radioactive Liquid Effluent Monitoring Instrumentation," by deleting the control building sump effluent line monitor, RE-17646, from TS Table 3.3-9, "Radioactive Liquid Effluent Monitoring Instrumentation," and TS Table 4.3-5, "Radioactive Liquid Effluent Monitoring Instrumentation Surveillance 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. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed amendment and has determined that it does not involve significant hazards considerations. The licensee has provided the following analysis in support of their conclusion.

1. The proposed change does not significantly by increase the probability or consequences of an accident previously evaluated. Neither the piping modification nor the deletion of RE-17646 have any effect on the failure modes which lead to analyzed accidents. Furthermore, monitor RE-17646 is not required to mitigate the consequences of any analyzed accidents. The probability or consequences of previously evaluated accidents are therefore not increased.

2. The proposed change does not create the possibility of a new or different kind of accident than any accident previously evaluated. The change does not alter operation of the drain system or the Process and Effluent Radiation Monitoring System in a manner which could cause an unanalyzed accident. Since no new failure mode is created, a new or different kind of accident could not occur.

3. The proposed change does not significantly reduce a margin of safety. Liquid discharged from the control building sump has low potential for contamination. Nonetheless, this effluent will be monitored by RE-0848 which is required by Technical Specifications to be operable at all times. Monitor RE-0848 has range and sensitivity similar to those of RE-17646 and will cause automatic diversion of effluent flow on sensing high radiation. The setpoint of RE-0848 will be determined in accordance with the Off-Site Dose Calculation Manual and will be as low as possible without being subject to spurious actuations. Control building sump effluent is discharged to the waste water retention basin. Discharge from the waste water retention basin is sampled and analyzed as required by the Technical Specifications to ensure that releases to unrestricted areas do not exceed prescribed limits. It is, therefore, extremely unlikely that radioactive effluent from the control building sump would be released in an uncontrolled manner, and ample safety margin is maintained.

The NRC staff has reviewed the licensee's analysis and concurs with the analysis.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth 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., Altanta, Georgia 30043.

NRC Project Director: Lawrence P. Crocker, Acting

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 1, 1986 as supplemented December 30, 1987 and March 21, 1988

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Waterford Steam Electric Station, Unit 3 to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. NPF-38 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 1, 1986, with additional information on December 30, 1987 and March 21, 1988, 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 amendment 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 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." For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans

Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 22, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications to correct the number of fire detectors installed in Fire Zone RAB2. A construction drawing was used as a basis for determining the number of detectors for the initial Technical Specifications submittal and the drawing had not been updated to the fire protection analysis for Fire Zone RAB2. The number of detectors is changed from 36 to the actual installed number of 35.

Basis for proposed no significant hazards consideration determination: The Commission had 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). One of these examples (i) is a purely administrative change to Technical Specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed amendment is directly related to this example in that it corrects an error in identifying the number of fire detectors installed in Fire Zone RAB2 in conformance with the approval fire protection program for Waterford. The licensee's submittal of the initial Technical Specifications was derived from construction drawings that had not been correctly updated to the approved fire protection program. The drawings are being updated and the proposed amendment would correct the error. On the basis of the above, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Niagara Mohawk Power Corporation, Docket Nos. 50-220 and 50-410, Nine Mile Point Nuclear Station, Units 1 and 2

Dates of amendment request: December 2, 1986, November 25, 1987, and December 29, 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 Nine Mile Point Nuclear Station, Units 1 and 2, to reflect recent changes to that regulation. The proposed amendment would modify paragraphs 2.D(4) of Facility Operating License DPR-63 and 2.E of Facility Operating License No. NPF-69 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, November 25, 1987 and December 29, 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 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: 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

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: February 8, 1988

Description of amendment request: The licensee has provided the following description of the changes to the Technical Specifications:

A. Proposed Changes to Figure 6.1-1:

As a result of a recent licensee 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 6.1-1 of the FitzPatrick 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 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

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 proposed amendment would streamline the chain of command within the licensee's organization, enhancing its effectiveness and efficiency without compromising functions required for the continued operation of the plant. The proposed TS changes reflect the licensee's reorganization and are administrative changes which do not involve hardware or procedural changes to the facility. Therefore, the proposed change will not produce a significant increase in the probability or consequences of previously evaluated accidents. Similarly, because the proposed changes are intended to improve the efficiency of the licensee's organization and do not entail hardware or procedural changes to the facility, these changes cannot create the possibility of a new or different kind of accident.

Under the proposed reorganization, the responsibilities formerly associated with the positions eliminated have been assumed by others within the management hierarchy. The individuals 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: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: February 24, 1988 (TS 238)

Description of amendment requests: The proposed amendments would change the Browns Ferry Nuclear Plant (BFN) Technical Specifications (TS) for Units 1, 2, and 3 to eliminate the use of absolute surveillance intervals for TS surveillance requirements (SR) 4.7.E.1, 4.7.E.3, 4.7.F.1, 4.9.A.2.c, and 4.11.A.5. Specifically, the words "not to exceed" are being replaced with "at least once every" for the five SR.

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). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a change to the facility operating license or the technical specifications involves a significant hazards consideration, as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in the margin of safety.

A discussion of these standards, as they relate to this amendment, is as follows.

1. The probability or consequences of an accident previously evaluated in the BFN Final Safety Analysis Report (FSAR) would not be affected by these TS changes. The BFN systems affected by these proposed amendments are not typically considered in determining accident probabilities. The consequences of an accident are not affected since the limiting conditions for operation and the types of surveillance testing used to confirm operability are not changed. In addition, the SR interval extension which would be allowed under the application of TS Definition 1.0.LL is consistent with the original intent of the TS surveillances for these BFN systems (as evidenced by other BFN TS surveillance intervals, other BWR custom TS, and the General Electric Standard TS [GE-STS] for similar system applications). As such, the criteria set forth in 10 CFR 50.92(c)(1) is satisfied.

2. The possibility of a new or different kind of accident than previously evaluated in the BFN FSAR would not be created by the proposed TS changes. These changes will not eliminate or modify any protective functions and will not permit any new plant operational conditions. In addition, these changes do not eliminate or modify the type of surveillance testing done on these systems. Application of TS Definition 1.0.LL in these cases cannot create a new type of accident since flexibility in the SR time intervals is the only change proposed. Based on this, the criteria set forth in 10 CFR 50.92(c)(2) is satisfied.

3. The margin of nuclear safety is not reduced by the proposed changes. These changes do not modify the intent of BFN TS. Application of TS Definition 1.0.LL to these BFN SRs is consistent with similar system applications in other BFN TS surveillances, other BWR custom TS surveillances, and the GE-STS. Based on this, the criteria set forth in 10 CFR 50.92(c)(3) is satisfied.

Since the application for amendment involves a proposed change that is encompassed by the criteria for which no significant hazards consideration exists, TVA proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: *Gary G. Zech*

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: May 29, 1987 (TS 87-06)

Description of amendment request: The Tennessee Valley Authority (TVA) has proposed to delete Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule," from the Sequoyah Unit 1 Technical Specifications (TS). In addition, the proposed change would delete the reference to Table 4.4-5 in TS Surveillance Requirement (SR) 4.4.9.1.2.

Basis for proposed no significant hazards consideration determination: The TS SR 4.4.9.1.2 states that the reactor vessel material irradiation surveillance specimens shall be removed for examination at intervals in accordance with Appendix H to 10 CFR Part 50 and with Table 4.4-5. TVA states that the TS would be simplified by referring only to Appendix H because the requirements for this surveillance and the definition of a withdrawal schedule that is approved by NRC are stated in the Appendix.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee

requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed technical specification would amend surveillance requirement (SR) 4.4.9.1.2 in Section 3/4 4.9, "Pressure/Temperature Limits, Reactor Coolant System," of the Sequoyah unit 1 technical specifications by deleting Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule." Deletion of the subject table from the technical specifications will not affect the reactor vessel surveillance program requirements as specified in 10 CFR Part 50, Appendix H, "Reactor Vessel Material Surveillance Program Requirements"; rather, the deletion will eliminate a license requirement that is redundant to regulation requirements. The proposed amendment is therefore administrative in nature and does not change plant operating setpoints or limits, or plant operating procedures. The potential for reactor vessel embrittlement affecting a postulated transient or accident conditions that have been previously evaluated is not increased as TVA is required to comply with 10 CFR Part 50, Appendix H. Thus, the proposed amendment involves no increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As previously stated, the proposed amendment is administrative in nature and does not change plant hardware, plant operating setpoints or limits, or plant operating procedures. Also, the evaluation of reactor vessel embrittlement is not affected as TVA is required to comply with 10 CFR Part 50, Appendix H. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

No. Again, as previously stated, the proposed amendment is administrative in nature and does not involve a change in plant hardware, plant operating setpoints or limits, or plant operating procedures. The evaluation of reactor vessel embrittlement is not affected as TVA is required to comply with 10 CFR Part 50, Appendix H. Thus, the proposed amendment involves no reduction in the margin of safety of the plant.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: March 1, 1988 (TS 87-46)

Description of amendment request: The Tennessee Valley Authority (TVA) has proposed to modify the Sequoyah Nuclear Plant (SQN) Unit 2 Technical Specifications (TS) to revise Table 3.6-1, "Secondary Containment Bypass Leakage Paths," to add four potential bypass leakage paths associated with the hydrogen analyzer system. In addition, two penetration number entries in the table would be revised for clarification.

Basis for proposed no significant hazards consideration determination: In its submittal dated March 1, 1988, TVA provided the basis for the proposed change to the TS. The basis provided is the following:

During the review of a design change notice (DCN) issued to enhance the hydrogen analyzer calibration process, it was discovered that the current system design contained a potential pathway for the release of radionuclides to the environment following a postulated loss of coolant accident (LOCA). Previously, the hydrogen analyzer system was considered a closed system outside containment with respect to containment isolation. This classification was identified to NRC in a January 2, 1987 submittal on SQN containment isolation design and in proposed technical specification change 87-33, which was submitted September 17, 1987. An earlier enhancement engineering change notice (ECN), however, had initiated a modification that moved the system calibration panels from the annulus to the Auxiliary Building. This was done for radiological and access considerations during the calibration of the analyzers, and because of the environmental qualifications of the equipment located in the annulus. This established an indirect release path to the Auxiliary Building and the environment through the system interface with the essential control air system. A direct release path to the Auxiliary Building and the environment was established on the train B analyzer because its calibration panel was moved outside the Auxiliary Building Secondary Containment Enclosure (ABSCE).

This design inadequacy is documented in Condition Adverse to Quality Reports SQP871611 and SQP871650. The deficiency was also reported to NRC in Licensee Event Report (LER) 327/87077. As was stated in the LER, preliminary evaluations of the radiological consequences of the potential bypass leakage to the environment have been performed. These evaluations indicated that the potential increases in both onsite and offsite doses would not have had significant safety consequences during power operation.

Modifications to the Unit 2 hydrogen analyzer system are being performed to eliminate the potential bypass leakage paths to the environment. In order to comply with specification 3.6.4.1 for operable hydrogen analyzers, the modifications for the hydrogen analyzer will be completed prior to entering Mode 2.... After the modifications are completed, the potential for bypass leakage to the Auxiliary Building inside the ABSCE will still exist. It is these potential bypass leakage paths that are added to the technical specification table.

In addition to the change described above, the table entries for penetrations X-94 and X-95 are revised to clarify that each penetration has three lines passing through it.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has performed and provided the following analysis for Sequoyah Unit 2 (SQN) in its submittal.

TVA has evaluated the proposed technical specification change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The addition of the hydrogen analyzer system bypass penetrations to Table 3.6-1 ensures that the penetrations are properly tested in accordance with surveillance requirement 4.6.1.2.e. This testing does not affect the probability or consequences of previously evaluated accidents. The hydrogen analyzer system is not required to mitigate design basis events, but is used to provide post-LOCA information to the operator in compliance with NUREG-0737. The hydrogen analyzer system does not contribute to the probability of an accident. The modifications made to the system eliminate potential leakage paths from containment to the environment. The remaining potential bypass leakage paths are into the ABSCE and are included in Table 3.6-1 as such. Eliminating the leakage paths to the environment will decrease the consequences of an accident. The offsite dose analysis of record (Final Safety Analysis Report, section 15.5.3) is not affected by moving the potential release point of the hydrogen analyzer system from the annulus to the ABSCE. This is because the total primary containment leakage remains unchanged, as do the assumptions that 75 percent of the leakage is to the annulus and 25 percent of the leakage is to the Auxiliary

Building. The change in potential release points only changes the allowable leakage for each individual penetration. The change does not impact systems or components used to mitigate postulated accidents. The addition of commas to two of the table entries is for clarification only, and does not alter the probability or consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The inclusion of the hydrogen analyzer system bypass penetrations in Table 3.6-1 identifies the penetrations as being within the scope of surveillance requirement 4.6.1.2.e. The leak rate testing required by this surveillance does not create the possibility of a new type of accident. The changes made to the hydrogen analyzer system do not affect the function or operation of the system. The changes are made to eliminate potential leakage paths from containment to the environment. The change does not adversely affect other systems. The addition of commas to two of the table entries is for clarification. Therefore, no new accident scenarios are created.

3. Involve a significant reduction in a margin of safety. The proposed change ensures that the hydrogen analyzer system bypass penetrations are routinely tested under the requirements of surveillance requirement 4.6.1.2.e. This testing ensures that the plant is bounded by the offsite dose analysis of record. As described above, the offsite dose analysis of record is not affected by the proposed change; and the margin of safety as defined by the technical specification bases is not changed. The modifications to the hydrogen analyzer system eliminate a potential bypass leakage path to the environment and bring the system into compliance with containment isolation requirements. Any leakage will be into the ABSCE where it is processed by [the] ABGTS. The technical specification change is made to reflect the potential bypass leakage paths to the Auxiliary Building. Because the potential for unprocessed bypass leakage is eliminated, the actual margin of safety is increased. The addition of commas to the two tables is for clarification. This clarification will not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: April 17, 1987 (TS 87-05)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to amend the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications (TS) to revise parts of Section 5.0, Administrative Controls, of the Appendix B Environmental Technical Specifications. The proposed changes would (1) reflect the new title for the station superintendent and assign the responsibility for review and audit to the "licensee", instead of a specific TVA organization, (2) extend the audit time interval on the environmental monitoring program from annual to once per 18 months, (3) add additional requirements on the conduct of the audit and maintaining the results of the audit, and (4) delete the reference to a defunct section of the Code of Federal Regulations (CFR).

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). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has provided the following analysis:

(1) Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No, the changes in responsibilities for review and audits in the environmental technical specifications will not prevent these jobs from being performed. This job function will still be performed by the licensee in a satisfactory manner in order to meet the requirements. Extending the audit time interval to 18 months will still provide the necessary information relative to the status of environmental compliance.

(2) Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No, the proposed changes to the environmental technical specifications do not present new or different safety concerns. These changes will ensure that the licensee is responsible for compliance of these specifications.

(3) Is the margin of safety significantly reduced?

No, safety is not affected by the changes to the environmental technical specifications. These changes affect responsibility for review and audits and thus the margin of safety is unchanged.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the Commission has provided certain examples (51 FR 7751) of amendments not likely to involve significant hazards considerations. The remaining changes to change the title of the Station Superintendent to Plant Manager, and the deletion of a reference to a defunct section of the CFR (Section 51.5(b)(2) of 10 CFR Part 51 has been deleted due to a turnover of responsibilities to the Environmental Protection Agency), are encompassed by example (1) e.g., a purely administrative change to the TS: for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 19, 1987 (TS 87-25)

Description of amendment requests: The Tennessee Valley Authority (TVA) has proposed a change to the Action statements for the Limiting Conditions for Operation (LCO) of the radioactive liquid and gaseous effluent monitoring instrumentation in the Sequoyah Units 1 and 2 Technical Specifications (TS). The applicable LCO for this change are TS 3.3.3.9 and TS 3.3.3.10. The proposed change is to delete the reference to TS 6.9.1.13.b from the Action statement in these LCO.

Basis for proposed no significant hazards consideration determination: In its submittal dated June 19, 1987, TVA provided the basis for the proposed change. The basis is the following:

On January 1, 1984, NRC made effective 10 CFR 50.72, governing requirements for immediate notification of NRC, and 10 CFR 50.73, governing requirements for [Licensee Event Reports or] LERs. The requirements of the two sections superseded and made obsolete any possible conflicting requirements between the Code of Federal Regulations (CFR) and the technical

specifications. To provide for both incorporation and implementation of the subject CFR sections into the license, TVA submitted a proposed amendment to the technical specification to NRC by letter dated April 20, 1984. NRC reviewed the proposed amendment and on November 23, 1984, notified TVA of their approval of the proposed amendments.

Amendments 36 and 28 of Units 1 and 2, respectively, deleted requirements for issuing LERs from the technical specifications as given in Section 6.9.1.13.b and all references to those requirements. References to Section 6.9.1.13.b were overlooked, however, in Action "c" of LCO 3.3.3.9 and Action "c" of LCO 3.3.3.10. The subject action statements granted relief from writing extraneous LERs when manual radioactive effluent sampling was used as an alternative to automatic sampling.

Because Section 6.9.1.13.b no longer exists in the technical specifications, references to this section are meaningless and could cause unnecessary confusion on the part of the plant operators. The proposed amendment would delete the references to Section 6.9.1.13.b in LCO 3.3.3.9 and LCO 3.3.3.10.

Also, the requirements of 10 CFR 50.73 do not require an LER to be written for those instances when manual radioactive effluent sampling is used as an alternative to automatic sampling. Thus, the relief granted by reference to Section 6.9.1.13.b is no longer required. Therefore, the proposed amendment causes no conflict with the requirements of either the technical specifications nor the CFR.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has provided the following analysis for Sequoyah (SQN) in its submittal:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment is editorial in nature and does not effect changes to plant equipment, operating setpoints or limits, or operating procedures. Therefore, the proposed amendment involves no significant increase in either the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As related above, the change advanced by the proposed amendment deletes a reference to a now nonexistent section of the technical specifications. The proposed amendment is editorial in nature and does not effect changes to plant equipment, operating setpoints or limits, or operating procedures. Therefore, the proposed amendment would not create the probability of a new or different kind of accident [from any] previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. Again, the proposed amendment is editorial in nature and does not effect changes to plant equipment, operating setpoints or limits, or operating procedures. The proposed amendment deletes a reference to a now nonexistent section of the technical specifications that has previously been superseded by the regulations of 10 CFR 50.73. This deletion would eliminate a potential source of confusion to the operators. Thus, the proposed amendment would provide for an improvement in the margin of safety in operating the plant.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 24, 1987 (TS 87-17)

Description of amendment requests: The Tennessee Valley Authority (TVA) has proposed changes to the Sequoyah Units 1 and 2 Technical Specifications (TS). These changes are throughout the TS to correct inconsistencies, discrepancies and typographical errors within the TS and to remove an error from a previous TS amendment.

Basis for proposed no significant hazards consideration determination: In its submittal dated June 24, 1987, TVA listed the 31 different proposed changes to the TS. TVA stated the following in its submittal as justification for the proposed changes:

Twelve changes correct typographical errors. One change corrects the alphabetical listing of an index section. Five changes correct references to figures or the figure itself. Six changes correct inconsistencies between the technical specification for one unit and the other. In each case, the proposed changes conform with the NRC [Standard Technical Specifications or] STS. Correction of these inconsistencies will eliminate confusion over applicable requirements and eliminate the potential for error.

Four changes correct inconsistencies between action statements and other requirements in the technical specifications. Correction of these inconsistencies will eliminate confusion over applicable requirements and eliminate the potential for error.

Two changes correct discrepancies between the technical specifications and the design of the plant. Correction of these discrepancies will eliminate confusion over applicable requirements and eliminate the potential for error.

One change corrects an error from a previous amendment. Correction of the error will properly identify the correct surveillance intervals for a surveillance requirement.

Examples of the proposed changes are listed below:

1. *3/4 1-14* Delete references to nonexistent figure.

2. *3/4 1-21* Delete references to nonexistent figure.

3. *3/4 3-13* Correct typographical errors in Table 4.3-1 notation.

4. *3/4 3-56 (U1), 3/4 3-57 (U2)* Correctly identify the required number of channels and minimum number of channels operable for auxiliary feedwater flow in the list of accident monitoring instrumentation to be consistent with plant design.

5. *3/4 7-1* Correct an inconsistency between action b. and technical specification 3.4.1.1 for operation with less than four reactor coolant pumps running.

6. *3/4 7-6* Correct an error from a previous amendment that inadvertently omitted the surveillance frequency for verification of control valve operability.

7. *3/4 7-10* Correct an inconsistency within the action statement for modes 1 and 3.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has provided the following analysis:

1. Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. These changes are to correct typographical errors, inconsistencies between requirements, discrepancies between plant design and requirements, and to remedy an error from a previous amendment. Correcting these problems will eliminate confusion over applicable requirements and eliminate the potential for error. Eliminating the potential for error will reduce the probability of an occurrence. These changes have no effect on the consequences of an accident previously evaluated.

2. Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. These changes are to correct typographical errors, inconsistencies between requirements, discrepancies between plant

design and requirements, and to remedy an error from a previous amendment. No hardware changes were made to the plant. Correcting the inconsistencies between certain action statements and other requirements in the technical specifications will eliminate confusion over applicable requirements and eliminate the potential for error. In this case, the error would be to operate in a plant configuration not previously analyzed. Correcting these inconsistencies should eliminate the potential for this type of error.

3. Is the margin of safety significantly reduced?

No. These changes are to correct typographical errors, inconsistencies between requirements, discrepancies between plant design and requirements, and to remedy an error from a previous amendment. Correcting these problems will eliminate confusion over applicable requirements and eliminate the potential for error. The margin of safety will be increased with the elimination of the potential for error.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: September 16, 1987 (TS 87-41)

Description of amendment requests: The Tennessee Valley Authority (TVA) has proposed to revise Section 3/4.9.7, Crane Travel-Spent Fuel Pit Area, of the Sequoyah Units 1 and 2 Technical Specifications (TS). The changes are to (1) revise the maximum load transported over the fuel assemblies in the storage pool from 2,000 pounds to 2,100 pounds and (2) allow for the fuel pool divider gate and the fuel transfer canal gate to be transported over the storage pool when following safe load paths.

Basis for proposed no significant hazards consideration determination: In its submittal, TVA provided the basis for the proposed change. The basis is the following:

Limiting Condition for Operation 3.9.7 prohibits loads in excess of 2,000 pounds from travel over fuel assemblies in the [spent fuel] storage pool. The basis for [the] weight limit is listed in the bases for the technical specification as the weight of a single spent fuel assembly, control rod assembly, and associated handling tool. A review of the Westinghouse drawings of a Sequoyah Nuclear Plant (SQN) fuel assembly, rod cluster control assembly (RCCA), and spent fuel handling tool identified the total nominal weight to be 2,024 pounds. The proposed change will allow a 2,100-pound limit, which is rounded off to the next higher hundred to allow for this extra weight and any minor equipment or fuel weight changes in future assemblies.

Approximately once a year, SQN performs a refueling operation. During refueling, the full pool divider gate and the fuel transfer canal gate are lifted with the main Auxiliary Building crane within the storage pool and must travel over the spent fuel storage racks in order to be placed in the gate storage racks. The proposed change will allow these gates to be transported within the spent fuel pool with the safe load path.

Together, the above changes to the control of loads across fuel assemblies in the storage pool will resolve the weight limit discrepancy and the movement of the pool gates in excess of the present weight limit.

The fuel handling accident analysis presented in Section 15.4.5 of the Final Safety Analysis Report (FSAR) was examined to determine whether changing the load limit from 2,000 pounds to 2,100 pounds would invalidate the analysis. The accident is defined as dropping a spent fuel assembly onto the spent fuel pit floor and the environmental consequences of that accident. Changing the maximum weight limit from 2,000 to 2,100 pounds transported over the assemblies will not affect or invalidate the FSAR fuel handling accident.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has performed and provided the following analysis on Sequoyah (SQN) in its submittal:

TVA has evaluated the proposed technical specification change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The FSAR fuel handling accident analysis is not based on the weight of the fuel assembly and handling tool but on the radioactive release to the surroundings. Thus, the proposed change for the increased weight limit will not increase resultant offsite dose effects and consequences. The probability of an accident occurring that involves the spent fuel pool gates is very low. The gates are moved infrequently and many safety precautions are used, such as approved slings, procedures, and crane, to significantly lower the possibility of an accident. Movement of the spent fuel pit gates in accordance with identified safety precautions provides reasonable assurance that the gates will not be dropped. Therefore, the proposed change does not significantly increase 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.

The proposed changes do not affect the methodology and analysis previously used in the FSAR. Future refueling activities that involve moving fuel assemblies will be conducted as in the past. Movement of the spent fuel pool gates in accordance with the guidelines of NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants," provides reasonable assurance that the gates will not be dropped. Plant instructions will be revised to incorporate these guidelines, and a new plant procedure will specifically address detailed instructions for removal and installation of these gates. Thus, the proposed changes does not create the possibility for a new or different accident.

(3) involve a significant reduction in a margin of safety.

The SER for NUREG-0612, concludes that the guidelines have been followed and remain within the safety limits. The proposed change is in accordance with these guidelines, and thus the margin of safety is not reduced.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: December 28, 1987 (TS 87-43)

Description of amendment requests: Tennessee Valley Authority (TVA) has proposed a change to the surveillance requirement (SR) 4.6.2.1.b of the Sequoyah Units 1 and 2 Technical Specifications (TS). This SR is for the pumps in the containment spray system (CSS). The change would require each CSS pump to have a differential pressure of greater than or equal to 143 psid at a flow rate greater than or equal to 4750 gpm for the pump to be

considered operable. The current SR requires each CSS pump to develop a discharge pressure of greater than or equal to 140 psig to demonstrate it is operable.

Basis for proposed no significant hazards consideration determination: In its submittal, TVA stated the basis for the proposed change. The basis is the following:

Calculations were not found that support the current 140-psig containment spray pump discharge value in the technical specifications (TS). New engineering calculations were performed to determine the minimum pump head required in order to ensure the capability of delivering the required flow rate. The proposed change establishes new testing acceptance criteria to prove pump operability based on the engineering calculations.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis on Sequoyah (SQN) in its submittal:

TVA has evaluated the proposed TS change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The containment spray system is an engineered safety features system that functions to reduce containment pressure and airborne fission products in the containment atmosphere following a LOCA. The accident analysis requires a containment spray flow rate of 4,750 gal/min to ensure adequate accident mitigation. The proposed change establishes new testing requirements for the containment spray pumps based on an engineering calculation that determines the required minimum total developed head at a flow rate of 4,750 gal/min. Thus, the new acceptance criteria for the containment spray pumps will more accurately reflect pump design capability.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The change in testing requirements for the containment spray pumps will ensure proper operation of this engineered safety features system. No changes in system operation have been made. Thus, no new or different types of accidents have been introduced by this change.

3. Involve a significant reduction in a margin of safety. The change in testing requirements for the containment spray pumps is conservative. Establishing the test value based on the calculation assumption that only one of the containment spray pumps [is] running is conservative, because this results in the smallest margin between developed and required flow. If both pumps are running, each individual pump may not be capable of developing 4,750 gal/min, but the combined flow from both pumps will be significantly greater than the FSAR requirement of 4,750 gal/min. System operation has not changed. The proposed differential pressure value and corresponding flow rate will more accurately test system operation, therefore, increasing the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The licensee is proposing a more accurate SR to determine CSS pump operability based on the requirements for these pumps during a LOCA in Section 15 of the Sequoyah Final Safety Analysis Report. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room Location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: February 1, 1988 (TS 87-45)

Description of amendment requests: The Tennessee Valley Authority (TVA) has proposed to revise Table 3.3-11, Fire Detection Instruments, of the Sequoyah Units 1 and 2 Technical Specifications (TS). The proposed revisions are to (1) correct typographical errors and discrepancies between the table and the plant and (2) have the table reflect instrumentation that has been added or removed as a result of plant modifications. The table is also rearranged to have the fire zones listed in numerical order. This proposed change supersedes TVA's TS change request number 87-04 that was submitted by letter dated May 12, 1987.

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). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed TS change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The fire detection instruments are elements of the early warning fire detection system whose mission is to notify personnel of a fire, actuate automatic suppression systems, and control auxiliary equipment. The correction of typographical errors associated with fire detection instrument locations will provide for the correct location identification of a fire in the unlikely event one should occur in the plant. The addition of fire protection instrumentation will provide increased coverage of the areas monitored by the fire detection warning system, enabling a potential fire to be located and appropriate responses to be initiated in a more timely fashion than without the instrumentation. The addition of inadvertently omitted fire zones will ensure that appropriate fire detection instrumentation is operable at those locations determined to be important for the safety of the plant and plant personnel. The proposed TS change amends table 3.3-11 to correct typographical errors and add fire detection instruments installed as a result of plant modifications. Additionally, the reordering of the table will lessen the possibility of errors when using the table. Thus, the proposed change improves overall plant safety and does not increase either 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.

The proposed TS change amends table 3.3-11 to correct typographical errors, to add fire zones that have previously been inadvertently omitted, and to add fire detection instrumentation installed as a result of plant modifications. Correction of typographical errors and inadvertent omissions will provide the correct identification of the location of a fire, in the unlikely event that one should occur, as well as ensure that appropriate fire detection instrumentation is operable. The additional fire detection instrumentation increases the ability of plant personnel to identify and take appropriate corrective action in the unlikely event that a fire should occur. Thus, the proposed TS change improves the plant's ability to respond to previously evaluated accidents and events and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) involve a significant reduction in a margin of safety.

Again, the proposed TS change amends table 3.3-11 to correct typographical errors, to add fire zones that have previously been inadvertently omitted, and to add

instrumentation installed as a result of plant modifications. Correcting typographical errors and adding fire zones that had previously been inadvertently omitted will allow for the correct identification of instrument location, as well as providing for appropriate fire detection instrumentation to be operable, thereby improving plant safety. [The] Addition of recently installed instrumentation provides for increased surveillance capabilities within the plant, thereby again improving plant safety. Rearrangement of the table reduces the chance of errors in utilizing the table. Thus, the proposed TS change improves overall plant safety and results in no reduction in margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: March 1, 1988 (TS 87-44)

Description of amendment requests: The Tennessee Valley Authority (TVA) has proposed changes to Section 6, Administrative Controls, of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TS). These changes are to reflect TVA corporate and Sequoyah Site organizational changes and to properly identify the desired organizational structure for both corporate and site staffs. The proposed changes are identified below.

1. The name of Nuclear Safety and Licensing has been changed to Nuclear Licensing and Regulatory Affairs for clarification of responsibilities.

2. The site quality control (QC) and quality engineering (QE) functions have been divided into separate lines of authority and responsibility to enhance the functions. The Plant Operations Review Committee (PORC) composition is revised to reflect this change in authorities and responsibilities.

3. The corporate and site security organizations were reorganized to provide corporate level programmatic guidance while elevating site security reporting to the Site Director.

4. Responsibility for the Fire Protection Program and fire brigade staffing is being removed from the industrial safety group and operations group, respectively, and placed in an independent Fire Protection Section to provide enhanced, dedicated fire protection management and coverage.

5. An Assistant to the Plant Manager position has been added to the plant management structure.

6. A water and waste processing section is being established to separate this function from other shift operation duties, and establish direct accountability to the Operations Superintendent.

7. A maintenance engineering group is being established to provide a measure of separation between the maintenance craft and engineering disciplines.

8. The technical support function under the Plant Manager is to be elevated to a superintendent level. This provides enhanced authority and responsibility for the function, and makes the function directly reportable to the Plant Manager. The PORC composition is revised to reflect this change in authorities and responsibilities.

9. The Technical Review and Control Section (TS 6.5.1A) is revised to reflect that all activities which affect nuclear safety are ultimately the responsibility of the Plant Manager and the plant superintendents.

10. The Deputy Manager of Nuclear Power position is deleted from TS Figure 6.2-1 because it is not in the direct line of management for plant operations.

11. The planning and scheduling and the radiological control functions are revised on TS Figure 6.2-2 to reflect them as management positions.

12. The references to unit staff and organization in TS Section 6 are changed to facility staff and organization for consistency with other information in Section 6.

Basis for proposed no significant hazards consideration determination: In its submittal dated March 1, 1988, TVA provided the basis for the proposed changes to TS Section 6. This basis is the following:

The first change is a title change only. The licensing staff title was changed from Nuclear Safety and Licensing to Nuclear Licensing and Regulatory Affairs. This was done to clarify the independence of the Nuclear Safety Review Board from the licensing staff. There are no changes in lines of authority or responsibility related to this technical specification change.

The second change is the result of a change in the lines of responsibility and authority in the Division of Nuclear Quality Assurance (DNQA). The original organization had both QE and QC under the supervision of the Quality Engineering and Control Manager, who reported to the Site QA Manager. The DNQA reorganization separated the QE and QC functions, and established both a QE Manager and a QC Manager. The QE Manager is retained as a member of PORC.

The next change [3.] is the result of the restructuring of the corporate and site security staffs. Under the new organization, the Site Security Manager receives functional direction from the Nuclear Security Branch of the Division of Nuclear Services. The Site Security Manager receives daily direction and management from the Site Director. This organization provides a centralized programmatic support group, in addition to the routine management provided by the Site Director. The Site Security Manager now reports to the Site Director instead of the Plant Manager because security is a function supporting the site.

Another change [4.] will be the result of separating fire protection responsibilities from the industrial safety section. A Fire Protection Section is being developed that will provide the fire brigade personnel and maintain the site fire protection program. This change will enhance the management of the fire protection program, and provide dedicated fire protection coverage.

Another change [5.] is made to reflect an additional management position at the Plant Manager level. The Assistant to the Plant Manager position was formed to increase management availability and attention at this level. The Fire Protection Section and the Plant Operations Review Staff will report to the Assistant to the Plant Manager.

Two other changes [6. and 7.] are made to clarify the separation of responsibilities for two plant sections. The Water and Waste Processing Group Supervisor position is added to Figure 6.2-2 to clarify that the water and waste processing function is performed by a section separate from the shift operations personnel. Simarily, the maintenance engineering supervisor position is added to clarify the separate maintenance engineering and craft groups.

The remaining organizational changes [8.] are the result of elevating the technical support functions to a superintendent level. This was done to enhance the responsibilities and authorities of the function. It also makes the function report directly to the Plant Manager. Chemistry, reactor engineering, mechanical test, and systems engineering are all technical support groups that will report to the Technical Support Superintendent. As part of this realignment, the Nuclear Power Plant Superintendent position is changed to Operations Superintendent. This position is now responsible for the operations and the water and waste processing functions. Also, as part of this realignment, the Assistant Operations Supervisor position was removed. This removes one layer of management, and establishes direct reporting of the Shift Supervisor to the Operations Manager.

As part of the technical support reorganization, the PORC composition will be revised to reflect the superintendent positions as members. The Operations Manager and QE Manager are also retained as members. A Division of Nuclear Engineering representative is added as a PORC member to provide engineering expertise. This PORC

composition is consistent with the PORC responsibility to provide a diverse, upper management oversight review of activities affecting nuclear safety.

The revisions to Section 6.5.1A [9.] are made because the Plant Manager and the plant superintendents are ultimately responsible for the safe operation of the plant. As such, the activities that affect nuclear safety are under their supervision and control. Also, a wording change is made in Section 6.5.1A.1.c for consistency with other wording in the section.

The Deputy Manager of Nuclear Power position is deleted from Figure 6.2-1 because it is not in the direct line of management for plant operations [10.]. The position was created as part of TVA's management reorganization and development effort as described in the Nuclear Performance Plan Volume 1. It is not appropriate to represent it as part of the direct management chain because the Site Director reports directly to the Manager of Nuclear Power in matters concerning safe operation of the plant.

The planning function and radiological control functions are revised on Figure 6.2-2 to present them as management positions [11.]. This is done for consistency with the other positions presented on the figure. Planning and scheduling is under the responsibility of the Planning, Scheduling, Estimating, and Financial Service Staff Manager. Similarly, radiological control functions are under the supervision of the Site Radiological Control Superintendent.

The references in Section 6 to unit staff and organization are changed to facility staff and organization [12.]. This is consistent with the title of, and the organization shown, on Figure 6.2-2.

The changes described above represent corporate and site organizational changes that affect the technical specifications in Section 6. The changes range from title changes only, to revised lines of responsibility and authority. The changes are made to maintain a proper representation of the corporate and site organizations in the technical specifications.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has performed and provided the following analysis for Sequoyah (SQN) in its submittal.

TVA has evaluated the proposed technical specification change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change is intended to accurately reflect the changes to the Administrative Controls section (Section 6) of the technical specifications resulting from recent and planned organization changes. The functions specified in Section 6 [which are] important to the safe operation of SQN have not been altered or deleted. The changes to this section merely reflect title changes, new positions, and the realignment of positions that hold the expertise to perform these functions. The title changes are made for clarification. The roles of the individuals charged with the responsibility of safe operation of this facility are enhanced by the new positions and realignments. This change better identifies those positions occupied by individuals qualified to provide this technical assistance. There are no hardware, procedure, personnel, or analysis changes represented by this amendment proposal that adversely affect the probability of occurrence or the consequences of an accident previously evaluated in the [final] safety analysis report.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. This change represents title changes and changes in the administrative process in that new positions and responsibilities are identified. The functions important to safety will continue to be performed by those individuals who are technically competent to perform these functions; therefore, the potential for the increase of a possibility of an accident or a new or different type of accident is reduced rather than increased because of having the appropriate personnel designated for these functions.

(3) Involve a significant reduction in a margin of safety. The changes in this amendment proposal serve only to clarify or enhance those positions responsible for key safety functions specified in Section 6 of technical specifications. No function has been impaired or deleted by this change. On the contrary, these functions are improved by the additional clarity and elevated levels of authority and responsibility afforded by the proposed changes.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. For the item (2) above, it is not that the proposed change reduces the potential for a new or different kind of accident, but that the proposed change does not affect any component or system in the plant, the operation of the plant, or the kind of safety reviews conducted at the plant and, therefore, does not create the possibility of a new or different kind of accident from any previously analyzed. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

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: March 18, 1988

Description of amendment request: The proposed changes would revise the NA-1&2 Technical Specifications (TS) and the NA-2 Facility Operating License No. NPF-7. The proposed changes are itemized as follows. Item 1 would revise the NA-1&2 TS Table 6.2.1, Minimum Shift Crew Composition. Item 2 would delete the NA-1 TS 6.13 and the NA-2 Facility Operating License Conditions 4.a, 4.b, 4.d, and 4.e, regarding the schedule for identification of environmental qualification of equipment important to safety. Item 3 would revise the NA-1&2 TS 6.9.2, Special Reports. Specifically, the Item 1 change would simplify the Shift Composition requirements of the NA-1&2 TS Table 6.2-1 by eliminating the reduced staffing allowances for operations with one unit in Modes 5 and 6 and by combining the requirements of the currently independent but interrelated NA-1&2 TS into a single comprehensive table. This change would not reduce the requirements from those presently specified in the NA-1&2 TS and would increase the staffing requirements when one unit is in Mode 1, 2, 3, or 4 and the other unit is in Mode 5 or 6. In addition, the change would add the requirement for an additional Auxiliary Operator (AO), which is in accordance with the licensee's commitment in the NA-1&2 10 CFR 50 Appendix R Report.

The Item 2 change would delete NA-1 TS 6.13 and NA-2 Facility Operating License Conditions 4.a, 4.b, 4.d, and 4.e in accordance with 10 CFR 50.49(g), which provides the schedule for identification of qualified equipment important to safety and the replacement of equipment important to safety that is not qualified and 10 CFR 50.49(j), which requires the maintenance of an auditable record of the equipment qualification. In addition, 10 CFR 50.49(g) also states, "The schedule in this paragraph supersedes the June 30, 1982, deadline, or any other previously imposed date, for environmental qualification of electrical equipment contained in certain nuclear power operating licenses."

The Item 3 change would provide a more complete list of Special Reports required by the NA-1&2 TS. The purpose

of this change would achieve consistency between TS 6.9.2 and the various Limiting Conditions for Operations (LCOs) that require the submission of Special Reports.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7741). Example (ii) states that a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement, is explicitly considered not likely to involve significant hazards. As noted above, the Item 1 change will increase the Minimum Shift Crew Composition in accordance with the licensee's commitments for 10 CFR 50 Appendix R compliance. Therefore, the changes noted in Item 1 above are enveloped by example (ii). In addition, example (vii) states that a change to make a license conform to changes in regulations, where the license change results in very minor changes to facility operations in keeping with the regulations, is considered not likely to involve a significant hazards. For the changes noted in Item 2 above, 10 CFR 50.49 provides the requirements of, or supersedes, TS 6.13 for NA-1 and NA-2 Facility Operating License Conditions 4.a, 4.b, 4.d, and 4.e. Thus, the Item 2 changes noted above are enveloped by example (vii). Finally, example (i) states "a purely administrative change to the TS: for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature is considered not likely to involve a significant hazards." The proposed changes regarding Item 3 would achieve consistency between the NA-1&2 TS 6.9.2 and the various LCOs that require the submission of Special Reports. Also, TS 6.9.2 has been updated to provide a more complete list of Special Reports required by the NA-1&2 TS. Therefore, the proposed changes for Item 3 are enveloped by example (i). Accordingly, the Commission proposes to determine that the changes described in Items 1, 2, 3 above 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 and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: November 12, 1986 and November 18, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55 and accompanying 10 CFR 73.70 record reporting requirements, the licensee submitted amendments to the Physical Security Plan for Washington Nuclear Project Number 2 to reflect recent changes to that regulation. The proposed license amendment would modify paragraph 2.E of Facility Operating License No. NPF-21 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 revisions to the previously approved plan on November 12, 1986 and November 18, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the plan as revised.

In the Supplementary Material accompanying the amended regulations, the Commission indicated that it is amending its regulations "to provide a more safety conscious safeguards systems while maining 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 (51 FR 7751). Example (vii) is "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 fall within the scope of example (vii). For the foregoing reason, the Commission proposes to determine the proposed amendment involves no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: George W. Knighton

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: February 26, 1988

Description of amendment request: This license amendment request proposes revising Technical Specification (T.S.) Figures 6.2-1, 6.2-2, and Section 6.5.1.2 which addresses the Wolf Creek Nuclear Operating Corporation Organization. The proposed changes involve:

1. Changes to titles in T.S. Figure 6.2-1,
2. Changes in reporting relationships shown on T.S. Figure 6.2-2,
3. Removal of positions and organizations from T.S. Figures 6.2-1 and 6.2-2.,
4. Changes to the reporting relationships of the Maintenance Services Supervisor and the Maintenance Support Supervisor,
5. Changes to the Plant Safety Review Committee composition.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

This amendment revises Wolf Creek Generating Station (WCGS), Unit No. 1, Technical Specifications Section 6.5.1.2, which addresses the composition of the Plant Safety Review Committee, Figure 6.2-1, which addresses the Operating Corporation Organization, and Figure 6.2-2, which addresses the Operations Division Organization.

The first set of requested revisions involve changes to titles in Figure 6.2-2. The titles of Superintendent of Maintenance; Superintendent of Operations; Superintendent of Technical Support; and Superintendent of Plant Support are being changed to the Manager of Maintenance and Modifications; Manager of Operations; Manager of Technical Support; and the Manager of Plant Support respectively.

The title of Operations Coordinator - Operations is being changed to the Operations Supervisor, and the title of

Operations Coordinator - Projects and Planning is being changed to the Operations Support Supervisor. The title of the Engineering/Specialist currently under the Operations Coordinator - Projects and Planning is being changed to the Projects group.

Additional title changes are being made to T.S. Figure 6.2-1 and T.S. Section 6.5.1.2. The title Superintendent Quality Control is being changed to the Manager Quality Control in Figure 6.2.1. The title of Instrument and Control Supervisor is being changed to the Manager Instrumentation and Controls.

These title changes are only administrative in nature and do not represent any change in reporting relationships or reduction in job responsibilities, relationships or overall organizational commitments.

The second set of requested revisions involve changes in reporting relationships shown on T.S. 6.2-2. The Outage Manager, previously reporting to the Vice-President Nuclear Operations, will be reporting directly to the Plant Manager and be included in T.S. Figure 6.2-2. This change increases organizational effectiveness by providing the Plant Manager direct supervision of outage activities.

Fire Protection, previously reporting to the Superintendent of Plant Support, will be reporting to the Operations Support Supervisor under the Manager of Operations. This change will provide better control and better response to the concerns of Fire Protection, and does not effect overall organizational commitments.

Health Physics, previously reporting to the Superintendent of Plant Support, will be reporting to the Manager of Technical Support. This is only a change in reporting relationship and has no effect on job responsibilities.

Compliance, previously reporting to the Superintendent of Regulatory, Quality, and Administrative Services, will be reporting to the Manager of Plant Support. This is only a revision of reporting relationships and does not effect job responsibilities.

Administration, previously reporting to the Superintendent of Regulatory, Quality, and Administrative Services, will be reporting to the Manager of Plant Support. This is only a revision of reporting relationships and does not effect job responsibilities.

Emergency Planning will be removed from T.S. Figure 6.2-2. Emergency Planning will be reporting through Health Physics. This relationship should prove to be a more efficient structure.

These reporting relationship changes represent organizational enhancements and do not constitute changes in overall organizational commitments.

The third set of requested revisions involve positions and organizations that have been removed from T.S. Figures 6.2-1 or 6.2-2. The position of Superintendent Regulatory, Quality, and Administrative Services, currently shown on Figure 6.2-2, is being deleted. The responsibilities of this position will be assigned to the Manager of Plant Support. This change represents an organizational restructuring and does not effect overall organizational commitments.

Document Control, currently reporting to the Superintendent of Regulatory, Quality, and Administrative Services as shown on Figure 6.2.-2, is being consolidated with the Document Control group reporting to the Manager Management Systems. The Manager Management Systems reports to the Vice-President Engineering and Technical Services as shown on Figure 6.2-1. This will increase organizational effectiveness by consolidating two departments with similar responsibilities.

Engineering and Technical Services Support, currently shown on Figure 6.2-1, is being deleted. The responsibilities of Engineering and Technical Services Support are being divided between the remaining departments under the Vice-President Engineering and Technical Services. This change is an organizational restructuring and will not change overall organizational commitments.

The Manager Facilities and Modifications, currently shown on Figure 6.2-1 reporting to the Vice-President Engineering and Technical Services, is being deleted. Facilities and Modifications is being consolidated with the Maintenance organization shown on Figure 6.2-2 reporting to the Manager of Maintenance and Modifications. This change will increase organizational effectiveness by consolidating two departments with similar responsibilities.

The fourth set of requested revisions to the Technical Specifications involve changes in responsibilities. The Maintenance Services Supervisor, currently reporting to the Superintendent of Maintenance in T.S. Figure 6.2-2, is being replaced by Maintenance Engineering and Maintenance Planning. This revision will enhance organizational effectiveness by allowing both the Maintenance Planning and Maintenance Engineering, previously reporting to the Maintenance Services Supervisor, to report directly to the Manager of Maintenance and Modifications.

The Maintenance Support Supervisor, currently reporting to the Superintendent of Maintenance in T.S. Figure 6.2-2, is being replaced by Electrical Maintenance and Mechanical Maintenance. This revision will enhance organizational effectiveness by allowing both Electrical Maintenance and Mechanical Maintenance, previously reporting to the Maintenance Support Supervisor, to report directly to the Manager of Maintenance and Modifications.

The fifth set of requested revisions involve changes to the Plant Safety Review Committee (PSRC) composition as shown in T.S. Section 6.5.1.2. T.S. Section 6.5.1.2 is being revised to reflect the assignment of the Manager of Plant Support as the PSRC Chairman and the removal of the Plant Manager from the PSRC. This change is intended to provide effective oversight of all PSRC activities. T.S. 6.5.1.2 is also being revised to reflect the deletion of the Superintendent of Regulatory, Quality and Administrative Services and the title changes for the other Superintendent positions and the Supervisor Instrument and Control shown in Section 6.5.1.2. This revision does not change overall organizational commitments.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing examples of amendments that are not likely to involve Significant Hazards Consideration (51 FR 7751). Among those examples are, "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the Technical Specifications, corrections of an error, or a change in nomenclature" and "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications..."

The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes involve organizational modifications and enhancements and as such, have no effect of plant equipment or the technical qualifications of plant personnel.

The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated. These changes do not affect the qualifications of personnel who operate Wolf Creek Generation Station, nor do they involve any change to the installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

The proposed revisions do not involve a significant reduction in a margin of safety. These changes do not involve any changes in overall organizational commitments. Organizational enhancements alone do not reduce any margin of safety.

Based on the above discussions it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 25, 1988

Description of amendment request: The proposed amendment would delete references to mode 5 (cold shutdown) in certain Technical Specification tables in order to gain consistency between mode requirements for the containment systems and containment isolation systems instrumentation.

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 related to this proposal states the following:

This change 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. This change merely provides consistency between existing specifications. The applicable mode deleted by this change applies to containment isolation actuation instrumentation during a mode when containtment integrity is not required. Therefore, there is no 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. This change is consistent with Standard Technical Specifications and does not introduce a new operation, configuration or analytical assumption. Therefore, there is no possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety. This change merely provides for consistency between existing specifications. The applicable mode deleted by this change applies to containment isolation actuation instrumentation during a mode when containment integrity is not required. Therefore, there is no significant reduction in the margins of safety associated with containment integrity.

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 agrees 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: Richard H. Wessman

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.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 9, 1988

Brief description of amendment request: The proposed amendment would revise the Technical Specification (TS) to allow a one-time extension in the 18 month surveillance interval for the inspection of Diesel Generator No. 1 during the refueling outage scheduled to begin September 1988. The 18 month inspection of Diesel Generator No. 1 is currently due by April 30, 1988.

Date of publication of individual notice in **Federal Register:** March 18, 1988 (53 FR 9015)

Expiration date of individual notice: April 18, 1988

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

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 request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of applications for amendment: November 30, 1987 as supplemented on March 7, 1988.

Brief description of amendment: The amendment modified the Technical Specification to permit Arkansas Power and Light to render eight of the ten main steam safety valves inoperable and reset the remaining two valves while in Mode 3 in order to carry out the 10 year hydrostatic test on the main steam system.

Date of issuance: April 6, 1988

Effective date: April 6, 1988

Amendment No.: 83

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** January 14, 1988 (53 FR 968) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russelville, Arkansas 72801

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 1, 1986 as supplemented on September 18, 1987

Brief Description of amendment: The amendment modified paragraph 3.G of the license to require compliance with the amended Physical Security Plan. The Plan was amended to conform to the requirements of 10 CFR 73.55 consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: March 28, 1988

Effective date: Immediately

Amendment No.: 115

Facility Operating License No. DPR-35: Amendment revised the license.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5486) The Commission's related evaluation on the amendment is contained in a Safety Evaluation Report dated March 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Dates of application for amendment: September 29, 1987, as supplemented November 24, 1987

Brief description of amendment: The amendment changes the Technical Specifications to lower the reactor water level setpoints for the isolation of the Group 1 primary containment isolation valves from low level 2 to low level 3 and to correct the existing master trip unit numbers to make them agree with current plant convention.

Date of issuance: April 1, 1988

Effective date: April 1, 1988

Amendment No.: 146

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 4778) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 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 Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: March 5, 1986 and December 17, 1987

Brief description of amendments: Revision to Table 4.4.6.1.3-1 to allow staggered and varied schedule for removing Reactor Vessel Surveillance Capsules and addition to Technical Specification 4.4.6.1.3 to calculate cumulative effective full power years at least once every 18 months to support the reactor vessel material surveillance test.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment Nos.: 117 and 147

Facility Operating Licenses Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18677) and February 24, 1988 (53 FR 5487) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 4, 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. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: December 10, 1987

Brief description of amendment: The amendment revises Technical Specification (TS) Tables 3.3.5.2-1 and 4.3.5.2-1 to reflect changed equipment numbers to comply with 10 CFR Part 50, Appendix R, Alternative Shutdown Capabilities.

Date of issuance: April 7, 1988

Effective date: April 7, 1988

Amendment No.: 148

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 10, 1988 (53 FR 3952) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 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. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: September 4, 1987

Brief description of amendment: Amendment incorporates operating limits for all fuel types for Cycle 8 operation.

Date of issuance: April 8, 1988

Effective date: April 8, 1988

Amendment No.: 149

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2310) This amendment grants a portion of the licensee's request. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 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

Dates of application for amendment: May 26, 1987 as supplemented November 2, 1987

Description of amendment: The amendment modifies Specification 5.3 of the Technical Specifications to allow only storage and handling of fuel elements having a maximum fuel enrichment of 4.2 weight percent uranium-235

Date of issuance: April 7, 1988

Effective date: April 7, 1988

Amendment No. 5

Facility Operating License No. NPF-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47779) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1988.

No significant hazards consideration comments received: No

Attorney for the Licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: May 20, 1987

Brief description of amendments: These amendments revise the Technical Specifications to eliminate the setpoint verification in the monthly or quarterly Trip Actuating Device Operational Test for the undervoltage and underfrequency relays.

Date of issuance: April 8, 1988

Effective Date: April 8, 1988

Amendment Nos.: 16 for Byron, 7 for Braidwood

Facility Operating Licenses Nos. NPF-37, NPF-66, NPF-72, and NPF-75. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24544). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1988.

No significant hazards consideration comments received: No

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.

Commonwealth Edison Company, Docket No. 50-254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: November 17, 1987

Brief description of amendment: Amendment has incorporated changes to the Limiting Conditions for Operation, Surveillance Requirements and Basis of Technical Specification 3.4/4.4 for the Standby Liquid Control System to comply with 10 CFR 50.62 related modifications.

Date of issuance: March 28, 1988

Effective date: March 28, 1988

Amendment No.: 106

Facility Operating License Nos. DPR-29. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49221). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: December 9, 1987, amended by letter dated February 11, 1988.

Brief description of amendments: These amendments upgrade plant program for verifying existence of adequate battery capacity.

Date of issuance: March 28, 1988

Effective date: March 28, 1988

Amendment Nos.: 109 and 98

Facility Operating License Nos. DPR-39 and DPR-48: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** February 10, 1988 (53 FR 3953). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50-295, and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: May 29, 1987

Brief description of amendment: These amendments change Technical Specifications for the Low Temperature Overpressure Protection.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment Nos: 110 and 99

Facility Operating License Nos. DPR-39 and DPR-48. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 32197) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: November 19, 1988

Brief description of amendment: This amendment revises Table 4.2-1, "Minimum Frequencies for Testing, Calibrating and/or Checking Instrument Channels," such that daily heat balance calibration of the nuclear instrument is not required when the power range channels have been adjusted to maintain a 9 percent margin to the overpower trip setpoint steady-state reduced power operation.

Date of Issuance: March 28, 1988

Effective date: March 28, 1988

Amendment No.: 101

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5489). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 11, 1987.

Brief description of amendment: This amendment involves the correction of a Technical Specification by deleting a footnote from Table 4.2.1 involving sampling frequency of a safety injection tank that pertained to Cycle 5 operation which ended a few years ago.

Date of issuance: March 25, 1988

Effective date: March 25, 1988

Amendment No.: 113

Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1987 (52 FR 37545). The Commission's related evaluation of the amendment is contained in a letter to the licensee dated March 25, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 29, 1988

Brief description of amendment: The proposed amendment revises the Fermi-2 Technical Specification to add isolation valves for the primary containment radiation monitor.

Date of issuance: March 29, 1988

Effective date: March 29, 1988

Amendment No.: 17

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5489) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 2, 1986, and September 25, 1987

Brief description of amendments: The amendments modified paragraphs 2.E. of the licenses to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: March 28, 1988

Effective date: March 28, 1988

Amendment Nos.: 79 and 60

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the operating licenses.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5490) The Commission's related evaluation of the amendments is contained in a Safeguards Evaluation dated March 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: January 20, 1988.

Brief description of amendment: The amendment increased the maximum U-235 enrichment contained in unirradiated fuel stored in the new fuel storage racks from 4.0 to 4.5 weight percent.

Date of Issuance: April 5, 1988

Effective Date: April 5, 1988

Amendment No.: 92

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5490). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 18, 1987 as supplemented March 11, 1988

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to increase the leak detection setpoints and allowable values for the reactor water cleanup (RWCU) system heat exchanger room ambient and differential temperatures and decrease the reactor core isolation cooling (RCIC) system isolation trip setpoint and allowable value for the residual heat removal (RHR)/RCIC steam line flow-high.

Date of issuance: April 5, 1988

Effective date: April 5, 1988

Amendment No.: 19

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29919) The March 11, 1988 submittal 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 April 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 10, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by adding the requirement of having two emergency core cooling system subsystems operable when the reactor coolant system average temperature is greater than or equal to 500° F.

Date of issuance: March 30, 1988

Effective date: March 30, 1988

Amendment No.: 34

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 13, 1988 (53 FR 829) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 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

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 28, 1988

Brief description of amendment: The amendment revised the Technical Specifications by allowing a further reduction in shutdown cooling flow during Mode 6 (refueling) to 2000 gpm, 375 hours after reactor shutdown.

Date of issuance: April 1, 1988

Effective date: April 1, 1988

Amendment No.: 35

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5491) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 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 14, 1987 and January 21, 1988.

Brief description of amendment: The amendment changed the Technical Specifications to permit installation of Lead Test Assembly fuel assemblies and control blades under the provisions of 10 CFR 50.59.

Date of issuance: April 1, 1988

Effective date: April 1, 1988

Amendment No.: 118

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1988 (53 FR 6212) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: January 21, 1988

Brief description of amendment: This amendment revises the Technical Specification Table 3.2.7 to delete Main Steam Warmup Valves. These valves are being removed from the plant because they are not required.

Date of issuance: March 25, 1988

Effective date: March 25, 1988

Amendment No.: 96

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5492) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: May 26, 1987

Brief description of amendment: The Technical Specification change will correct the point of reference for measuring the nearest site boundary from the reactor building to the elevated stack. The change is consistent with the Unit 2 and 3 Technical Specifications and the design basis pathway calculations.

Date of issuance: March 28, 1988

Effective date: March 28, 1988

Amendment No.: 16

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29923). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 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. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut Date of applications for amendments: December 23, 1987 and February 3, 1988

Brief description of amendment: The amendment revises the Technical Specifications (TS) to delete the chlorine detection system from TS 3/4.3.3.6. In addition, the amendment revises TS Table 3.9-1, "Access Doors to Spent Fuel Pool Area," to reflect the installation of a new access door to the spent fuel pool area.

Date of issuance: March 28, 1988

Effective date: March 28, 1988

Amendment No.: 127

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5493) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut 06385.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 13, 1987

Brief description of amendments: The amendments revised the Standby Gas Treatment System Action Statement.

Date of issuance: March 28, 1988

Effective date: March 28, 1988

Amendment Nos. 76 and 41

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26595) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 7, 1987

Brief description of amendments: These amendments revised the Susquehanna Steam Electric Station, Units 1 and 2, Technical Specifications Sections 3.0.4, 4.0.3, and 4.0.4 regarding operational conditions in response to Generic Letter 87-09.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment Nos.: 78 and 43

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49230) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: November 13, 1987

Brief description of amendment: The amendment revises Technical Specification Section 3/4.10, "Special Test Exceptions" by extending the surveillance time period for verifying control rod insertability during control rod worth and shutdown margin tests from 24 hours to 7 days.

Date of issuance: March 31, 1988

Effective date: March 31, 1988

Amendment No.: 139

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5494). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

Public Service Company of Colorado, Docket no. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: December 23, 1986 as supplemented December 17, 1987

Brief description of amendment: The amendment deletes the tabular listing of safety-related snubbers from the Technical Specifications.

Date of issuance: April 7, 1988

Effective date: April 7, 1988

Amendment No.: 59

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13348) The December 17, 1987 submittal 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 April 7, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: June 4, 1986 as superseded and supplemented by letters dated November 21 and December 18, 1986 and February 20, 1987. The supplemental letters of March 19, May 15, and July 13, 1987 provided additional information in support of the proposed changes and were not of a substantive nature.

Brief description of amendment: The amendment revised Section 3/4.6.1.8 to permit the operation of the valves in one containment purge supply line and one containment purge exhaust line and a six-inch nitrogen supply valve for up to 120 hours in a 365 day period, for pre-purge cleanup, inerting, deinerting or pressure control of the primary containment during plant Operational Conditions 1, 2, and 3. Additionally, it revises Table 3.6.3-1 to reflect a decrease in the maximum isolation time for the purge and supply valves.

Date of issuance: March 30, 1988

Effective date: March 30, 1988

Amendment No. 16

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9582) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Rochester Gas & Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Plant, Wayne County, New York

Date of application for amendment: November 21, 1986 and August 18, 1987

Brief description of amendment: The amendment modified paragraph 2.E of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: March 28, 1988

Effective date: March 28, 1988

Amendment No.: 26

Facility Operating License No. DPR-18: This amendment revised the license.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5496) The Commission's related evaluation of the amendment is contained in a letter to Rochester Gas & Electric Company dated March 28, 1988 and a Safeguards Evaluation Report dated March 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: June 30, 1987, as supplemented October 3, December 23, 1987, January 11, 1988 and February 11, 1988.

Brief description of amendment: The amendment revised the Technical Specifications by (1) reducing the lower limits of detection for liquid radioactive effluents, (2) changing requirements to match changes in the effluent systems, (3) clarifying certain existing requirements and (4) improving consistency with the Standard Technical Specifications.

Date of issuance: March 17, 1988

Effective date: Within 30 days of issuance or prior to reactor criticality following the 1986/87 outage, whichever occurs first.

Amendment No.: 98

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 28, 1987 (52 FR 48889). Supplemental information, which was not referenced in the December 28, 1987 **Federal Register** notice, was submitted on December 23, 1987, January 11, 1988 and February 11, 1988. These three submittals were made to incorporate NRC staff comments following evaluation of the licensee's initial submittals. The changes included: (1) more restrictive release criteria based on the staff's more conservative evaluation. (2) terminology changes, and (3) administrative changes and clarifications. The changes submitted on December 23, 1987, January 11, 1988 and February 11, 1988 did not alter the description of the proposed amendment as published in the Decemeber 28, 1987 **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 1988

No significant hazards consideratior comments received: No

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

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: April 8, 1987 (TS 87-03)

Brief description of amendments: The amendments revise the Technical Specifications to define the operability and surveillance requirements for the residual heat removal spray trains.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment Nos.: 69 and 61

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29929) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 22, 1987

Brief description of amendments: The amendments modify North Anna Technical Specifications 4.8.1.1.3 and 4.8.2.3.2, which address the surveillance requirements for the emergency diesel generator (EDG) and station batteries. The changes result in technical specification requirements that are consistent with IEEE 450-1980, "Recommended Practice for Maintenance, Testing, and Replacement of Large Lead Storage Batteries for Generating Stations and Substations," Regulatory Guide 1.129, "Maintenance, Testing, and Replacement of Large Lead Storage Batteries for Nuclear Power Plants," and NRC-approved Westinghouse Standard Technical Specifications, Rev. 4. Additionally, these changes are consistent with the manufacturer's recommendations for operating station batteries.

Date of issuance: March 25, 1988

Effective date: March 25, 1988

Amendment Nos.: 97 and 84

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47796) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: May 27, 1987

Brief description of amendments: The amendments revised the NA-1&2 TS by placing the hydrogen recombiner containment isolation valves under administrative control in order to permit functional testing of the hydrogen recombiner in Modes 1 through 4.

Date of issuance: March 29, 1988

Effective date: Within 14 days from the date of issuance.

Amendment Nos.: 98 and 85

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26599). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

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 operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated

Unless otherwise indicated, the Commission has determined that these

amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(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 May 20, 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).

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: April 5, 1988

Brief description of amendment: This amendment revised Technical Specification Figures 3.17-1A and 3.17-1B, "Axial Offset," and Section 3.17.2, "Linear Heat Generation Rate". The change reduced the Linear Heat Generation Rate by approximately 1kW/ft with a corresponding reduction in the axial offset limits for four-loop operation.

Date of Issuance: April 8, 1988

Effective date: April 8, 1988

Amendment No.: 102

Facility Operating License No. DPR-61. 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 April 8, 1988.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 14th day of April, 1988.

For the Nuclear Regulatory Commission

Bruce A. Boger,

Acting Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 88-8500 Filed 4-19-88; 8:45 am]

BILLING CODE 7590-01-D

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 5–7, 1988, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the Federal Register on March 22, 1988.

Thursday, May 5, 1988

8:30 A.M.–8:45 A.M.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 A.M.–12:00 Noon: Fire Risk Scoping Study (Open)—Discuss report by Sandia National Laboratory regarding the fire risk scoping study of nuclear power plants.

1:00 P.M.–4:00 P.M.: Babcock & Wilcox Nuclear Power Plants (Open)—Review B&W Owners' Group safety reassessment of B&W water-cooled nuclear power plants.

4:15 P.M.–5:15 P.M.: Integrated Safety Assessment (Open)—Review NRC Staff proposed requirements for continuation of the ISAP program.

5:15 P.M.–6:30 P.M.: Thermal-Hydraulic Phenomena (Open)—Discuss proposed ACRS comments regarding NRC thermal-hydraulic research program.

Friday, May 6, 1988

8:30 A.M.–10:15 A.M.: Generic Issues (Open)—Discuss proposed prioritization of new generic issues.

10:30 A.M.–11:30 A.M.: World Association of Nuclear Operators (Open)—Briefing regarding the objectives, etc. of the World Association of Nuclear Operators.

11:30 A.M.–12:30 P.M.: Individual Plant Examination (Open)—Review proposed NRC generic letter regarding IPEs for nuclear power plants.

1:30 P.M.–3:00 P.M.: Revised ECCS Rule (Open)—Review proposed revision of 10 CFR 50.46, Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Plants.

3:15 P.M.–4:45 P.M.: Human Factors (Open)—Review proposed NRC Policy Statement regarding Professional Conduct of Nuclear Power Plant Operators.

4:45 P.M.–5:30 P.M.: Containment of Nuclear Plants (Open)—Briefing regarding the status of the NRC program to evaluate the integrity of Mark–1 containment systems to withstand severe accidents.

5:30 P.M.–6:00 P.M.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

6:00 P.M.–6:30 P.M.: Appointment of New Members (Closed)—Discuss qualifications of candidates proposed for appointment to the Committee.

This session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, May 7, 1988

8:30 A.M.–12:30 P.M.: Preparation of ACRS Reports (Open)—Discuss proposed reports to NRC regarding items considered during this meeting and a report on key design features related to advanced reactors considered during the 336th ACRS meeting.

1:30 P.M.–2:30 P.M.: Miscellaneous (Open)—Reports on and discussion of topics related to ACRS subcommittee assignments and ACRS activities including proposed revision of ACRS subcommittee assignments and membership, participation by members in meetings which are not sponsored by the ACRS, ACRS subcommittee review of the Westinghouse Advanced PWR, and the proposed revision of an NRC Regulatory Guide on Seismic Qualification of Electrical and Mechanical Components.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Date: April 15, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–8665 Filed 4–19–88; 8:45 am]

BILLING CODE 7590–01–M

Relocation of NRC Commission-Level Offices

Effective April 11, 1988, the following components of the NRC have been relocated at the agency's new office building located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland: The five NRC Commissioners, the Office of the Secretary of the Commission, Congressional Affairs staff (of the Office of Governmental and Public Affairs), and the staff of the Office of the General Counsel who were formerly located at 1717 H Street NW., Washington, DC. The mailing address for the NRC remains unchanged: U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The new telephone numbers for the Commissioners are as follows: Chairman Lando W. Zech, Jr., 301–492–1759; Commissioner Frederick M. Bernthal, 301–492–1875; Commissioner Kenneth M. Carr, 301–492–1820; Commissioner Thomas M. Roberts, 301–492–1800; and Commissioner Kenneth C. Rogers, 301–492–1855. Telephone numbers for other relocated personnel may be obtained from the NRC Operator on 301–492–7000. The newly revised NRC Telephone Directory (NUREG/BR–0046, Rev. 7) is available for purchase from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

Dated at Bethesda, Maryland, this 15th day of April 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-8666 Filed 4-19-88; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

[Docket Nos. 50-454, 50-455, 40-456, and 50-457]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 15 to Facility Operating License Nos. NPF-37 and NPF-66 issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois and Amendment No. 6 to Facility Operating License Nos. NPF-72 and NPF-75 which revised the Technical Specifications for Braidwood Station, Units 1 and 2, located in Will County, Illinois. The amendments were effective as of the date of its issuance.

The amendments add two radiation monitors for each station and add a requirement that a composite sample of sump effluent be taken prior to discharge into the circulating water system.

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.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this was published in the Federal Register on February 3, 1988 (53 FR 3091). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has performed an Environmental Assessment of the amendment and determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.32(d)(4) an environmental impact statement need not be prepared in connection with issuance of the amendment.

For further details with respect to the actions see (1) the application for amendment dated February 18, 1987, supplemented November 17, 1987 and clarified January 8, 1988, (2) Amendment No. 15 to License Nos. NPF-37 and NPF-66, (3) Amendment No. 6 to License Nos. NPF-72 and NPF-75, (4) the Commission's related Safety Evaluation and (5) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101, and at the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 25th day of March 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-8667 Filed 4-19-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DRP-38, DPR-47, and DPR-55 issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

Changes to Technical Specifications (TSs) proposed within this amendment request include: administrative changes to the Table of Contents, Limiting Conditions for Operation (LCO) of the control room pressurization and filtering system and administrative changes to Specification 3.15, and additional testing requirements for the control room pressurization and filtering system and clarifications to Specification 4.12. The proposed amendments are in response to the NRC's request for TSs on control room habitability. In NUREG-0737, "Clarification of TMI Action Plan Requirements," one of the issues, III.D.3.4, dealt with control room habitability requirements. One of the items that needed to be addressed was revisions to the Technical Specifications.

Oconee 1 and 2 have a shared control room while Oconee 3 has a separate control room. The control rooms are located in the Auxiliary Building. The Control Room Area Ventilation and Air Conditioning Systems (HVAC) are designed to maintain the environment in the Control Room, Control Room Zone, Cable Room, and Electrical Equipment Rooms with acceptable limits for the operation of unit controls as necessary for equipment and operating personnel. The Control Room Area Ventilation and Air Conditioning System consists of HVAC units which are separated and isolated from the HVAC systems of other adjacent areas. Each control room is primarily served by two large air handling units (AHU). The AHUs are 100 percent capacity and only one AHU is required to operate at a time. An AHU consists of a roughing filter, chilled water coils, and a centrifugal fan. As opposed to the Control Room Area Ventilation and Air Conditioning System, the control room pressurization and filtering system is not normally operated and would only be activated by manual operator action in the event of a radioactive or toxic gas release in the Turbine Building or Auxiliary Building only.

The licensee states that the control room pressurization and filtering system has been upgraded to meet the intent of NUREG-0737, Item III.D.3.4 (Control Room Habitability) by providing additional protection for the control room operators from the effects of accidental release of radioactive effluents and toxic gases in the Turbine Building and Auxiliary Building only. These upgrades will serve to help maintain operator doses ALARA. The main objective of the system modifications has been to pressurize the control rooms to a slightly positive differential pressure as compared to areas surrounding the control room envelope.

By May 20, 1988, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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 request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for 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 amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, 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 required that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Unit at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Darl Hood, Acting Director, project Directorate II–3; (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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

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 the factors specific in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated January 6, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 13th day of April 1988.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Project Director, Project Directorate II–3, Division of Reactor Projects—I/II.

[FR Doc. 88–8668 Filed 4–19–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–16367; 812–6794]

Dreyfus Foreign Investors GNMA Fund, L.P., et al.; Application

April 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Dreyfus Foreign Investors GNMA Fund, L.P., Dreyfus Foreign Investors U.S. Government Bond Fund, L.P., Dreyfus New Jersey Tax Exempt Bond Fund, L.P., Dreyfus Strategic Aggressive Investing, L.P., Dreyfus Strategic World Investing, L.P., Dreyfus Strategic World Revenues, L.P., Dreyfus U.S. Government Bond Fund, L.P., Dreyfus U.S. Government Intermediate Securities, L.P., Dreyfus U.S. Guaranteed Money Market Account, L.P. (the "Partnerships"), Dreyfus Partnership Management, Inc. ("DPM"), and The Dreyfus Corporation (the "Adviser").

Relevant 1940 Act Sections: Order requested pursuant to section 6(c) for determinations under the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order determining that the Independent Managing General Partners of the Partnerships and/or any person who may become a successor or additional Independent Managing General Partner would not be deemed "interested persons" of a Partnership, the Advisor of each Partnership's principal underwriter pursuant to the provisions of section 2(a)(19) of the 1940 Act solely because of such Independent Managing General Partners' status as General Partners. In addition, Applicants seek an order determining that Limited Partners who own less than a 5% equity interest in a Partnership will not be deemed "affiliated persons" (as defined in section 2(a)(3)(D) of the 1940 Act) of the Partnership or its other Partners solely by reason of their status as Limited Partners of a Partnership.

Filing date: The application was filed on July 17, 1987, and amended on December 21, 1987, March 2, 1988, and March 29, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 5, 1988. Request a hearing in writing, giving the nature of your

interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request information of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; the Partnerships, 666 Old Country Road, Garden City, New York 11530; DPM, 767 Fifth Avenue, New York, New York 10153; the Adviser, 767 Fifth Avenue, New York, New York 10153.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272–2811 or Karen L. Skidmore, Special Counsel, (202) 272–3023 (Office of Invesment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Partnership is an open-end, registered management investment company organized as a limited partnership pursuant to Delaware law. All of the Partnerships have commenced operations and have public shareholders.

2. The Adviser, registered under the Investment Advisers Act of 1940, serves as each Partnership's investment adviser; DPM, a wholly-owned subsidiary of the Adviser, takes no part in the advisory function and is not registered as an investment adviser. Dreyfus Service Corporation, a wholly–owned subsidiary of the Adviser, acts as the principal underwriter of shares representing each Partnership's limited partnership interests.

3. The Partnerships were structured as limited partnerships, rather than as corporations or business trusts, to afford each Partnership certain operational advantages in furtherance of its investment objective, while enabling each Partnership and its partners (the "Partners") to receive, in effect, the "pass through" tax treatment typically available to mutual funds and their shareholders.

4. Each Partnership consists of two Partners: general partners ("General Partners") and limited partners ("Limited Partners"). The General Partners include a number of individuals (the "Managing General Partners") and one corporate General Partner, DPM (the "Non-Managing General Partner"). Only individuals may serve as Managing General Partners. Certain of the Managing General Partners (the "Independent Managing General Partners") are unaffiliated with DPM, the Adviser and each Partnership's principal underwriter. Each Partnership currently has five Managing General Partners of which three, constituting a majority, serve as Independent Managing General Partners. The Managing General Partners perform the same functions for the Partnerships as directors of a corporate mutual fund. The Managing General Partners have complete and exclusive control over the management, conduct and operation of each Partnership's business. The Independent Managing General Partners act as the equivalent of directors who are not "interested persons" as defined in section 2(a)(19) of the 1940 Act with respect to each Partnership.

5. A General Partner is entitled to indemnification from the Partnership against liabilities and expenses to which he may be subject in his capacity as a General Partner, so long as such liabilities and expenses were not the result of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of such General Partner's office. In addition, each Partnership will be bound by the SEC's policy on indemnification. Each Partnership Agreement permits the Partnerships to obtain liability insurance to cover the General Partners, including the Independent Managing General Partners, against liabilities and expenses to which they may be subject in their capacity as General Partners. Limited Partners are not liable for the debts or obligations of the Partnership except that Limited Partners may be liable to the Partnership to the extent provided by the Delaware Revised Uniform Limited Partnership Act, which provides that Limited Partners may be liable to the extent of distributions to them constituting a return of all or a part of their capital contributions, potentially with interest. Each Partnership may carry insurance in such amounts as the Managing General Partners consider reasonable to cover potential liabilities of the Partnership and the Managing General Partners will periodically consider the question of the appropriateness of obtaining errors and omissions insurance for each Partnership.

6. Under the terms of the Partnership Agreement, the Limited Partners do not have the right to take part in the control of the Partnership's business, but they may exercise the right to vote on matters requiring approval under the 1940 Act and on certain other matters.

Applicants' Legal Conclusions

1. Applicants have operated the Partnerships under the assumption and opinion that the Independent Managing General Partners are not partners of the Adviser or the principal underwriter and thus should not be deemed to be "interested persons" by reason of their service as Managing General Partners. Applicants have relied upon this interpretation to date, recognize that the relief requested will have exemptive effect only from the date of grant and will not constitute retroactive authority for actions previously taken, including compliance with section 10 of the 1940 Act. Applicants acknowledge that such interpretation is based upon their analysis of the law. Under section 2(a)(3), each Partner might be deemed an affiliated person of the Partnership, the Adviser and the principal underwriter. If the Independent Managing General Partners are deemed to be affiliated persons of the Partnership, the Adviser and the principal underwriter, then each would be an interested person of the Partnership, the Adviser and the principal underwriter under subparagraphs 2(a)(19)(A) and 2(a)(19)(B) of the 1940 Act.

2. To obtain assurance that the Partnership can comply with the requirements of the Act relating to an investment company's non-interested directors, Applicants seek an order under section 2(a)(19) of the 1940 Act determining that Independent Managing General Partners and/or any person who may become a successor or additional Independent Managing General Partner will not be considered interested persons of a Partnership, the Adviser or the principal underwriter solely because of their status as General Partner. DPM agrees, as a condition to the order, to fulfill its obligation under each Partnership Agreement to contribute to each Partnership through the purchase of shares of limited partnership interests from time to time an aggregate amount sufficient to enable the General Partners to own, as a group, not less than 1% of the shares outstanding. Each Limited Partner, as a Partner or Co-partner of the Partnership and each other Partner of the Partnership, could be deemed to be an affiliated person of the Partnership as well as of each of the Limited Partner and General Partners merely by virtue of having purchased shares of a Partnership and having been admitted as a Limited Partner.

3. Applicants further request that the Commission, pursuant to section 6(c),

determine that any Limited Partner not be deemed to be an "affiliated person," under section 2(a)(3)(D) of the 1940 Act, of a Partnership, any other Limited Partners of the Partnership and any of the General Partners of the Partnership solely because such Limited Partner is a Partner of a Partnership holding less than a 5% equity interest.

Applicants' Condition

Applicants agree that if the order is granted, such order will be expressly conditioned on the Applicants' compliance with the representations included in the Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-8652 Files 4-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16364/File No. 812-6972]

The Mutual Life Insurance Company of New York, et al.; Application for Exemption

Date: April 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Mutual Life Insurance Company of New York ("MONY") and The MONY Variable Account-C (the foregoing hereinafter collectively referred to as "Applicants").

Relevant 1940 Act Sections and Rules: Exemptions requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the Act.

Summary of Application: Applicants seek an order to permit the Insurer to deduct mortality and expense risk charges from the assets of the Account in connection with a variable annuity contract ("Contract").

Filing Date: The application was filed on January 27, 1988 and amended on April 4, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 9, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Staff Attorney (202) 272-2622 or Lewis B. Reich, Special Counsel (202) 272-2061 (Office of Insurance Products & Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. MONY is a mutual life insurance company organized under the laws of New York. On December 6, 1987, the company established the MONY Variable Account-C under New York insurance law as a separate investment account ("Account"). A registration statement on Form N-4 was filed on behalf of MONY and the Account on January 27, 1988. MONY, a registered broker-dealer and a member of the National Association of Securities Dealers, is the principal underwriter for the Contracts.

2. There are currently three Sub-Accounts within the Account, each of which will invest only in a corresponding portfolio of MONY Series Fund, Inc. (the "Fund"), an open-end, management investment company registered under the Investment Company Act of 1940.

3. On each contract anniversary prior to the annuity purchase date, MONY will deduct an annual contract charge from the participant's accumulation account to reimburse MONY for administrative expenses relating to the maintenance of the Contract. The charge is currently $30, but MONY may in the future change the amount of the charge, not to exceed $50.

4. Applicants request exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to deduct from the Account a daily mortality and expense risk charge equal to an effective annual rate of up to 1.25% of the net assets attributable to the Contract. Of the 1.25% charge, .80% is for assuming mortality risks and .45% is for assuming expense risks.

5. Applicants state that the mortality risk assumed is that annuitants may live for a longer time than projected, and that an aggregate amount of annuity benefits greater than that projected will accordingly be payable. In making this projection, MONY has used the mortality rates from the 1983 GAM (Group Annuity Mortality Table). The expense risk assumed is that expenses incurred in issuing and administering the Contract will exceed the administrative charges provided in the Contract.

6. Applicants represent that the mortality and expense risk charge of 1.25% is reasonable in amount and within the range of industry practice for comparable annuity contracts issued by other insurance companies. This representation is based on MONY's analysis of publicly available information about such other contracts, taking into consideration the particular annuity features of the comparable contracts, including such factors as current charge levels, annuity rate guarantees, the manner in which the charges are imposed, and the markets in which the Contract will be offered.

7. MONY has incorporated the identity of the products analyzed and their analyses, including their methodology and results, into a memorandum which they will maintain as long as there is a Contract outstanding. The memorandum will be available to the Commission or its staff upon request.

8. Applicants represent that if the mortality assumptions used should prove to be insufficient to cover the actual cost of the mortality risk undertaken, MONY will absorb the resulting loss by transferring funds from its general corporate surplus to the appropriate Subaccounts of the Account. Conversely, if the mortality assumptions used should prove to be more than sufficient, the resulting excess will be retained by MONY.

9. If administrative expenses exceed the administrative component of the risk charge, MONY will pay the excess out of its general corporate surplus.

10. Conversely, while the expense component of the risk charge is not designed to increase MONY's surplus, if the risk charge is more than sufficient to meet administrative expenses, an increase in surplus will result.

11. Applicants represent that there is a reasonable likelihood that the distribution financing arrangement of the Account will benefit the Account and the contractholders, and undertake to maintain and make available to the Commission upon request a memorandum setting forth the basis for this conclusion.

12. MONY also represents that the assets of the Account will be invested

only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 of the Act, to have such plan formulated and approved by a board of directors or trustees, the majority of whom are not "interested persons" of the management company within the meaning of Section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–8653 Filed 4–19–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24623]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 14, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 9, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified on any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70–7509)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its subsidiaries, Seneca Resources Corporation ("Seneca") and Empire Exploration, Inc. ("Empire"), 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 45 and 50(a)(5) thereunder.

National proposes to issue and sell prior to April 30, 1990, in one or more transactions pursuant to Rule 415 under the Securities Act of 1933, as amended, an aggregate of not to exceed two million authorized but unissued shares of its common stock, no par value ("Common Stock"). The proceeds from the issuance and sale of Common Stock will be contributed to the capital of Seneca and Empire for the purpose of reducing borrowings under Seneca's and/or Empire's credit lines.

National states that in light of current market conditions, the fact that the market for National's common stock is believed to consist of a limited number of small institutional investors, the need for a large retail effort to attract many buyers and the inherent time delays associated with competitive bidding, the interest of National's investors, consumers and the public require National to utilize the marketing capability of a single comprehensive underwriting group. National has requested an exception from the Act's competitive bidding requirements pursuant to Rule 50(a)(5), and authority to undertake negotiations with respect to the issuance and sale of the Common Stock. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–8654 Filed 4–19–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25590; File No. SR–NYSE–88–10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc.

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 April 5, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for seven months its pilot program allowing "monthly expirations" for stock options (the listing of series in stock options to assure that contracts covering four expiration months (including the two nearest-term expiration months) are always open for trading). Accordingly, the new termination date for the pilot program in Rule 703, Supplementary Material .20(b) is December 16, 1988.

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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1987, the Commission approved a four-month extension of the Exchange's pilot program allowing monthly expirations in stock options retroctive from January 16, 1987. (*See* Rel. No. 34–24193 (March 9, 1987); File No. SR–NYSE–87–1.) The Commission subsequently approved a one-year extension of the Exchange's pilot program, allowing the listing through May 21, 1988, of short-term series enabling monthly expirations in stock options. (*See* Rel. No. 34–24650 (June 26, 1987); File No. SR–NYSE–87–15.) in 1987, the other options exchanges also received one-year extensions of their pilot programs to allow monthly expirations of stock options and to add February and March cycle series to their programs.

The proposed rule change extends the pilot program for an additional seven months at the request of the Commission staff. This further extension is designed to give the Commission additional time to study the effect on the market of the program in light of the October market break before it considers permanent approval.

The statutory basis of the proposed rule change is section 6(b) of the Securities Exchange Act of 1934 (the "Act") in general and, in particular, paragraph (5) of section 6(b), which

requires that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes he proposed rule change imposes no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was approved by the Options Market Performance Subcommittee, comprised of members and representatives of member organizations of the Exchange. Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (a) 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 (b) as to which the self-regulatory organization consents, the Commission will:

(i) By order approve the proposed rule change, or

(ii) 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 for such filing will also be available for inspection and copying at the principa 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 May 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 14, 1988.

Shirledy E. Hollis,

Assistant Secretary.

[FR Doc. 88-8651 Filed 4-19-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on April 13, 1988

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on April 13, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on April 13, 1988.

DOT No: 3039.

OMB No: 2127-0547.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR Part 544, Insurer Reporting Requirements—Motor Vehicle Enforcement Act of 1984.

Need for Information: To aid in implementing and evaluating the provisions of the Motor Vehicle Theft Law Enforcement Act.

Proposed Use of Information: Insurance companies and rental/leasing companies are required to provide information to NHTSA on comprehensive insurance premiums charged by insurers of motor vehicles due to vehicle thefts and distribution of stolen vehicle parts.

Frequency: Annually.

Burden Estimate: 412,535 hours.

Respondents: 4,031.

Form(s): None.

DOT No: 3040.

OMB No: 2133-0027.

Administration: Maritime Administration:

Title: Capital Construction Fund and Exhibits.

Need for Information: To document eligibility for and compliance with Capital Construction Fund program requirements.

Proposed Use of Information: To determine fitness for and compliance with the provisions of the Capital Construction Fund program.

Frequency: Semi Annual, Annual.

Burden Estimate: 5,783 hours.

Respondents: Fundholders (actual and/or potential).

Form(s): N/A.

DOT No: 3041.
OMB No: 2115–0548.
Administration: U.S. Coast Guard.
Title: Vital System Automation.
Need for Information: This information is needed to ensure safety of life at sea; to ensure that U.S. Flag vessels conform to the automation requirement of the 1981 Amendments to the International Convention for the Safety of Life at Sea, 1974) (SOLAS '74); and to facilitate delegation of automation evaluation to the American Bureau of Shipping (ABS).
Proposed Use of Information: The Coast Guard uses the information to determine compliance with the proposed safety regulations and to evaluate the necessary minimum manning consistent with the safe operation of the vessel.
Frequency: On occasion.
Burden Estimate: 630.
Respondents: Vessel Designers, shipyards, manufacturers, owners and crewmembers.
Form(s): N/A.

DOT No: 3042.
OMB No: 2115–0504.
Administration: U.S. Coast Guard.
Title: Tank Vessel Examination Letter, Certificate of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records and Shipping Papers.
Need for Information: This information collection requirement is needed to enable the Coast Guard to fulfill its responsibilities of ensuring maritime safety.
Proposed Use of Information: Coast Guard uses this information as a means to indicate compliance with safety standards and regulations.
Frequency: On occasion.
Burden Estimate: 22202.
Respondents: Some owners/operators of large merchant vessels and all foreign flag tankers calling at U.S. ports.
Form(s): CG–840S–1 and CG–840S–2.
DOT No: 3043.
OMB No: 2115–0037.
Administration: U.S. Coast Guard.
Title: Importation of Noncomplying Recreational Boats and Products.
Need for Information: This information collection requirement is needed by both the Coast Guard and the U.S. Customs to determine who is importing products which do not comply with federal safety standards.
Proposed Use of Information: The information is used to monitor the importation of products which do not comply. Also, the Coast Guard uses the information to determine what company or individual in the U.S. would be responsible for notifying purchasers and correcting defects which create a substantial risk of personal injury to the public.
Frequency: On occasion.
Burden Estimate: 500.
Respondents: Importers of recreational boats and associated equipment.
Form(s): CG–5096.

DOT No: 3044.
OMB NO: 2115–0528.
Administration: U.S. Coast Guard.
Title: Financial Responsibility for Water Pollution.
Need for Information: This information collection requirement is needed to ensure that the statutory requirements of 33 U.S.C. 1321(p) are complied with.
Proposed Use of Information: Coast Guard will use the information to ensure that owners and operators of vessels over 300 gross registered tons, using U.S. waters, have established evidence of financial responsibility as contained in the statue.
Frequency: On occasion.
Burden Estimate: 1884.
Respondents: Owners/operators of vessels over 300 tons.
Forms: CG–5358–8, GC–5358–10.

DOT No: 3045.
OMB No: 2106–0003.
Administration: Department of Transportation/OST.
Title: Part 291—Domestic Cargo Transportation.
Need for Information: To establish the fitness of carriers seeking to provide domestic all-cargo air service.
Proposed Use of Information: To determine whether carriers should be authorized to engage in domestic all-cargo service.
Frequency: On occasion when seeking authority to operate under section 418 of the Federal Aviation Act.
Burden Estimate: 400.
Respondents: U.S. Air Carriers.
Form(s): None.

DOT No: 3046.
OMB No: 2125–0529.
Administration: Federal Highway Administration.
Title: Preparation and Execution of the Project Agreement and Modifications.
Need for Information: To meet the requirements of section 110 of Title 23, United States Code.
Proposed Use of Information: To formally document for Federal-aid highway projects mutual responsibilities of Federal and State officials who are responsible for project approval and management.
Frequency: On Occasion.
Burden Estimate: 14,000.
Respondents: State highway agencies.
Form(s): PR–2, PR–2A, PR–2.1.

DOT No: 3047.
OMB No: 2125–0038.
Administration: Federal Highway Administration.
Title: Description of Motor Carrier Operations.
Need for Information: For FHWA to administer and enforce the Federal Motor Carrier Safety and Hazardous Materials Regulations.
Proposed Use of Information: To determine national and individual motor carrier accident statistics and rates.
Frequency: Other: If accident is reported.
Burden Estimate: 5,000.
Respondents: Motor Carriers.
Form(s): MCS–137.

DOT No: 3048.
OMB No: 2115–0025.
Administration: U.S. Coast Guard.
Title: Oil Record Book for Ships.
Need for Information: This information collection requirement is needed to enable the Coast Guard to meet its statutory requirements for preventing oil pollution of the sea.
Proposed Use of Information: Coast Guard uses this information to identify potential or actual violations of MARPOL 73/78 and the Act to Prevent Pollution from Ships.
Frequency: On occasion.
Burden Estimate: 17,033.
Respondents: Operators/owners of tankers and nontankers.
Form(s): CG–4601.

DOT No: 3049.
OMB No: 2115–0017.
Administration: U.S. Coast Guard.
Title: Application for Approval of Marine Event.
Need for Information: This information collection requirement is needed to provide effective control over regattas and marine parades performed on navigable waters of the U.S..
Proposed Use of Information: The Coast Guard uses the information to evaluate the impact of the event on the environment and to determine the type and degree of supervision or assistance needed to protect other life and property in the area.
Frequency: On Occasion.
Burden Estimate: 4,000.
Respondents: Applicant for marine parades or regattas.
Form(s): CG–4423.

DOT No: 3050.
OMB No: New.
Administration: Maritime Administration.
Title: Approval of Underwriters for Marine Hull Insurance.
Need for Information: To document compliance with 46 CFR 249.

Proposed Use of Information: To evaluate nature and extent of compliance with these new regulations.
Frequency: On occasion, Annually.
Burden Estimate: 66 hours.
Respondents: Foreign and Domestic Marine Hull Insurance Underwriters.
Form(s): N/A.

DOT No: 3051.
OMB No: 2120–0043.
Administration: Federal Aviation Administration.
Title: Recordkeeping of Aircraft Conveyances and Security Documents.
Need/Use of Information: Approval is needed for security conveyances, such as mortgages, submitted by the public for recording against aircraft engines, propellers, and spare parts locations. The form is used for that approval.
Frequency: On occasion.
Burden Estimate: 62,467.
Respondents: State & local governments, individuals, businesses.
Form(s): AC Form 8050–41.

DOT No: 3052.
OMB No: 2115–0518.
Administration: U.S. Coast Guard.
Title: Requirements for the Installation and Use of Oil Discharge Monitoring Equipment on Tank Vessels and the Retention of Discharge Data—33 CFR 157.
Need for Information: This information collection requirement is needed to (1) determine if a vessel's construction, arrangement and equipment meet the applicable standards; and (2) verify the vessel's compliance with international treaty requirements.
Proposed Use of Information: Coast Guard uses the information to ensure that system installation complies with safety standards and that proper machinery and appliances are used in the handling and stowage of oil cargoes.
Frequency: On occasion.
Burden Estimate: 963.
Respondents: Tank vessel owners and operators.
Form(s):

DOT No: 3053.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Pre-Employment Inquiries Data.
Need for Information: The FAA is under a Congressional mandate to increase the number of full-time Air Traffic Control Specialists. We need to collect the information to begin an accelerated hiring.
Proposed Use of Information: The information will be used to collect information quickly for preliminary investigation of applicants for Air Traffic Controller Positions.
Frequency: One time.
Burden Estimate: 300.
Respondents: Individuals.
Form(s): FAA Form 1600–58.

DOT No: 3054.
OMB No: 2130–0017.
Administration: Federal Railroad Administration.
Title: U.S. DOT-AAR Crossing Inventory Form.
Need for Information: This is the only National Inventory of Grade Crossing Information.
Proposed Use of Information: This voluntary information is used to evaluate causes of grade crossing accidents and to evaluate grade crossing improvements.
Frequency: On Occasion.
Burden Estimate: 2,638 hours.
Respondents: Railroads and States.
Form(s): FRA–F–6180.71.

DOT No.: 3055.
OMB No.: 2130–0010.
Administration: Federal Railroad Administration.
Title: Designation of Qualified Persons (Track) and Record of Results of Track Inspections.
Need for Information: To assure safe passage of trains and compliance with Track Safety Standards.
Proposed Use of Information: Records are required to assure that inspections are made by qualified persons and that railroads are in compliance with prescribed safety standards.
Frequency: Recordkeeping.
Burden Estimate: 1,764,800 hours.
Respondents: Railroads.
Form(s): None.

DOT No.: 3056.
OMB No.: 2130–0524.
Administration: Federal Railroad Administration.
Title: Transmission of Train Orders by Radio.
Need for Information: To assure safe operating practices in the use of radio communications in railroad operations.
Proposed Use of Information: FRA uses this information to assure safe uniform procedures covering the use of radio phone technology in railroad operations.
Frequency: Recordkeeping.
Burden Estimate: 240,000 hours.
Respondents: Railroads.
Form(s): None.

DOT No.: 3057.
OMB No.: 2125–0010.
Administration: Federal Highway Administration.
Title: Bid Price Data.
Need for Information: For FHWA to monitor the changes in purchasing power of the Federal-aid dollar and for FHWA to justify funding levels of recommendations to Congress.
Proposed Use of Information: To produce the national FHWA bid price index and related statistics used as an indicator of price trends.
Frequency: On Occasion.
Burden Estimate: 576.
Respondents: State highway agencies.
Form(s): FHWA–45.

DOT No.: 3058.
OMB No.: 2127–0043.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR Part 566, Manufacturer identification.
Need for Information: To identify manufacturers in the event of a recall.
Proposed Use of Information: Manufacturers of motor vehicle and/or motor vehicle equipment are required to submit their names, addressed, and a brief summary of the type of vehicle or equipment they manufacture to NHTSA. NHTSA uses the information to locate manufacturers in the event of a recall.
Frequency: On Occasion.
Burden Estimate: 25 hours.
Respondents: 100.
Form(s): None.

DOT No.: 3059.
OMB No.: 2106–0033.
Administration: Department of Transportation/OST.
Title: Charter Trips by Foreign Air Carriers (14 CFR Part 212).
Need for Information: To establish the terms, conditions and limitations applicable to foreign air carriers.
Proposed Use of Information: Monitor foreign air carrier commercial charter operations to and from the United States, and its territories.
Frequency: On Onccasion.
Burden Estimate: $1,813.
Respondents: Foreign air carriers.
Form(s): OST Form 4540.

DOT No.: 3060.
OMB No.: 2106–0030.
Administration: Department of Transportation.
Title: Certificate of Insurance, Air Taxi Operator Policies of Insurance for Aircraft Bodily Injury and Property Damage Liability.
Need for Information: To protect the public's right to recover losses incurred in accidents involving air taxi operators.
Proposed Use of Information: To assure that air taxi operators maintain the prescribed minimum liability insurance coverage.
Frequency: As necesary, when policies are renewed or modified.
Burden Estimate: $55,500.
Respondents: Aviation insuranc underwriters, brokers and agents

Form(s): OST Form 4521.

DOT No.: 3061.

OMB No.: 2106–0023.

Administration: Department of Transportation/OST/P/Ofc of Air Carrier Fitness Division.

Title: Part 201 Applications for Certificates of Public Convenience and Necessity.

Need for Information: Required to issue a certificate of public convenience and necessity for carrier to engage in air transportation operations.

Proposed Use of Information: Required to determine the nature and scope of requested authority.

Frequency: As needed.

Burden Estimate: $1,240.

Respondents: 100.

Form(s): None

Issued in Washington, DC on April 13, 1988.

Robert J. Woods,

Director of Information, Resource Management.

[FR Doc. 88–8693 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Airport Traffic Control Tower at Bellingham, WA; Notice of Opening

Notice is hereby given that on or about May 1, 1988, an Airport Traffic Control Tower at Bellingham, Washington, will be opened. Hours of operation will be 7 a.m. to 9 p.m. local time daily, 7 days per week. This information will be reflected in the FAA Organization Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Seattle, Washington, on April 1, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–8620 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Tri-City Airport; Freeland, MI; Closing

Notice is hereby given that on or about April 19, 1988, the present Flight Service Station at Tri-City Airport, Freeland, Michigan will be closed. Services to the general of Minneapolis, Minnesota Flight Plan Area, formerly provided by this office, will be provided by the New Automated Flight Service Station in Lansing, Michigan. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Des Plaines, Illinois on April 8, 1988.

William H. Pollard,

Director, Great Lakes Region.

[FR Doc. 88–8621 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Jamestown Municipal Airport, Jamestown, ND; Closing

Notice is hereby given that on or about March 29, 1988, the Flight Service Station at Jamestown Municipal Airport, Jamestown, North Dakota was closed. Services to the general public, formerly provided by this office, are being provided by the Automated Flight Service Station in Grand Forks, North Dakota. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Des Plaines, Illinois on April 8, 1988.

William H. Pollard,

Director, Great Lakes Region.

[FR Doc. 88–8619 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–827]

Lykes Bros. Steamship Co., Inc.; Application To Provide Fully Subsidized Calls at Ports South of Jacksonville, FL, and Discharge at Ports on the North Coast of Colombia, Venezuela

Lykes Bros. Steamship Co., Inc. (Lykes) by application dated April 4, 1988, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–451, so as to permit fully subsidized calls at ports south of Jacksonville and discharge at ports on the north coast of Colombia on its Trade Route (TR) 2 (U.S. Atlantic/West Coast South America) service.

Lykes points out that Crowley Caribbean Transport has recently stopped serving the north coast of Colombia with U.S.-flag vessels from south Florida ports and consequently, there is no regular U.S.-flag liner service to the north coast of Colombia from south Florida.

Lykes proposes to fill that void with its regular U.S.-flag container/breakbulk service from the U.S. Atlantic coast to Central and South America, including the north coast of Colombia. Lykes advises that the proposed fully subsidized service would ensure the continuation of regular U.S.-flag service to that area.

In support of its request, Lykes notes that there is no subsidy impact since it would use existing vessels and it is in keeping with the purposes and policies of the Merchant Marine Act, 1936, as amended (Act), since the proposed port calls will ensure that more cargo will move on U.S.-flag vessels. Additionally, Lykes certifies that the vessel operations to be subsidized will be conducted in a manner which will not preclude Lykes from earning at least 50 percent of its inbound gross freight revenue and at least 50 percent of its outbound gross freight revenue for the service covered by the application from carriage of competitive cargo.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on May 13, 1988.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Date: April 15, 1988.

James E. Saari,

Secretary.

[FR Doc. 88–8678 Filed 4–19–88; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 9–88]

Treasury Notes, Series F–1995

Washington, April 13, 1988.

The Secretary announced on April 12, 1988, that the interest rate on the notes designated Series F–1995, described in Department Circular—Public Debt Series—No. 9–88 dated April 6, 1988, will be 8⅜ percent. Interest on the notes will be payable at the rate of 8⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–8624 Filed 4–19–88; 8:45 am]

BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 76
Wednesday, April 20, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 7:32 a.m. on Friday, April 15, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 15, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-8742 Filed 4-18-88; 11:29 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 14, 1988.

TIME AND DATE: 10:00 a.m., Thursday, April 21, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Youghiogheny & Ohio Coal Company, Docket No. LAKE 86-121-R, etc. (Issues include whether the judge erred in modifying a section 104(d)(1) withdrawal order to a section 104(a)(1) citation.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150 (a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/ (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-8719 Filed 4-18-88; 11:10 am]

BILLING CODE 6735-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, April 28, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints:
   Certain Electric Power Tools, Battery Cartridges, and Battery Chargers (Document Number 1438).
5. Any items left over previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: April 12, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-8697 Filed 4-15-88; 4:47 pm]

BILLING CODE 7020-02-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, May 4, 1988.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of April, 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: April 12, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-8720 Filed 4-18-88; 11:10 am]

BILLING CODE 7550-01-M

NATIONAL TRANSPORATION SAFETY BOARD

TIME AND DATE: 9:00 a.m. Tuesday, April 26, 1988.

PLACE: Board Room (812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Highway Accident Report: Collapse of New York Thruway Bridge over the Schoharie Creek, Amsterdam, New York on April 5, 1987.
2. Aircraft Accident Report: Foster Excavating, Inc., Bell 206B Helicopter, In-Flight Collision with Trees, Alamo, California, August 3, 1986.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: April 15, 1988.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 88-8698 Filed 4-15-88; 5:08 p.m.]

BILLING CODE 7533-01-M

Federal Register

Wednesday
April 20, 1988

Part II

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3403

Small Business Innovation Research Program; Administrative Provisions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3403

Small Business Innovation Research Program; Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish Part 3403 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the U.S. Department of Agriculture's Small Business Innovation Research (SBIR) program conducted under the authority of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638) and Section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Pub. L. Number 99–591, 100 Stat. 3341.

The issuance of this rule will establish the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program.

DATE: Written comments concerning this proposed regulation are invited from interested individuals and organizations. To be considered, all relevant materials must be received on or before May 20, 1988.

ADDRESS: Written comments must be submitted to: Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 112, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251–2200. All comments received will be available for public inspection at said office on weekdays between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky, (202) 475–5024.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this rule have been approved under OMB Document Nos. 0524–0022, 0524–0025, and 0524–0026.

Classification

This rule has been received under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.212, Small Business Innovation Research (SBIR Program). For the reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, and pursuant to the Notice found at 52 FR 22831, June 16, 1987, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

This document proposes to establish Part 3403 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the U.S. Department of Agriculture's Small Business Innovation Research (SBIR) program conducted under the authority of Section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes as made applicable by section 101(a) of Pub. L. Number 99–591, 100 Stat. 3341, and the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638). This rule will establish and codify the procedures to be followed in the solicitation of competitive small business innovation research proposals, the evaluation of such proposals, and the award of grants under this program.

List of Subjects in 7 CFR Part 3403

Grants programs—agriculture, Grant administration.

It is therefore proposed to add Part 3403 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations as follows:

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

Subpart A—General Information

Sec.

Subpart B—Program Description

Subpart C—Preparation and Submission of Proposals

Subpart D—Proposal Review and Evaluation

Subpart E—Supplementary Information

Authority: 5 U.S.C. 301.

Subpart A—General Information

§ 3403.1 Applicability of regulations.

(a) The regulations of this part apply to small business innovation research grants awarded under the general authority of section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Pub. L. Number 99–591, 100 Stat. 3341, and the provisions of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638). The Small Business Innovation Development Act of 1982, as amended, mandates that each Federal agency with an annual extramural budget for

research or research and development in excess of $100 million participate in a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of its annual extramural budget for award to small business concerns for research or research and development in order to stimulate technological innovation, use small business to meet Federal research and development needs, increase private sector commercialization of innovations derived from Federal research and development, and foster and encourage minority and disadvantaged participation in technological innovation. The U.S. Department of Agriculture (USDA) will participate in this program through the issuance of competitive research grants which will be administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS).

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3403.2 Definitions.

As used in this part:

(a) "Department" means the Department of Agriculture.

(b) "Principal investigator" means a single individual designated by the grantee in the grant application and approved by the Department who is responsible for the scientific and technical direction of the project.

(c) "Grantee" means the small business concern designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(d) "Research project grant" means the award by the Department of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research topic area identified in the annual solicitation of applications.

(e) "Project" means the particular activity within the scope of one of the research topic areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(f) "Project period" means the total length of time that is approved by the Department for conducting the research project as outlined in an approved grant application.

(g) "Budget period" means the interval of time into which the project period is divided for budgetary and reporting purposes.

(h) "Awarding official" means any officer or employee of the Department who has the authority to issue or modify research project grant instruments in behalf of the Department.

(i) "Peer review group" means experts or consultants, qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications in those fields, who assemble as a group to discuss and evaluate all of the eligible proposals submitted to this program in their area of expertise.

(j) "*Ad hoc* reviewers" means experts or consultants, qualified by training and experience in particular scientific or technical fields to render expert advice on the scientific or technical merit of grant applications in those fields, who review on an individual basis one or several of the eligible proposals submitted to this program in their area of expertise and who submit to the Department written evaluations of such proposals.

(k) "Program solicitation" is a formal request for proposals whereby an agency notifies the small business community of its research or research and development needs and interests in selected areas and invites proposals from small business concerns in response to those needs.

(l) "Funding agreement" is any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

(m) "Subcontract" is any agreement, other than one involving an employer-employee relationship, entered into by a Federal Government funding agreement awardee calling for supplies or services required solely for the performance of the original funding agreement.

(n) "Research or research and development (R&D)" means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(o) "Small business" means a concern which at the time of award of phase I and phase II funding agreements meets the following criteria:

(1) Is organized for profit, independently owned or operated, is not dominant in the field in which it is proposing, has its principal place of business located in the United States, has a number of employees not exceeding 500 (full-time, part-time, temporary, or other) in all affiliated concerns owned or controlled by a single parent concern, and meets the other regulatory requirements outlined in 13 CFR Part 121. Business concerns, other than licensed investment companies, or State development companies qualifying under the Small Business Investment Act of 1958, 15 U.S.C. 661, et seq., are affiliates of one another when directly or indirectly one concern controls or has the power to control the other or third parties (or party) control or have the power to control both. Control can be exercised through common ownership, common management, and contractual relationships. The term "affiliates" is defined in greater detail in 13 CFR 121.3(a). The term "number of employees" is defined in 13 CFR 121.2(b). Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

(2) Is at least 51 percent owned, or in the case of a publicly owned business at least 51 percent of its voting stock is owned, by United States citizens or lawfully admitted permanent resident aliens.

(3) Is the primary source of employment of the principal investigator of the proposed effort at the time of award and during the conduct of the proposed research. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the small business. Primary employment with the small business applicant precludes full-time employment with another organization.

(4) Is the primary performer of the proposed research effort. Because the program is intended to increase the use of small business firms in Federal research or R&D, the term "primary performer" means that a minimum of two-thirds of the research or analytical work must be performed by the proposing organization under phase I grants. For phase II awards, a minimum of one-half of the research or analytical effort must be conducted by the proposing firm.

(p) "Minority and disadvantaged small business" is a concern:

(1) Which is at least 51 percent owned by one or more minority and

disadvantaged individuals or, in the case of any publicly owned business, one in which at least 51 percent of the voting stock is owned by one or more minority and disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

For purposes of this program, a minority and disadvantaged individual is defined as a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans.

(q) "Women-owned small business" means a concern that is at least 51 percent owned by a woman or women who also control and operate it. "Control" as used in this context means exercising the power to make policy decisions. "Operate" as used in this context means being actively involved in the day-to-day management of the concern.

(r) "United States" means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

§ 3403.3 Eligibility requirements.

(a) Each organization submitting a proposal must qualify as a small business for research purposes, must be the primary employer of the principal investigator at the time of award and during the conduct of the actual research, and must be the primary performer of the research and development effort. In addition, the work must be performed by the small business concern in the United States.

(b) Joint ventures and limited partnerships are eligible to apply for and to receive research grants under this program provided that the entity created qualifies as a small business in accordance with section 2[3] of the Small Business Act (15 U.S.C. 632) and as defined in § 3403.2(o) of this part.

Subpart B—Program Description

§ 3403.4 Three-phase program.

The Small Business Innovation Research program will be carried out in three separate phases described below. The first two phases are designed to assist USDA in meeting its research and development objectives and will be supported with Federal funds. The purpose of the third phase is to pursue the commercial applications or objectives of the research carried out in phases I and II through the use of private, non-Federal funds.

(a) Phase I is the initial stage in which the scientific and technical merit and feasibility of an idea related to one of the research areas described in the program solicitation is evaluated, normally for a period not to exceed 6 months.

(b) Phase II is the principal research or research and development effort in which the results from Phase I are expanded upon and further pursued, normally for a period not to exceed 24 months. Only those small businesses previously receiving phase I awards are eligible to submit phase II proposals. For each phase I project funded the awardee may apply for a phase II award only once. Phase I awardees who for valid reasons cannot apply for phase II support in the next fiscal year funding cycle may apply for support no later than the second fiscal year funding cycle.

(c) Phase III is the pursuit of commercial objectives resulting from the Federally supported work carried out in phases I and II. This portion of the project is performed by the small business firm and privately funded by a non-Federal source through the use of a follow-on funding commitment. A follow-on funding commitment is an agreement between the small business firm and a provider of follow-on capital for a specified amount of funds to be made available to the small business for further development of their effort upon achieving certain mutually agreed upon technical objectives during phase II.

Subpart C—Preparation and Submission of Proposals

§ 3403.5 Requests for proposals.

(c) *Phase I.* A program solicitation requesting phase I proposals will be prepared each fiscal year in which funds are made available for this purpose. The solicitation will contain information sufficient to enable eligible applicants to prepare grant proposals and will include descriptions of specific research topic areas which the Department will support during the fiscal year involved, forms to be completed and submitted with proposals, and special requirements. A notice will be published in the **Federal Register** informing the public of the availability of the program solicitation.

(b) *Phase II.* For each fiscal year in which funds are made available for this purpose, the Department will send a letter requesting phase II proposals from the phase I grantees eligible to apply for phase II funding in that fiscal year. The letter will contain information sufficient to enable eligible applicants to prepare grant proposals and will include forms to be submitted with proposals as well as special requirements.

§ 3403.6 General content of proposals.

(a) The proposed research must be responsive to one of the USDA program interests stated in the research topic descriptions of the program solicitation.

(b) Proposals must cover only scientific research activities. A firm must not propose product development, technical assistance, demonstration projects, classified research, or patent applications. Literature surveys should be conducted prior to preparing proposals for submission and must not be proposed as a part of the SBIR phase I or phase II effort. Proposals principally for the development of proven concepts toward commercialization or for market research should not be submitted since such efforts are considered the responsibility of the private sector and therefore are not supported by USDA.

(c) A proposal must be limited to only one topic. The same proposal may not be submitted under more than one topic. However, an organization may submit separate proposals on different topics or different proposals on the same topic. Where similar research is discussed under more than one topic, the proposer should choose that topic whose description appears most relevant to the proposer's research concept. Duplicate proposals will be returned to the applicant without review.

(d) Phase I applicants should submit a research proposal of no more than 25 pages, including cover page, budget, and all proposal-related enclosures or attachments. The text must be prepared on only one side of the page using standard 8½" x 11" white paper, with no type smaller than elite regardless of whether it is single or double spaced. In the interest of equity to all proposers, no additional attachments, appendixes, or references beyond the 25-page limitation will be considered in the proposal evaluation process, and proposals in excess of the 25-page limitation will not be considered for review or award. In addition, supplementary materials, revisions, and/or substitutions will not be accepted after the due date for proposals. For phase II applicants, this page limitation does not apply.

§ 3403.7 Proposal format for phase I applications.

(a) *Cover sheet.* Photocopy and complete Form CSRS–667 in the program solicitation. The original of the cover sheet must at a minimum contain the pen-and-ink signatures of the proposed

principal investigator(s) and the authorized organizational official. A proposal which does not contain the signature of the authorized organizational official will not be considered a legal document and will be returned to the proposing small business firm without review. All other copies of the proposal must also contain a cover sheet, but facsimile or photocopied signatures will be accepted. The title should be a brief (80-character maximum), clear, specific designation of the research proposed. It will be used to provide information to Congress and also will be used in issuing press releases. Therefore, it should not contain highly technical words. In addition, phrases such as "investigation of" or "research on" should not be used.

(b) *Project summary.* Photocopy and complete Form CSRS–668 in the program solicitation. The technical abstract should include a brief description of the problem or opportunity, project objectives, and a description of the effort. Anticipated results and potential commercial applications of the proposed research also should be summarized in the space provided. Keywords, to be provided in the last block on the page, should characterize the most important aspects of the project. The project summary of successful proposers may be published by USDA and, therefore, should not contain proprietary information.

(c) *Technical content.* The main body of the proposal should include:

(1) *Identification and significance of the problem or opportunity.* Clearly state the specific technical problem or opportunity addressed and its importance.

(2) *Background and rationale.* Indicate the overall background and technical approach to the problem or opportunity and the part that the proposed research plays in providing needed results.

(3) *Relationship with future research or research and development.* Discuss the significance of the phase I effort in providing a foundation for the phase II R&D effort. State the anticipated results of the approach if the project is successful (phase I and II). This should address: the technical, economic, social, and other benefits to the Nation and to users of the results such as the commercial sector, the Federal Government, or other researchers; the estimated total cost of the approach relative to benefits; and, if appropriate, any specific policy issues or decisions which might be affected by the results.

(4) *Phase I technical objectives.* State the specific objectives of the phase I research or research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(5) *Phase I work plan.* This work plan must provide an explicit, detailed description of the phase I research or research and development approach. The plan should indicate the tasks to be performed as well as how and where the work will be carried out. The phase I effort should attempt to determine the technical feasibility of the proposed concept. The work plan should be linked with the technical objectives of the research and the questions the effort is designed to answer. Therefore, it should flow logically from 3403.7(c)(4) of this part. This section should constitute a substantial portion of the total proposal.

(6) *Related research or research and development.* Describe the significant research or research and development activities from relevant literature that are directly related to the proposed effort, including any conducted by the principal investigator or by the proposing firm, how it relates to the proposed effort, and any planned coordination with outside sources. The proposer must persuade reviewers that he or she is aware of related research in the selected subject.

(d) *Key personnel and bibliography.* Identify key personnel involved in the effort, including information on their directly related education and experience. For each key person, provide a chronological list of the most recent representative publications in the topic area during the preceding 5 years, including those in press. List the authors (in the same order as they appear on the paper), the full title, and the complete reference as these usually appear in journals. Where vitae are extensive, summaries that focus on most relevant experience or publications may be necessary to meet the proposal size limitation in phase I.

(e) *Facilities and equipment.* Describe the types, location, and availability of instrumentation and physical facilities necessary to carry out the work proposed. Items of equipment to be purchase must be fully justified under this section.

(f) *Consultants.* Involvement of university or other consultants in the planning and research stages of the project is permitted and may be particularly helpful to small firms which have not previously received Federal research awards. If such involvement is intended, it should be described in detail. Proposals should include letters from proposed consultants indicating willingness to serve.

(g) *Potential post application.* Briefly describe:

(1) Whether and by what means the proposed research appears to have potential commercial application; and

(2) Whether and by what means the proposed research appears to have potential use by the Federal Government.

(h) *Current and pending support.* If a proposal, substantially the same as the one being submitted, has been previously funded or is currently funded, pending, or about to be submitted to another Federal agency or to USDA in a separate action, the proposer must provide the following information:

(1) Name and address of the agency(s) to which a proposal was submitted, or will be submitted, or from which an award is expected or has been received.

(2) Date of actual or anticipated proposal submission or date of award, as appropriate.

(3) Title of proposal or award, identifying number assigned by the agency involved, and the date of program solicitation under which the proposal was submitted or the award was received.

(4) Applicable research topic area for each proposal submitted or award received.

(5) Title of research project.

(6) Name and title of principal investigator for each proposal submitted or award received.

USDA will not make awards that duplicate research funded (or to be funded) by other Federal agencies.

(i) *Cost breakdown on proposal budget.* Photocopy and complete Form CSRS–55 in the program solicitation only for the phase under which you are currently applying. (An applicant for phase I funding should not submit both phase I and II budgets.) Please note the following in completing the budget:

(1) *Salaries and wages.* Indicate the number and kind of personnel for whom salary support is sought. For key personnel, also indicate the number of work months of involvement to be supported with USDA funds (see blocks labeled "CSRS Funded Work Months").

(2) *Equipment.* Performing organizations are expected to have appropriate facilities, suitably furnished and equipped. However, items of equipment may be requested provided that they are specifically identified and adequately justified. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than 2 years and an acquisition cost of $500 or more per unit. Vesting of title to equipment purchased with funds provided under an SBIR funding agreement will be determined

by USDA. Awardees should plan to lease expensive equipment.

(3) *Travel.* The inclusion of travel will be carefully reviewed with respect to need and appropriateness for the research proposed. Foreign travel may not be included in the phase I budget.

(4) *Subcontracting limits.* Subcontracting may not exceed one-third of the research or analytical effort during phase I. In addition, subcontractors must perform their portion of the work in the United States. If subcontracting costs are anticipated, they should be indicated in block I, "All Other Direct Costs," on the budget sheet. A breakdown of subcontractual cost is required. For proposals involving subcontractual or consulting arrangements, USDA encourages the applicant to submit an agreement or letter of intent signed by the subcontractor or consulting firm's authorized organizational official.

(5) *Fee.* A reasonable fee is permitted under this program. All fees are subject to negotiation with USDA. If a fee is requested, the amount should be indicated in block I, "All Other Direct Costs," on the budget sheet.

(6) *Indirect costs.* If available, the current rate negotiated with the cognizant Federal negotiating agency should be used. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by USDA. A proposer may elect not to charge indirect costs and, instead, use all grant funds for direct costs. If a negotiated rate is used, the percentage and base should be indicated in the space allotted under item K on the budget sheet. If indirect costs are not charged, the phrase "None requested" should be written in this space.

(7) *Cost-sharing.* Cost-sharing is permitted for proposals under this program; however, cost-sharing is not required nor will it be an evaluation factor in considering the competitive merit of proposals submitted.

(j) *Research involving special considerations.* (1) If the proposed research will involve either recombinant DNA molecules or human subjects at risk, the proposal must so indicate. In the event that the project is funded, the proposer may be required to have the research plan reviewed and approved by an appropriate "Institutional Review Board" prior to commencing actual substantive work. It is suggested that proposers contact local universities, colleges, or nonprofit research organizations which have established such reviewing mechanisms to have this service performed.

(2) Guidelines to be applied and observed when conducting such research are:

(i) *Recombinant DNA Molecules.* "Guidelines for Research Involving Recombinant DNA Molecules" issued by the National Institutes of Health. (See 51 FR 16958–16985 and any subsequent revisions.)

(ii) *Human Subjects at Risk.* Guidelines issued by the Department of Health and Human Services. (See 45 CFR Part 46.)

(k) *Proprietary information.* (1) If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided the information is clearly marked by the proposer with the term "confidential proprietary information" and provided the following legend also appears in the designated area at the bottom of the proposal's cover sheet (Form CSRS–667).

For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this proposer as a result of, or in connection with, the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction is contained in pages _____ of this proposal.

(2) USDA by law is required to make the final decision as to whether the information is required to be kept in confidence.

(3) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. The proprietary information included should be limited, set off on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Also, trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be keyed and set off on separate page. Proposals or reports which set off any large amount of information may be found unacceptable by USDA.

(l) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the submission of certain organizational management and financial information to assure the responsibility of the proposer. Form CSRS–666 ("Organizational Information") and Form CSRS–665 ("Assurance of Compliance with the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964, as amended") are used for this purpose and are contained in the program solicitation. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only.

§ 3403.8 Proposal format for phase II applications.

(a) *Cover sheet.* Follow instructions found in § 3403.7(a) of this part.

(b) *Project summary.* Follow instructions found in § 3403.7(b) of this part.

(c) *Phase I results.* A synopsis of the phase I research results should be included in the phase II application. This synopsis should contain a discussion of the overall background, phase I technical approach, and feasibility conclusions.

(d) *Proposal.* Since phase II is the principal research and development effort, proposals should be more comprehensive than those submitted under phase I. However, the outline contained in § 3403.7(c) of this part should be followed, tailoring the information requested to the phase II project.

(e) *Cost breakdown on proposal budget.* (1) For phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period. Form CSRS–55, "Proposed Budget", is to be used for this purpose and may be photocopied as necessary.

(2) *Travel.* Foreign travel may be included as necessary in the phase II budget. Such a request will be reviewed with respect to need and appropriateness for the research proposed and therefore should be adequately justified in the proposal.

(3) *Subcontracting limits.* The instructions found in § 3403.7(i)(4) of this part apply to phase II proposals except that the subcontracting limit is changed from one-third to one-half of the research or analytical effort.

(f) *Organizational management information.* Each phase II awardee will be asked to submit an updated statement of financial condition.

(g) *Follow-on funding commitment.* If the proposer has obtained a contingent commitment for phase III follow-on

funding, it should be forwarded with the phase II application.

§ 3403.9 Submission of proposals.

The program solicitation for phase I proposals and the letter requesting phase II proposals will provide the deadline date for submitting proposals, the number of copies to be submitted, and the address where proposals should be mailed or delivered.

Subpart D—Proposal Review and Evaluation

§ 3403.10 Proposal review.

(a) All research grant applications will be acknowledged.

(b) Phase I and phase II proposals will be judged competitively in a two-stage process, based primarily upon scientific or technical merit. First, each proposal will be screened by USDA scientists to ensure that it is responsive to stated requirements contained in the program solicitation. Proposals found to be responsive will be technically evaluated by peer scientists knowledgeable in the appropriate scientific field using the criteria listed in §§ 3403.11 or 3403.12 of this part, as appropriate. Proposals found to be nonresponsive will be returned to the proposing firm without review.

(c) Both internal and external peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, Government, and non-profit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(d) Technical reviewers will base their conclusions and recommendations on information contained in the phase I or phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposal should be self-contained and written with the care and thoroughness accorded papers for publication.

(e) Final decisions will be made by USDA based upon the ratings assigned by reviewers and consideration of other factors, including the potential commercial application, possible duplication of other research, and critical USDA requirements, program balance, and budget limitations. In addition, the follow-on funding commitment will be a consideration for phase II proposals.

§ 3403.11. Phase I evaluation criteria.

USDA plans to select for award those proposals offering the best value to the Nation, with approximately equal consideration given to each of the following criteria except for item (1) which will receive twice the value of any of the other items:

(a) The scientific/technical quality of the phase I research plan and its relevance to the stated objectives, with special emphasis on innovativeness and originality.

(b) Importance of the problem or opportunity and anticipated benefits of the proposed research, if successful.

(c) Adequacy of the phase I objectives to show incremental progress toward proving the feasibility of approach.

(d) Qualifications of the principal investigator(s), other key staff and consultants, and the probable adequacy of available or obtainable instrumentation and facilities.

§ 3403.12 Phase II evaluation criteria.

(a) A phase II proposal may be submitted only by a phase I awardee. The phase II proposal will be reviewed for overall merit based on the following criteria with each item receiving approximately equal weight except for item (1), which will receive twice the value of any of the other items:

(1) The scientific/technical quality of the proposed research, with special emphasis on innovativeness and originality.

(2) Degree to which phase I objectives were met (as indicated in phase I final report.)

(3) The technical, economic, and/or social importance of the problem or opportunity and anticipated benefits if phase II research is successful.

(4) The adequacy of the phase II objectives to meet the problem of opportunity.

(5) The qualifications of the principal investigator(s) and other key personnel to carry out the proposed work.

(6) Reasonableness of the budget requested for the work proposed.

(b) In the event that two or more phase II proposals are of approximately equal technical merit, the follow-on funding commitment for continued development will be an important consideration. The value of the commitment will depend upon the degree of commitment made by non-Federal investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to the funding requested from USDA in phase II.

§ 3403.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR Part 1.

Subpart E—Supplementary Information

§ 3403.14 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the Federal Acquisition Regulation (48 CFR Part 31), and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

§ 3403.15 Notice of grant awards.

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Principal Investigator(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authorities under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described above.

§ 3403.16 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the Department without additional financial support for such additional period(s) as the Department determines may be necessary to complete or fulfill the purposes of an approved project. Such extension shall be conditioned upon prior request by the grantee and approval in writing by the Department.

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the Department prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb increases in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded;

(3) Result in a need or claim for the award of additional funds; or

(4) Involve transfers or expenditures of amounts requiring prior approval as set forth in the Departmental regulations or in the grant award.

§ 3403.17 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR Part 1.1—USDA implementation of Freedom of Information Act.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–102, A–110, A–87, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

48 CFR Part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 3403.18 Other conditions.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, DC, this 12th day of April, 1988.

Clare I. Harris,

Acting Administrator, Cooperative State Research Service.

[FR Doc. 88–8387 Filed 4–19–88; 8:45 am]

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federal register

Wednesday
April 20, 1988

Part III

National Aeronautics and Space Administration

48 CFR Part 1801 et al.
Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1807, 1815, 1819, 1822, 1825, 1827, 1829, 1832, 1836, 1837, 1842, 1849, 1851, 1852, 1853, and 1870

[NASA FAR Supplement Directive 85-10]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with NASA internal or administrative matters.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) Unsolicited proposals, (2) labor standards for construction contracts, (3) trade agreements act threshold, (4) prompt payment, (5) contracting officers' technical representative delegations, and (6) contractor employee air transportation. Typographical and editorial changes to improve readability and conformance with FAR drafting conventions have been made. Substantive meanings have not been altered; however, entire textual segments have been reprinted when such changes are both numerous and scattered throughout the rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no burdens on the public within the ambit of the Paper Work Reduction Work Act, as implemented at 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 1801, 1807, 1815, 1819, 1822, 1825, 1827, 1829, 1832, 1836, 1837, 1842, 1849, 1851, 1852, 1853, and 1870

Government procurement.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1801, 1807, 1815, 1819, 1822, 1825, 1827, 1829, 1832, 1836, 1837, 1842, 1849, 1851, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Subpart 1801.6 is amended by adding 1801.602-3 to read as follows:

1801.-602-3 Ratification of unauthorized commitments.

The ratifying official shall provide a copy of each ratification, including documentation that the limitations in FAR 1.602-3(c) have been satisfied, to the Assistant Administrator for Procurement (Attn.: Code HP).

PART 1807—ACQUISITION PLANNING

3. Subpart 1807.71 is amended as set forth below:

a. In 1807.7102, paragraph (c) is revised to read as follows:

1807.7102 Applicability.

* * * * *

(c) The following are monetary limitations under the Master Buy Plan procedures.

(1) $10,000,000:

(i) National Space Technology Laboratories.

(ii) Headquarters Contracts and Grants Division.

(iii) NASA Resident Office-JPL.

For the purpose of the initial Master Buy Plan submission only, the above installations not having procurements at or above the $10 million limitation will submit the three largest procurements over $5 million.

(2) $25,000,000:

(i) Ames Research Center.

(ii) Goddard Space Flight Center.

(iii) Johnson Space Center.

(iv) Kennedy Space Center.

(v) Langley Research Center.

(vi) Lewis Research Center.

(vii) Marshall Space Flight Center.

* * * * *

1807.7105 [Amended]

b. In 1807.7105, paragraph (a), the amounts "$5,000,000," "$10,000,000," and "$5,000,000," are revised to read "$10,000,000," "$25,000,000," and "$10,000,000," respectively.

c. In section 1807.7106 the introductory text and the heading to the Master Buy Plan Procedure are revised to read as follows:

1807.7106 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103-1 and 1807.7103-2, Master Buy Plans and amendments to Master Buy Plans will be prepared in the format illustrated in Table 7-1.

Table 7-1 Format Master Buy Plan Procedures.

PART 1815—CONTRACTING BY NEGOTIATION

4. Part 1815 is amended as set forth below:

a. In Subpart 1815.4, paragraph (a) of 1815.407-70 is revised to read as follows:

1815.407-70 NASA solicitation provisions.

(a) The contracting officer shall insert in requests for proposals and requests for quotations other than for information or planning purposes the provision at 1852.215-72, Restriction on Use and Disclosure of Proposal/Quotation Information (Data). (See also 1815.509-70(a)).

* * * * *

b. Subpart 1815.5 is revised to read as follows:

Subpart 1815.5—Unsolicited Proposals

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.

NASA will foster and encourage the submission of unsolicited proposals relevant to agency mission requirements by expeditious and equitable handling of all unsolicited proposals.

1815.503 General.

(a) *Submission to other agencies or JPL.* NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the express consent of the offeror. Proposals submitted to NASA shall not be transferred to JPL for

procurement without the offeror's written permission.

(b) *Transferring proposals.* When a reviewing official determines that an unsolicited proposal is not related to the mission of NASA or may be of interest to agencies in addition to NASA, the proposal control officer may identify for the offeror other agencies whose missions may bear a relationship to the subject matter of the unsolicited proposal. NASA shall not respond to an unsolicited proposal by transferring it to another agency for action without the written consent of the offeror.

(c) *Relationship to award.* All unsolicited proposals may be prepared in a similar fashion as NASA does not have separate "contract proposal" or "grant proposal" categories. An unsolicited proposal may result in the award of a contract, a grant, a cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1) applies.

1815.504 Advance guidance.

1815.504-70 Unsolicited proposal brochure.

The Office of Procurement (Code HP) is responsible for preparing for public use a brochure titled "Guidance for the Preparation and Submission of Unsolicited Proposals," which shall be provided without charge by procurement and other NASA officials in response to requests for proposal submission information. The brochure, issued pursuant to FAR 15.504, constitutes NASA's single, official, general-purpose guidance document for public use. A deviation is required for use of any modified or summarized version of the brochure or for alternate means of general dissemination of unsolicited proposal information. The Headquarters Office of Small and Disadvantaged Business Utilization (Code K) is responsible for internal distribution of the brochure. Installations and individuals should request bulk supplies from that office.

1815.505 Content of unsolicited proposals.

1815.505-70 Unsolicited renewal proposals.

Renewal proposals, i.e., those for the extension or augmentation of current contracts are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

1815.506 Agency procedures.

(a) *NASA unsolicited proposal coordinating offices.* Each NASA field installation and NASA Headquarters shall designate an organizational entity as its unsolicited proposal coordinating office for receiving and coordinating the handling and evaluation of unsolicited proposals in accordance with the policies and procedures of FAR Subpart 15.5, this Subpart 1815.5, and NHB 5800.1. Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the coordinating office to the proper installation. Field installation unsolicited proposal coordinating offices are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions. At Headquarters, responding to general inquiries from academic researchers is the responsibility of the Headquarters unsolicited proposal coordinating office while handling inquiries from all other proposers is the responsibility of the Contracts and Grants Division (Code HW).

(b) [Reserved.]

(c) *Reconsideration.* An appropriately revised submission that is responsive to comments contained in an initial determination of inadequacy under FAR 15.506-1 shall be reconsidered by NASA officials.

(d) *Information requirements.* Unsolicited proposal coordinating offices shall keep records of unsolicited proposals received and shall provide prompt status information to requestors. The records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year, the identity of the proposers and the office to which each was referred. These numbers shall be broken out by source (large business, small business, university, or nonprofit institutions).

1815.507 Contracting methods.

A "Justification for Other Than Full and Open Competition (JOFOC)" is required in accordance with FAR 6.302. See NFS 1805.202 for guidance in complying with the preaward synopsis requirement at FAR 15.507(b)(4).

1815.508 Prohibitions.

FAR 15.508(b) shall not apply to NASA; see instead 1815.508-70.

1815.508-70 NASA prohibitions.

Information (data) in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with procedures in, FAR 15.413-2 and 1815.413.

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509-70.

1815.509-70 Limited use of proposals.

(a) The provision, Restriction on Use and Disclosure of Proposal/Quotation Information (Data) at 1852.215-72, is applicable to unsolicited proposals.

(b) If an unsolicited proposal is received with a more restrictive legend than made applicable by 1815.509-70(a), the procedures of FAR 15.413-2(c) apply.

(c) Upon receipt in the coordinating office, the Government notice in FAR 15.413-2(e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with the procedures prescribed in, FAR 15.413-2(f) and 1815.413.

(e) If a request is made under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413-2(g) apply.

1815.570 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs.

c. In 1815.613-71, the introductory material to paragraph (a)(1) introductory text is revised to read as follows:

1815.613-71 Evaluation and negotiation of procurements conducted in accordance with the Source Evaluation Board Manual (NHB 5103.6).

(a) *Applicability.* (1) These procedures shall be used in all competitive negotiated procurements of $25,000,000 or more including those where the initial contract is less than $25,000,000 but where it is likely that the source selected will receive contracts for follow-on or later phases of the same project which when combined would total $25,000,000 or more. (Examples would be: options; agreements-to-agree, and later phases as in A-109 procurements.) Exceptions to the above include procurements where:

* * * * *

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

5. Part 1819 is amended as set forth below:

a. Section 1819.001 is revised to read as follows:

1819.001 Definitions.

"Small Business Specialist" means the person who—

(1) Is appointed by the Head of each NASA installation having procurement responsibilities; and

(2) Is the central point of contact for all small business and labor surplus area matters. See 1819.201(b) and (c) for a detailed description of this position. This person is synonymous with the Small and Disadvantaged Business Utilization Specialist (see FAR 19.201(d)).

b. In Subpart 1819.2, 1819.202–4 is added to read as follows:

1819.202–4 Solicitation.

The contracting officer shall include in the solicitation mailing list the names of firms submitted by SBA, unless there is a valid reason for not so doing.

1819.202–5, 1819.402, 1819.470, 1819.502–2, 1819.810 [Removed]

c. Sections 1819.202–5, 1819.402, 1819.470, 1819.502–2, and 1819.810 are removed.

d. Sections 1819.602–70 and 1819.809–1 are revised to read as follows:

1819.602–70 Reports on certificates of competency.

Small Business Specialists shall inform the Director of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K), quarterly in writing, of all certificate of competency cases initiated during the quarter and of the final disposition made on cases during the quarter, including the number and dollar value of certificates of competency issued during the period. The Small Business Specialist shall include the company name, item being procured, solicitation number, dollar value of the procurement, and date the case was submitted to SBA. In addition, the Small Business Specialist shall provide advice and data for all cases where (a) the small business concern elects not to file an application for a certificate of competency, (b) SBA declines to issue a certificate of competency, or (c) the contracting activity reverses the preaward survey activity's negative finding on responsibility, withdraws the referral to SBA and makes the award.

1819.809–1 General.

(a) *Supplies and services (including research and development).* (1) As required by FAR 19.809–1(a), the contracting officer shall prepare a Standard Form 26 for execution with the SBA. The prime contract between NASA and SBA shall include the clause at 1852.219–70, "NASA-Requested Actions (Supplies and Services)."

(2) The contracting officer shall accomplish internal NASA distribution of both the prime contract and the subcontract and provide SBA a duplicate original copy of the executed prime contract and any additional authenticated, conformed, or reproduced copies SBA requests. The SBA shall provide the contracting officer two duplicate original copies of the executed subcontract and any additional authenticated, conformed, or reproduced copies the contracting officer requests for internal NASA distribution.

(b) *Construction.* (1) Provisions of the Miller Act regarding performance and payment bonds do not apply to the prime contract between NASA and SBA but do apply to the subcontract between SBA and its subcontrctor.

(2) The prime contract between NASA and SBA shall include the clause at 1852.219–71, "NASA-Requested Actions (Construction)."

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

6. Part 1822 is amended by adding Subparts 1822.3 and 1822.4 to read as follows:

Subpart 1822.3—Contract Work Hours and Safety Standards Act

Subpart 1822.4—Labor Standards for Contracts Involving Construction

Subpart 1822.3—Contract Work Hours and Safety Standards Act

§ 1822.302 Liquidated damages and overtime pay.

Disposal of funds withheld or collected for liquidated damages shall be in accordance with direction of the Director, Industrial Relations Office (Code NR), who is the agency head's designee relative to liquidated damages under the Contract Work Hours and Safety Standards Act.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.403–4 Department of Labor regulations.

For industrial relations actions requiring communication with the Department of Labor, National Headquarters, Washington, DC (including the Administrator, Wage and Hour Division), contracting officers shall provide the appropriate information and supporting documentation to the Industrial Relations Office (Code NR), which shall make all contacts with the Department of Labor on these matters.

1822.404–3 Procedures for requesting wage determinations.

Contracting officers shall submit requests for project wage determinations to Code NR at least 55 days (70 days if possible) before issuing the solicitation.

1822.406–2 Wages, fringe benefits, and overtime.

In implementing FAR 22.406–2(b)(2), the contracting officer shall provide information to the Director, Industrial Relations Office (Code NR), who shall submit the question of cash equivalents to the Department of Labor for final determination.

1822.406–8 Investigations.

The contracting officer is responsible for conducting investigations, as provided by FAR 22.406–8(a), of labor violations relative to contracts under his/her cognizance. The agency head's designee for receiving and processing contracting officer reports of violations is the Director, Industrial Relations Office (Code NR), who, with the concurrence of the Associate General Counsel for Contracts, shall forward reports of violations to the Attorney General in accordance with FAR 22.406–8(d)(2)(iv).

1822.406–9 Withholding from or suspension of contract payments.

Disposal of funds withheld or collected for liquidated damages under the Davis-Bacon Act shall be in accordance with direction of the Director, Industrial Relations Office (Code NR).

1822.406–11 Contract terminations.

Contracting officers shall forward reports of contract or subcontract terminations for violation of labor standards clauses to the Director, Industrial Relations Office (Code NR).

who shall submit the reports in accordance with FAR 22.406–11.

1822.406–13 Semiannual enforcement reports.

Procurement Officers shall submit semiannual enforcement data within 20 days after the end of the reporting period specified in FAR 22.406–13 to the Office of Procurement (Attn: Code HP) for consolidation and submission to the Department of Labor. Negative statements are required. The Procurement Policy Division (Code HP) is the point of contract regarding data to be included in the submissions.

PART 1825—FOREIGN ACQUISITION

7. In Subpart 1825.4, 1825.402 is revised to read as follows:

1825.402 Policy.

The threshold for procurements subject to the Trade Agreements Act of 1979 is $156,000.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

8. Subpart 1827.3 is amended as set forth below:

a. Section 1827.371 is revised to read as follows:

1827.371 Definitions.

"Administrator," as used in this subpart, means the Administrator of NASA or a duly authorized representative.

"Contract," as used in this subpart, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

"Made," as used in this subpart, means conceived or first actually reduced to practice; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

"Nonprofit organization," as used in this subpart, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit-organization statute.

"Practical application," as used in this subpart, means manufacturing, in the case of a composition or product; practice, in the case of a process or method; or operation, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law and Government regulations, available to the public on reasonable terms.

"Reportable item," as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract.

"Small business firm," as used in this subpart, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3–8 for small business contractors and in 13 CFR 121.3–12 for small business contractors shall be used. See FAR Part 19.)

"Subject invention," as used in this subpart, means any reportable item that is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

1827.374–1 [Amended]

b. In 1827.374–1, paragraph (f) is removed, paragraphs (g) and (h) are redesignated (f) and (g), respectively, and newly redesignated paragraph (g) is revised to read as follows:

1827.374–1 General.

* * * * *

(g) *Licenses and assignments under contracts with nonprofit organizations.* FAR 27.304–1(h) shall apply. NASA's approving official for any assignment requested under FAR 27.304–1(h) is the Associate General Counsel (Intellectual Property). Contractors' requests should be made to the Patent Representative designated in accordance with 1827.373(e) and forwarded, with recommendation, to the Associate General Counsel (Intellectual Property) for decision.

PART 1829—TAXES

9. Part 1829 is amended as set forth below:

1829.170 [Removed]

a. In Subpart 1829.1, 1829.170 is removed.

b. Subpart 1829.2 is added to read as follows:

Subpart 1829.2—Federal Excise Taxes

1829.203 Other federal tax exemptions.

(a) Distilled spirits, and specially denatured spirits of 190 degrees proof or more, may be purchased tax-free by any United States Government agency or its contractors. To obtain alcohol tax free, the Administrator or Assistant Administrator for Procurement is responsible for filing and updating Form ATF 1444/1486, Tax-Free Spirits or Specially Denatured Spirits for Use of United States, with the Treasury Department, Bureau of Alcohol, Tobacco and Firearms, Special Operations Branch. One application shall be submitted for all of NASA's requirements. Copies of the Treasury Department certificates issued shall be furnished to all installation procurement officers.

(b) When purchasing spirits for use by Center personnel, the contracting officer shall attach a copy of the certificate to the purchase order/contract. Upon receipt of the spirits, the certificate shall be returned to the contracting officer unless future orders are anticipated.

(c) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall give the contractor a copy of the certificate to provide its vendor. Upon receipt of the spirits, the contractor shall return the certificate to the contracting officer unless future orders are anticipated. In any event, the certificate shall be returned upon completion of the contract.

PART 1832—CONTRACT FINANCING

10. Part 1832 is amended as set forth below:

a. In Subpart 1832.1, 1832.111–70 is revised to read as follows:

1832.111–70 NASA contract clause.

The contracting office shall insert the clause at 1852.232–79, Payment for On-site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis where progress payments are contemplated and pro rata payment of these costs to the contractor is appropriate.

b. Subpart 1832.9 is added to read as follows:

Subpart 1832.9—Prompt Payment

1832.908 Contract clause.

Alternate II, as authorized at FAR 32.908(c), and NASA modifications thereto shall be used in all solicitations and contracts containing the clause at FAR 52.232–25.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1836.370 [Amended]

11. In 1836.370(b), the last sentence is removed.

PART 1837—SERVICE CONTRACTING

1837.205–73 [Amended]

12. In 1837.205–73, the phrase "Associate Administrator for Management (Code N)." is revised to read "Director, General Management Division (Code NP)."

PART 1842—CONTRACT ADMINISTRATION

13. Subpart 1842.2 is amended by adding 1842.270 to read as follows:

1842.270 Contracting Officer Technical Representative (COTR) Delegations.

(a) A contracting officer may designate an appropriate Government employee to act as his or her authorized representative in administering a particular contract. If it is considered necessary, the contracting officer may designate an alternate COTR to act during short absences of the COTR; the policies and procedures for COTRs also shall apply to alternate COTRs. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses qualifications and experience commensurate with the authorities to be delegated and the nature of the contract. The contracting officer shall ensure that the duties and responsibilities delegated do not exceed the limitations at 1801.670(b).

(b) COTRs shall be designated by name and position title (but see 1801.670(b) prohibition against delegating COTR duties to a position rather than a named individual). Each COTR designation shall be in writing and shall clearly define the scope and limitations of the COTR's authority. NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to designate COTRs. The COTR delegation shall be signed by an appropriate contracting officer (see 1801.670(b)) and shall state that these duties are not redelegable and that the COTR may be personally liable for unauthorized direction. (However, this does not prohibit the COTR from having assistants for the purpose of monitoring contractor progress and gathering information.) When one individual is to act for a contracting officer on more than one contract, separate delegations shall be issued for each contract.

(c) The contracting officer shall make changes in the scope and limitations of the COTR's authority only by issuance of A new delegation. a COTR delegation shall remain in effect throughout the life of the contract unless—

(1) Cancelled in writing by an appropriate contracting officer; or

(2) Superseded by a subsequent COTR designation.

(d) A COTR shall be authorized to initiate procurement actions by use of purchase orders, to place calls or delivery orders under indefinite quantity-type contracts, indefinite delivery-type contracts, or basic ordering agreements. A COTR shall not be authorized toward, agree to, or sign any contract or modification or in any way obligate the payment of money by the Government. However, delegations may be made to construction contract COTRs to sign emergency change orders, if sufficient funds have been certified to cover the emergency change, with an estimated value not to exceed $2,500 onsite at construction sites.

(e) The contracting officer shall send the original and one copy of the COTR delegation letter to the COTR, who shall be required to acknowledge receipt by signing the original and returning it to the contracting officer. The original of the COTR delegation letter shall be filed and retained in the applicable contract file. Copies of the COTR delegation letter shall be distributed to the contractor and to each cognizant contract administration office. Acknowledgement and distribution for terminations of COTR delegations and COTR delegations that are revising duties shall follow the same rules.

PART 1849—TERMINATION OF CONTRACTS

14. In 1849.101–70, the introductory material to paragraph (a) is revised to read as follows:

1849.101–70 Appointment/Delegation.

(a) Heads of installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as one of that individual's primary functions. Such duties should include—

* * * * *

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.70—[Removed]

15. Subpart 1851.70 is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Part 1852 is amended as set forth below:

a. In 1852.103–70, paragraph (a) is revised to read as follows:

1852.103–70 Identification of Modified Provisions and Clauses.

(a) When a FAR clause or provision is included in a solicitation or contract and the NFS sets forth the exact wording of a modification, the title line shall identify the modification as shown below. This format shall be used for both incorporation by reference and when using full text.

52.232–1 Payments (APR 1984)—as modified by 1852.232–1 NASA FAR Supplement (APR 1984)

* * * * *

1852.216–7 [Amended]

b. In 1852.216–7, the sentence which reads "Paragraph (a) of the clause at FAR 52.216–7 shall be modified as specified in 1852.216–770." is removed.

1852.216–26, 1852.216–770 [Removed]

c. Sections 1852.216–26 and 1852.216–770 are removed.

d. Sections 1852.219–70 and 1852.219–71 are added, and 1852.222–70, 1852.222–71, and 1852.227–70 are revised to read as follows:

1852.219–70 NASA-requested actions (supplies and services)

As prescribed in 1819.809–1(a), insert the following clause:

NASA-Requested Actions (Supplies and Services) (April 1988)

It is agreed that the provisions of the Termination for Convenience of the Government, Changes, Disputes, and Default clauses that are included in the contract between the SBA and the subcontractor shall be invoked in appropriate cases when requested by the NASA Contracting Officer. If the SBA does not agree with the NASA Contracting Officer's request, the case shall be referred to the Assistant Administrator for Procurement, NASA Headquarters (Code H), for decision.

(End of Clause)

Alternate I (April 1988) In cost-reimbursement contracts, substitute "Termination (Cost-Reimbursement)" for "Termination for Convenience of the Government," and "Excusable Delays" for "Default" in the basic clause.

1852.219-71 NASA-requested actions (construction)

As specified in 1819.809-1(b), insert the following clause:

NASA-Requested Actions (Construction) (April 1988)

It is agreed that the provisions of the Termination for Convenience, Changes, Differing Site Conditions, Default-Damages for Delay-Time Extension, Suspension of Work, Disputes, Price Reduction, and Payments to Contractor clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the NASA Contracting Officer. If the SBA does not agree with the NASA Contracting Officer's request, the case shall be referred to the Assistant Administrator for Procurement, NASA Headquarters (Code H), for decision.

(End of Clause)

18.52.222-70 Facilities nondiscrimination notice.

As prescribed in 1822.7002(a), insert the following clause:

Facilities Nondiscrimination Notice (April 1988)

If the annual rental under this lease, combined with the annual rental under all other NASA leases of space in the building in which the space covered by this lease is located, exceeds $10,000, the lessor agrees to comply with the requirements of the Facilities Nondiscrimination clause of this contract.

(End of clause)

1852.222-71 Facilities nondiscrimination.

As prescribed at 1822.7002(b), insert the following clause:

Facilities Nondiscrimination (April 1988)

(a) As used in this clause, "facility" means store, shop, restaurant, cafeteria, restroom, or any other public facility in the building in which space covered by this lease is located.

(b) The lessor agrees not to discriminate against any person because of race, color, religion, or national origin in furnishing, or by refusing to furnish, the use of any facility, including any and all services, privileges, accommodations, and activities provided by that facility. Nothing in this clause requires the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants and their employees, customers patients, clients, guests, and invitees.

(c) The lessor's noncompliance with this clause shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the lessor shall be liable for all excess costs of the Government in acquiring substitute space, including the cost of moving to such space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible, and moving costs will be limited to the actual expenses incurred.

(d) Whenever an agreement is to be entered into or a concession is to be permitted to operate, the lessor shall include or require the inclusion of paragraphs (a), (b), and (c) of this clause in every such agreement or concession under which any person other than the lessor operates or has the right to operate any facility. Nothing in this clause, however, requries the lessor to include or require the inclusion of those paragraphs in any existing agreement or concession arrangement, or in one under which a party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend.

(e) The lessor also agrees to take, as expeditiously as possible, such lawful actions as NASA may direct to enforce the intent of this clause, including termination of the agreement or concession and institution of court action.

(End of Clause)

1852.227-70 New technology.

As prescribed in 1827.373(b), insert the following clause:

New Technology (April 1988)

(a) *Definitions.*

"Administrator," as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

"Contract," as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

"Made," as used in this clause, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of contract performance.

"Nonprofit organization," as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Reportable item," as used in this clause, means any invention, discovery, improvement, or innovation of the Contractor, whether or not the same is or may be patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

"Small business firm," as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

"Subject invention," as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(b) *Allocation of principal rights.*—(1) *Presumption of title.* (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of Section 305(a) of the National Aeronautics and Space Act of 1958 (43 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in subdivision (i) above. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of subdivision (1)(i) above is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in subparagraph (3) below.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of Section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR

Section 1245, Subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR 1245, Subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with subparagraph (e)(2) below, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government.* (1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR Section 1245, Subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR 1245, Subpart 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within 6 monhts of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by subparagraph (e)(1) above have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Contractor agrees, subject to paragraph 27.302(i), of the Federal Acquisition Regulations (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by subparagraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(1) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to subparagraph (e)(1) above;

(ii) Disclose any reportable items pursuant to subparagraph (e)(2) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) above; or

(iv) Provide the informtion regarding subcontracts pursuant to subparagraph (h)(4) below.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by subparagraph (e)(2) above, and an acceptable final report pursuant to subdivision (e)(3)(ii) above.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regarless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of subdivision (1)(i) or (1)(ii) above, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions. (1) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to poterntial licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

1852.232-1, 1852.232-2, 1852.232-4, 1852.232-7, 1852.232-10, 1852.232-16, 1852.232-1670, 1852.232-71, 1852.232-73, and 1852.232-74 [Removed]

e. Sections 1852.232-1, 1852.232-2, 1852.232-4, 1852.232-7, 1852.232-10, 1852.232-16, 1852.232-1670, 1852.232-71, 1852.232-73, and 1852.232-74 are removed.

f. Section 1852.232-25 is added, and 1852.232-77 introductory text is revised as follows:

1852.232-25 Prompt payment.

As prescribed at 1832.908, insert Alternate II in solicitations and provisions which include the clause at FAR 52.232-25, Prompt Payment. Alternate II shall be modified by deleting the words "contract number" in paragraph (c)(4). The following paragraph shall be inserted in Alternate II as (c)(2)(iv) in lieu of the FAR paragraph at that location:

(v) A TFS Form 3881 shall be submitted by the contractor to the installation awarding this contract. If a TFS Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

1852.232-77 Limitation of funds (fixed-price-contract).

As prescribed in 1832.705-270, insert the following clause. Contracting officers are authorized, in appropriate cases, to revise paragraphs (a), (b), and (g) of the clause to specify the work required under the contract in lieu of contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

* * * * *

1852.232-78 [Removed]

g. Section 1852.232-78 is removed.

h. Sections 1852.232-79 introductory text, 1852.235-72 introductory text, 1852.236-72 introductory text, 1852.245-70, 1852.245-71 introductory text, and 1852.245-72 introductory text are revised to read as follows:

1852.232-79 Payment for on-site preparatory costs.

As prescribed in 1832.111-70, insert the following clause:

* * * * *

1852.235-72 Plan for new technology reporting.

As prescribed in 1835.070(c), insert the following clause:

* * * * *

1852.236-72 Bids with unit prices.

As prescirbed in 1836.370(b), insert the following provision:

* * * * *

1852.245-70 Acquisition of existing government equipment.

As prescribed in 1845.106-70(a), insert the following clause:

Acquisition of Existing Government Equipment (April 1988)

(a) "Centrally reportable equipment," as used in this clause means that plant equipment, special test equipment (including components), special tooling and nonflight space property (including ground support equipment) which is (1) generally commercially available and used as a separate item or component of a system, (2) is valued at $1,000 or more, and (3) is identifiable by a manufacturer and model number.

(b) Before the acquisition of any item of centrally reportable equipment under this contract (unless for incorporation into flight qualified or flight monitoring deliverable end items), the Contractor shall provide the Contracting Officer, at the earliest possible date, a detailed listing of requirements for screening of existing Government inventories. DD Form 1419, DOD Industrial Plant Equipment Requisition, will be prepared for each item of centrally reportable equipment to be acquired and forwarded through the Contracting Officer to the NASA Equipment Management System Coordinator at the cognizant NASA installation at least (30) days in advance of his intention to acquire or fabricate such equipment. In the event a certificate of nonavailability is not received within such period, the contractor may proceed to acquire the equipment or components, subject to any other applicable provisions of this contract. Instructions for preparing the DD Form 1419 are contained in the NASA FAR Supplement 1845.7103. Upon receipt of the equipment described on the DD Form 1419 (regardless of whether it is Contractor-Acquired or Government-Furnished), the contractor shall prepare and submit a DD Form 1342 in accordance with NASA FAR Supplement 1845.505-670.

(End of clause)

1852.245-71 Installation-provided government property.

As prescribed in 1845.106-70(b), insert the following clause:

* * * * *

1852.245-72 Liability for Government property furnished for repair or other services.

As prescribed in 1845.106-70(c), insert the following clause:

* * * * *

1852.251-70 [Removed]

i. Section 1852.251-70 is removed.

PART 1853—FORMS

17. Subpart 1853.2 is amended as set forth below:

a. Paragraph (f) of 1853.242-70 is added to read as follows:

1853.242-70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433).

* * * * *

(f) *NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation Letter.* NASA Form 1634, prescribed at 1842.270(b), shall be used to designate a COTR for a particular contract.

1853.251 [Removed]

b. Section 1853.251 is removed.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

18. In Appendix I to 1870.103, Appendix C, III. Identifying Information, section II, paragraphs A.3, a., d., f., and h. introductory text, are revised to read as follows:

1870.103 NASA acquisition of investigations.

* * * * *

Appendix C: Guidelines for Proposal Preparation

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III. Identifying Information

* * * * *

Section II—Management Plan and Cost Plan

A. * * *

3. Additional guidelines applicable to non-U.S. proposers only. * * *

a. Where a "Notice of Intent" to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the Announcement of Opportunity and send a copy of this letter to the International Relations Division, Office of External Relations, Code XID, NASA, Washington, DC 20546, U.S.A.

* * * * *

d. Proposals along with the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each Announcement of Opportunity. These documents should be sent to: National Aeronautics and Space Administration, International Relations Division, Code XID, Office of External Relations, Washington, DC 20546, U.S.A.

* * * * *

f. Shortly after the deadline for each Announcement of Opportunity, NASA's International Relations Division will advise the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgment will be provided to each proposer.

* * * * *

h. NASA's International Relations Division will then begin making the necessary arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

* * * * *

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Part IV

Federal Maritime Commission

Report on Tariff Automation Inquiry; Notice

FEDERAL MARITIME COMMISSION

Report on Tariff Automation Inquiry

In a Notice of Inquiry on Tariff Automation ("Notice"), published in the **Federal Register** on December 22, 1987 (52 FR 48504), the Federal Maritime Commission (the Commission or FMC) requested public views on the functionality of its proposed Automated Tariff Filing and Information System (ATFI).

The Notice indicated that the impact of the proposed system's functionality on the public and the shipping industry had been only recently developed in detail sufficient for meaningful review, i.e., by the following types of firms:

- The shipping industry, e.g., shippers, carriers, freight forwarders, and terminal operators;
- The information industry, e.g., the commercial firms who perform requested tariff filing, retrieval and watching services for the shipping industry; and
- Associations, small businesses, and other interested persons, such as the public and government agencies.

In response to the Notice, written comments were received as further described below. This Report:

A. Sets forth by major topic the proposed functionality of the system as described in the Notice;

B. Describes the comments received in response to the Notice;

C. Discusses the issues and questions raised; and

D. Contains the Commission's conclusions.

A. Proposed Functionality of ATFI

1. *Basic System.* The electronic ATFI system, for which the Commission is seeking a prime contractor, will be run on the contractor's central computer with appropriate terminals at the Commission for tariff review, processing, and retrieval. The format of tariff data to be electronically filed is being developed in conjunction with the industry Transportation Data Coordinating Committee and will emphasize "tariff line items," *vis-a-vis,* tariff pages, as under the present system. "Tariff line items" are basically equivalent to commodity rate items in current paper tariffs and can be amended directly, without having to issue an entire revised page.

2. *Standardized Coding.* As recommended by the Commission's Advisory Committee, standardized commodity or geographic coding will not be mandated at the beginning, but the system must have the capability to provide for these functions at the appropriate time. The system will also include the essential terms of service contracts.

3. *Implementation—Exemptions.* The Commission will operate the ATFI system as a prototype for a period of at least six months to test it and improve its functionality and performance. Volunteers will be sought for this prototype operation, during which there will be public-comment rulemakings on the final format of electronic tariff data and for establishment of user fees. Full implementation of the system will be in phases to allow commercial firms time to adapt their operations. Exemptions, at least temporary, will be granted to some types of tariff filers who are not economically able to use the electronic system.

4. *Compatibility—Security.* The system will be as compatible as possible with existing computer equipment through the use of software for full connectibility. The ATFI system will have appropriate security mechanisms to protect the integrity of the data base.

5. *Filing—Edit Checks.* Filing of tariffs will be done primarily by using asynchronous terminals or microcomputers, dialing in with a modem to the Commission's data base. The filing software will provide on-line edit checks to ensure that the tariff information is correct and that basic statutory provisions are complied with before the tariff can be officially on file. Such edit checks, for example, will be able to electronically identify improper effective dates, such as a rate increase on less than 30-days notice. Other problems for which rejection is warranted, such as unclear or conflicting tariff provisions, will still have to be handled by FMC staff and, if necessary, resolved at the Commission level. The system's computer capabilities, however, will facilitate this process also.

Tariff filers will be able to file and amend their tariff materials by remote access directly to the ATFI system by carriers or conferences almost any time of day. The carrier or conference will be able to screen-scan its tariff so that the appropriate item can be amended. Commercial tariff services can also continue to be used by carriers and conferences for filing, e.g., by direct input into the data base, after creating tariffs on instruction from their clients, or transforming their paper tariffs into electronic form. The Commission will encourage commercial tariff services to assist small firms who may find it difficult to file electronically.

6. *Availability of Unprocessed Data Base.* Once the tariff data is officially on file, the Commission will download the entire data base in "flat files", formatted onto computer tapes which will be sold to any person at the relatively inexpensive, marginal cost of dissemination. This will satisfy the Commission's statutory duty of providing copies of tariffs at a reasonable charge. In order to keep up with a substantial number of rapidly changing freight rates in the shipping industry, however, interested persons must obtain these updated data base tapes frequently. The Commission will offer a subscription service to provide this capability.

7. *Value-Added Services.* The Commission will not perform any value-added processing of the tariff data for sale to the shipping public in competition with commercial tariff services. It is expected that those services will subscribe to the data base tapes to facilitate their value-added services. The Commission must, however, use the system to process tariff data internally for investigative and other regulatory purposes and will continue to utilize appropriate and available, value-added services of commercial tariff firms for this purpose.

8. *Retrieval—Public Reference Room.* In order to carry out its statutory function of making tariffs and essential terms of service contracts available for public inspection, the Commission will continue to have a public reference room at its headquarters in Washington, DC. Here, interested persons can access a terminal on which information on a particular tariff will be brought up on the screen and scanned to find the necessary rates and rules. Paper copies of tariff data will still be available upon written request, especially for certification to courts and other tribunals for proceedings involving disputes over historical tariff rates.

9. *Remote Retrieval by Modem.* Another retrieval feature currently contained in the draft RFP is remote access to the Commission data base by modem, almost any time of day, for retrieval of tariff information by any interested person. This is described in the October 28, 1986 Feasibility Study Final Report as follows:

> b. Retrieval and Analysis by the Public.
>
> * * * * *
>
> FMC would also allow remote access whereby a member of the general public could access the automated tariff system from remote locations. For example, the system would enable a shipper on the West Coast to retrieve data from the automated tariff system using a terminal or microcomputer equipped with a device (i.e., a modem) to enable data communications over public telephone lines.

However, members of the general public would only be able to perform relatively rudimentary retrievals, and essentially no analysis of the data. Specifically, members of the public would only be able to retrieve one tariff at a time, in its full format. To retrieve a tariff, the public user would have to specify the specific tariff of a particular carrier that is desired; the public user would not be able to search by keys (e.g., by route or commodity).

FMC has imposed these restrictions based on a careful analysis of applicable federal policies and precedents. FMC does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. . . . In the absence of tariff automation—i.e., the status quo—FMC will make available copies of tariffs to members of the public only if they can specify the particular tariff desired. A user fee is assessed for this service. FMC would not expand these services after tariff automation is implemented. However, . . . FMC would help ensure that third-party services can provide such services. [Pages IV–8 and 9.]

However, due to concerns that the system would compete with commercial tariff information firms, the Commission announced in the Notice that it was considering not including this general electronic retrieval feature in its final RFP, thereby leaving this function to be performed solely by existing tariff services for their clients, as they do now in a paper environment. The change would not prevent carrier and conference filers from remotely accessing their own tariffs on the Commission's data base for retrieval, as well as for filing. Moreover, carriers would not be precluded from remotely accessing ATFI for conference tariffs to which they belong in order to check the official freight rates that should be charged to their shippers; and any person can use the terminals in the FMC public reading room for tariff retrieval. However, under this potential change, carriers would have remote access to their competitors' tariff data only through the value-added vendors that will provide this service.

B. Responses to the Notice of Inquiry

The Commission received 19 separate responses to the Notice from Government agencies and departments, Congress, associations, steamship conferences, carriers, freight forwarders, a shipper, and firms in the information service industry. The following describes these comments.

1. Government Departments and Agencies

(a) The Department of Agriculture (Agriculture) through its Office of Transportation, notes the increasing dependence of Agriculture upon liner shipping and enthusiastically supports the ATFI project. Moreover, according to Agriculture, the provisions of the Shipping Act of 1984 which gave more rate negotiating freedoms to carriers and shippers also increased the need for shipping rate and other tariff information. The Department encourages the Commission to provide the remote retrieval feature, if possible, because it is beneficial to shippers. Since the public is provided only with relatively rudimentary capabilities, Agriculture states that "* * * it is hard to see that third-party services would be adversely affected. The FMC would simply be offering electronically what it now offers in paper form * * *."

(b) The Department of the Navy, through the Military Sealift Command (MSC), indicates that, for Department of Defense cargoes, it now subscribes to "RATES," a commercial tariff service and states that ATFI appears limited and unable to provide the retrieval of information in the manner provided by "RATES," i.e., retrieval of rate information by route, commodity, carrier or conference; and by individual pages and/or commodity items, without retrieving the tariff in its full format.

(c) The Department of Transportation (DOT) comments that many of the issues raised in the Notice are similar to those now being considered by DOT in developing the best approach to the automation of international airline tariffs, e.g., security, public access, and non-interference with existing commercial tariff information services. DOT requests that it be kept informed of developments.

(d) The Department of the Treasury, through the U.S. Customs Service (Customs), would hope to see a broad use of the Harmonized System of coding as a "core for a variety of applications in international transactions."

(e) The General Services Administration, through its Federal Supply Service (GSA–FSS), believes the proposed ATFI system would simplify the receipt, storage and retrieval of tariff information, and indicates that it operates, through a private contractor, an automated rate and routing system for domestic transportation. GSA–FSS offers to share its experience in the design and implementation of its system.

2. The Congress

(a) The Government Information, Justice, and Agriculture Subcommittee of the House Committee on Government Operations, through its Staff Director, acknowledges receipt of the Notice and indicates that the matter would be discussed with Chairman English.

Later, Congressman Glenn English responded, noting that "[I]n general, the ATFI system as described in the December notice is consistent with the policy standards for government electronic information systems set out by the Government Operations Committee in House Report 99–560."

Congressman English continued:

However, I find one aspect of the proposed system to be questionable. The notice indicates that the FMC contemplates providing a limited on-line retrieval service to tariff filers.

This raises some concern. Allowing any outside users to have direct, on-line access to the data base will make the entire system more complex. The system will require a larger capacity, additional security, and expensive equipment for support.

Tariff filers who might use this service would, in its absence, be served by the private companies that are likely to make tariff filings available to the public. In fact, the availability of on-line access from the FMC might inhibit the offering of tariff services by private sector data companies. The net result could be unnecessary interference with the development of a private market in tariff data.

I am not convinced by the notice that the offering of any type of on-line retrieval service by the FMC is necessary. It is not clear why tariff filers need to obtain from the FMC copies of tariffs that they have filed with the FMC. In contrast, the Securities and Exchange Commission's EDGAR system includes no similar capability. If the FMC determines that such a service is important, it will have to do a better job of documenting the need.

Congressman English closes by indicating that he will continue to monitor the progress of ATFI and requests that the Subcommittee be kept informed of any future developments.

3. The Transportation Data Coordinating Committee

The Transportation Data Coordinating Committee (TDCC) Ocean Standards Maintenance Committee, on behalf of the Electronic Data Interchange Association (EDI) standards, comments that the functional specifications published in the Notice are "* * * fully in tune with the needs of the Ocean Transportation Industry," for which TDCC has the responsibility of maintaining the EDI standards.

The TDCC's Ocean Standards Maintenance Committee includes in its membership technical and commercial representatives of ocean carriers, freight forwarders, terminal operators, port authorities, steamship conferences, customs brokers, ocean tariff publishing companies, Government agencies, and vendors of electronic interchange services.

TDCC "agrees" that the FMC must be the custodian of the single legal data base that will govern all ocean freight rates that are used in the ocean transportation industry in the United States.

TDCC further supports the idea that public access to the ATFI system should be available only for relatively rudimentary retrievals, but that the system must have a provision for on-line retrieval of, and remote access to, ocean freight tariff information by the general public. There is, according to TDCC, a "real need" in the ocean transportation industry for this on-line and remote access feature. TDCC would like to see full implementation of the system as soon as possible.

4. Steamship Conferences and Carriers

(a) The Inter-American Freight Conference (IAFC) has 4 sections whose 14 member lines serve the trades between Argentina, Brazil, Paraguay, Uruguay and U.S. Atlantic and Gulf ports. According to IAFC, the ATFI system should provide for retrieval based on international communications standards, such as the EDI standards of TDCC (See # 3, above), but indicates that replacement of IAFC's expensive computer hardware and software solely to meet FMC tariff requirements would be prohibitive.

Since two of its Northbound Tariffs are not computer produced and are transmitted by page through a facsimile device or by courier, IAFC is opposed to doing away with page filings. Due to the fact that it uses an alphabetical-based tariff, IAFC is also against requiring tariffs to be indexed using unique tariff item numbers.

IAFC states that "The FMC should not create a new unique structure and system for tariffs, when a variety of methods already exist with current third party vendors." Further, IAFC argues that the Commission should maintain retrieval potential for the filers of their own tariffs, not for competitive tariffs, which should be left to third party vendors. However, charges for receipt of updated FMC data by such third party vendors should cover more of the system costs than just the incremental charges for extraction of the data.

Finally, IAFC is concerned about filing charges and indicates that other users, not just filers, must pay a "fair share."

(b) The Transpacific Westbound Rate Agreement (TWRA) is comprised of 13 carriers in the trades from the United States and Canada to the Far East and filed 65,000 tariff pages with the Commission in 1987.

The Managing Director of TWRA, speaking for himself, states that "Many of these entities [existing commercial services] have a vested interest in retaining the existing tariff page structure, and converting it to a data base, which will ultimately prove costly to the carriers, and the FMC." Logically, according to the Managing Director of TWRA, "* * * a data base should be used to create a tariff, not vice-versa." He believes that the data base approach is the logical system and could be used to produce tariffs for countries with limited computer capabilities.

On the subject of the distribution of the unprocessed data base on tapes, the Managing Director of TWRA suggests that a frequency of something between daily and monthly could be worked out.

The Managing Director of TWRA agrees that the Commission should not compete with value-added vendors. Further, he is opposed to the remote retrieval of tariff information by modem directly from the ATFI system because it would interfere with the sale of rates services by commercial entities. Without a commensurate hourly charge to offset the usage, it might also result in a substantial expense to the Commission which could not be retrieved by revenues. It is his belief that "* * * the only public reference room that the Commission should utilize is at [FMC] headquarters in Washington, D.C."

(c) The United States-European Carrier Associations (USECA) includes conferences operating on major trade routes in the foreign commerce of the United States, i.e, the North Europe-U.S. Gulf Freight Association (NEGFA); the Gulf-European Freight Association (GEFA); the North Europe-U.S. Atlantic Conference (NEAC); the U.S. Atlantic-North Europe Conference (ANEC); and the Trans-Atlantic American Flag Liner Operators Agreement (TAAFLO).

Tariff filing is a major function of USECA parties. In noting that the format of tariff data to be electronically filed on the ATFI system is being developed in conjunction with TDCC (above), USECA "* * * unequivocably supports the path FMC proposes to take * * * and asserts that it is functionally heading in the right direction." The entire Commission proposed system, as noted in the **Federal Register**, has USECA's complete backing.

Since current tariff systems employed by USECA groups are geared to the electronic page format, they will be totally incompatible with the FMC's proposed standards. Thus, the USECA parties, as well as individual common carriers, must be prepared for the eventual switch to the data element system. USECA further states that all tariff filers will have to adopt the same EDI standards in order to transmit or retrieve tariff data. The new system, however, must also have the ability to compile the elements into a page format.

Two USECA members, ANEC and NEAC, are currently developing tariff systems based on data element entry and are "eager" to be among the tariff filers selected to test the prototype operation.

(d) Sea-Land Service Inc. (Sea-Land) is a common carrier by water in the foreign and domestic offshore commerce of the United States and files 59 tariffs with the Commission, all of which are prepared and transmitted electronically. Additionally, Sea-Land is a member of 21 tariff-filing conferences or agreements.

Sea-Land indicates that the basic functionality of the proposed system as described in the Notice is "* * * without reservation, consistent with Sea-Land's operational needs" and supports Sea-Land's current and future development efforts.

Sea-Land also volunteers for the prototype operation and states:

> The specifics of the ATFI system, such as standard tariff data format, tariff line item control, dial-up capability for filing, and general inquiries, provide the required functionality and enforce the necessary standardization. The phased implementation of the proposed system also takes into consideration the time required for users to modify their internal operations.

5. Freight Forwarders and Customs Brokers

(a) The Pacific Coast Council of Customs Brokers and Freight Forwarders Assn., Inc. (PCC), which represents approximately 450 freight forwarders/customs broker firms, indicates that it is pleased to see the Commission proceeding with the RFP.

PCC is opposed to deleting the remote-retrieval function which would eliminate direct access to the tariff data base. It feels very strongly that its members and the shipping public should have such access which is essential to the service which PPC members wish to provide.

PCC notes that, without mandated standardization (e.g., commodity classifications, etc.), the task to present raw data in electronically intelligible form is unmanageable but would be feasible if ocean carriers were directed to provide the Commission with a standard format to be used by all carriers.

(b) Leading Forwarders, Inc. (Leading), a freight forwarder and customs broker, is of the opinion that the proposed ATFI system, along with the Customs' Automated Commercial

System, will too easily provide information to foreign competitors, to the competitive disadvantage of American forwarders. Since the information is "* * * our information and not theirs, as long as the rules of the trade game are different for foreigners and Americans, it is my humble opinion that it can hurt us and will hurt us."

6. Shippers

Warner Lambert Company (Warner Lambert) is a user of maritime transportation services to and from the United States and, as such, makes use of published tariff information. Warner Lambert notes that the Commission seems to seek public support for the inaccessibility of such data by the general public on the grounds that it does not want to compete with private third party services of tariff data retrieval systems. Warner Lambert continues:

> We believe this is ill advised. In our opinion efforts should be made not to frustrate but to facilitate direct remote access to the data base by the general public. This should be accomplished through a rudimentary capacity to search for individual commodity rates and rules through a menu driven index system and basic facility to dow[n] load selected files.
>
> In our view, such a capacity is neither particularly sophisticated nor does it represent the kind of commercial value-added service which should be properly left to the private sector for development and marketing.
>
> Moreover, it seems entirely reasonable that the Commission should make this capability available to the general public on a fee basis through a "900" telephone number charge system. Reasonable because the ATFI system will be funded by the federal government, i.e., the taxpayer. Reasonable because the system, in this sense, belongs to the general public. Reasonable because to do otherwise would almost be more difficult and certainly less than optimal given the state of modern computing technology.
>
> We do not believe that the Commission should compete with commercial tariff services. However, we are more strongly of the opinion that the Commission should not deliberately suboptimize the ATFI system in order to avoid such competition.
>
> Indeed, facilitating the recommended data access capability will not eliminate the market for value added services and products. What will be eliminated will be the wasteful, costly and technologically archaic means of manually collecting data. The primary beneficiaries of this development will be the value added services themselves.

7. The Information Industry Association and Firms

The Commission sent copies of the Notice to 16 tariff service firms and the Information Industry Association with a letter of transmittal which stated in pertinent part:

> The Federal Maritime Commission is especially interested in how the proposed functionality may affect the information industry, including existing commercial tariff services. In particular, we would appreciate comment on the extent to which commercial firms would provide the general electronic retrieval feature if the Commission, itself, does not provide for it in the technical specifications.

The Association and three firms responded.

(a) The Information Industry Association (IIA) is a trade association serving over 600 companies pursuing business opportunities associated with the generation, distribution and use of information.

IIA observes that the Commission has greatly reduced the value of this proceeding by withholding relevant and vital information from its cost-benefit study requested by IIA in a Freedom of Information Act request. IIA indicates that while it is confident it could prevail on the merits, it is "most loath to litigate," in light of the attempt by all parties to engage in productive discourse in the Advisory Committee (of which IIA was a member), and the desirability of moving forward with the electronic filing endeavor. IIA further states that "* * * the FMC cannot have it both ways: it cannot withhold crucial information *and* simultaneously expect the private sector to believe that which is dubious or implausible." [Emphasis in the original.]

On the proposed functionality, IIA indicates that there remain unanswered questions whose resolution could depend, at least in part, upon the results of the withheld analysis:

> First, what is the basis for the distinction between remote access by a filer to its own tariffs and any other usage? Without dispute, there is a *functional* need for verification by a filing party of its own filing, but that need does not itself compel the conclusion being suggested. We are now [sic] told how many more computer ports would be needed to support such access, how much more CPU capacity—in short, what it would cost. Nor are we told what marginal benefits would accrue, in terms of gains in consumers' surplus, or in any other measure. Against all this uncertainty, there are the considerations that no such system feature is absolutely necessary and that such filer access would hobble private incentive. The OMB Circular [A–130] represents a sound judgment that the value-added remote access part of the information chain or life-cycle is one which ought to be supported by voluntary risk capital rather than by involuntary taxes. The FMC cannot err by respecting this judgment and is quite likely to err if it does not.
>
> Second, the whole subject of database file structure, possible transition over time from the current page format to a relational database structure, and FMC mandatory input format cries out for informed structure by affected parties in the private sector. Even without the numbers to address these interrelated matters, the following can be said with confidence:
>
> (1) The existing page format is not an end-all and be-all. However, it has worked well for all intents and purposes to date.
>
> (2) The FMC does have some legitimately different functions than any private users, so that a file structure that has arisen for private-sector users is not necessarily optimized for government use as well. However, the FMC has failed to explain publicly just how an expensive change to a new file structure would improve its mission accomplishment, such as by enforcing common carrier obligations.
>
> (3) These are exactly the sort of questions that should be resolved rationally on a cost-benefit basis.
>
> (4) Particularly on this point, for the FMC to withhold the analysis is ultimately futile. Any FMC rule making on mandatory input format will be reviewed by OMB under the Paperwork Reduction Act. In accordance with the objectives of that Act, any proposed rule will have to pass muster under a cost-benefit test or some variation thereof. In any event, the least-cost alternative for society—the sum of costs to the government and the private sector—is that which should be selected. [Emphasis in the original.]

In response to the question presented to electronic service firms, IIA indicated that "* * * it is clear as it can be that private companies will continue to offer such services."

Asking for a level playing field, IIA urges that the incumbent contractor have no unearned or special advantage in value-added retail products and that all comers should be able to get tapes in raw output form rapidly, on the same terms and conditions, at true marginal or reproduction cost.

IIA also reserves the right to submit additional comments if and when the cost-benefit analysis is released.

(b) Studley Associates, Inc., (Studley) provides computerized tariff services and is a licensed FMC practitioner.

Studley expresses concern about the timeliness of the availability of the raw data tapes and whether or not there will be a device to make such tapes usable on some electronic systems of the commercial tariff services and carriers. On the remote retrieval feature, Studley comments:

> While the proposed "Remote Access Retrieval of Tariff Information" from the Commission's data base by modem almost any time of day seems to be a positive feature, there is concern that the ATFI System be compatible with present computer equipment not only for the retrieval of information but also for filing purposes.

Studley would also want an opportunity to test the functionality and performance of the prototype operation.

(c) Transportation Tariff Publishers, Inc. (TTP) files tariffs (and changes) at the Commission on behalf of approximately 25 different common carriers per month.

TTP's concerns about the ATFI system include: types of equipment needed; its cost for purchase and maintenance of equipment and software; access to the FMC's data base; length of time and procedures for preparing and transmitting tariffs, including the possibility of hand delivery of a disk or tape; delegations of authority; availability of raw data tapes; the number of public terminals in the public reference room; ability to access tariffs that it does not file; potential distinction in treatment between a "watching service" and a "tariff publishing company;" and possible temporary exemptions for third party vendors.

TTP adds that it will still have the need to provide its clients with paper (hard) copies of their own tariff pages and asks the Commission not "* * * to overlook the needs of the small tariff users, as well as, the thousands of people that must deal with 'paper' tariff pages every day of their lives."

(d) Transax/RATES (Transax) is a division of Journal of Commerce, Inc., which is a wholly owned subsidiary of Knight Ridder. Transax is one of the "leading" maritime tariff publishing companies and maintains an on-line electronic data base of currently in effect tariffs filed with the FMC, as well as off-line historical tariffs for at least five years. Transax also has developed "Compiler II" and "Shiprate," which is a service providing on-line access by a steamship company to its own tariffs, including unregulated tariffs which are not on file with the FMC.

Over the last five years, Transax has invested over ten million dollars in hardware and software development and operational costs and is "* * * now just beginning to break even in the data base retrieval segment" of its business. While Transax may make a submission in response to the FMC's Request for Proposals for the ATFI system, it is commenting here on how the proposed functionality of the system described in the Notice may impact its future operations.

Transax asks for a level playing field, such as provided in H.R. 2600 authorizing the SEC's EDGAR program, so that the contractor does not obtain undue advantage in the provision of retail services.

With respect to standardization, Transax indicates that the EDGAR program is a more appropriate response to the issue of transmission of electronic filings. EDGAR would also allow the filing of data on other media like floppy disks which would provide greater flexibility. Transax asks for clarification of whether the FMC will allow batch filing using the EDI standards, an approach which would be less expensive than the on-line system. Transax states that "* * * a tariff filer would prefer to modify their own copy of a tariff and then transmit the changes to the FMC rather than recreating the modifications at the FMC in an on-line environment."

At the same time, Transax indicates that the EDI approach is not required for effecting tariff filing and may create major difficulties for many filers. The tariff page approach as a transition strategy, "* * * while possibly not as technically elegant, is far more cost justified * * *."

Transax commends the FMC for its concern of not competing with the private sector and states that the FMC has appropriately approached the issue of tape dissemination to those in the private sector who will provide value-added services.

Transax strongly supports the elimination of the general electronic retrieval feature and indicates that it, and probably other firms, will continue to supply retrieval services to the public. On this issue, Transax further states:

> We, however, strongly object to a filer's on-line general retrieval of its own tariffs and to those of the conferences to which it is a member. Present private sector electronic filing technology not only gives "proof" of receipt of transmissions but the filer can retrieve the tariff page from the current data base that resides in the filer's computer. Given our previously stated position that on-line interactive access is not necessary, we do not accept the premise that the system has to be developed in such a way as to mandate on-line interactive access. Clearly, the SEC has gone in a different direction and the dissemination of the EDGAR data base is left up to the private sector with the contractor providing wholesale electronic products (both tape and electronic batch access) under a regulated pricing scheme. Clearly, a similar approach could be adopted by the FMC.
>
> Allowing a carrier unlimited on-line interactive access to their own tariffs and to the tariffs of conferences to which they are members could prove quite expensive to the FMC. Should a carrier use this access for rate quotation or other marketing functions, the number of transactions from our experience may increase by a factor of twenty to fifty. This would require significantly greater resources for communication and for computing power than that required to meet the FMC's internal automation requirements. This additional "capital" expense cannot, of course, be offset by user fees which has been clearly stated by the GAO in the context of the EDGAR program. Such fees can be used for marginal dissemination costs only, such as the cost of magnetic tapes.
>
> However, accepting the functional approach set forth by the FMC, a filer should be able to obtain access only to the FMC ATFI system for the purpose of filing or amending tariffs. The suggestion of the FMC that a filer should have unlimited access to the AFTI system is providing a service far beyond the needs of the AFTI system. There needs to be a line drawn separating legitimate FMC activities and the provision of commercial services. Unlimited filer access to its tariffs as such is a commercial service in competition with our Shiprate service and will require a far larger taxpayer investment than otherwise would reasonably be required to operate this system. Enforcement of a restriction limiting the use of the AFTI system could easily be maintained by activity monitoring and limiting which carrier employees may have access on its behalf to the AFTI system.
>
> Under OMB Circular A–130, Federal agencies are admonished not to disseminate new information products and services unless they are:
>
> (a) Specifically required by law; or
>
> (b) Necessary for the proper performance of agency functions, provided that the latter do not duplicate similar products or services that are or would otherwise be provided by other government or private sector organizations.
>
> OMB Circular A–130 § 8.a.(9).
>
> The FMC has no authority to disseminate tariff information products and services. Under the FMC's existing regulations, tariffs are not distributed or disseminated by the FMC. Tariffs are merely "available for inspection and copying upon request in writing addressed to the Office of the Secretary." 46 CFR § 503.32(c). In contrast, in Section 8 of the Shipping Act of 1984, Congress provided that carriers and conferences must "keep open for public inspection tariffs" and that "copies of tariffs shall be made available to any person, and a reasonable charge may be assessed for them." (46 U.S.C. § 1707). Therefore, Congress did not look to the FMC as the source of tariff information, rather it accepted the concept of tariff publishing which is the primary means of disseminating tariffs.
>
> The proposed AFTI system would directly compete with existing private sector tariff filing, publishing and disseminating services. In 1984, when Congress reflected on whether to continue tariff filing with the FMC, it was noted that an FMC survey of shippers revealed that of the 25 surveyed not one relied on FMC files as their source of tariff information. See H.R. Rep. No. 98–53, Part I pp. 79–80 (additional views of Hon. Gene Snyder), reprinted in, 1984 U.S. Code Cong. & Admin. News 219–220.
>
> Rather, then as today, most carriers, shippers and others rely on commercial tariff filing, publishing and retrieval services. Private industry and not the FMC has been relied upon as a source of tariff information.

It is disturbing that the FMC is using its legitimate needs for improved automation as a justification for providing services to the carriers which have traditionally been provided by the private sector.

If the FMC insists on providing data base retrieval to the maritime industry, it is putting that industry at great risk. Future budget restrictions may require a scaling back of services and activities of the FMC after private sector innovation has been driven from the scene. We and others will continue to provide value added services based upon the government's tapes. However, if due to budgetary constraints, quality control is lessened and those tapes degrade in quality or are discontinued, private sector vendors will not be in the position to provide such services. The primary concern of OMB Circular A–130 is to create a variety of services and to reduce costs to the Government. The FMC should foster private sector dissemination by limiting its own role in dissemination.

No other comments were filed in response to the Notice.

C. Discussion

1. Background and General Considerations

Some of the commenters in this proceeding have raised questions about matters which are much more fundamental than the issues on functionality presented in the Notice. To ensure complete understanding of the Commission's statutory responsibilities, the nature of steamship tariffs, the ATFI system concept, and historical development to date, the following topics are analyzed before addressing the specifics of functionality.

(a) Tariffs and Statutory Responsibilities

The Commission administers, *inter alia*, the Shipping Act, 1916, and the Shipping Act of 1984, which apply to domestic offshore commerce (e.g., between the mainland and Hawaii or Puerto Rico), and to foreign commerce, respectively, for both inbound and outbound waterborne transportation. The statutes require that common carriers by water in these trades file and keep open to public inspection their "tariffs." Additionally, the Shipping Act of 1984 requires that service contracts be filed and that their essential terms be made available to the public in tariff format. See 46 U.S.C. app. 817, 844 and 1707.

A "tariff" is a list of rates, charges and rules applicable to the transportation of cargo. A service contract is a special agreement between shipper(s) and carriers(s) governing transportation of a certain minimum quantity of the shipper's cargo over a period of time in consideration for a commitment by the carrier of a certain rate and service level. When a service contract is filed, the filer is also required to submit a Statement of Essential Terms, which contains the rates, charges and rules for a specific service contract.

The statutes and implementing regulations require the Commission to ensure that certain essentials are complied with before tariff material is accepted for filing. For example, a tariff, or amendment thereto, must not be unclear or indefinite and must not duplicate or conflict with other tariff provisions already in effect. Moreover, tariffs must contain effective-date provisions in compliance with the statutes, e.g., a minimum of 30 days for a rate increase. If a tariff filing is defective in any of these respects, it is rejected and must be refiled in the proper form and manner before the tariff is considered officially filed. See 46 CFR Parts 515, 550, 580 and 581.

Once the tariff is officially filed and the rate becomes effective, it determines the exact amount of freight to be paid by the shipper and collected by the carrier under the bill of lading or other type of transportation contract.

In addition to being a schedule of rates, the tariff of a carrier or conference is used as a marketing brochure, and a copy of a tariff on file with the Commission is made available by the filer to anyone at a reasonable charge. 46 CFR 550.3 and 580.3. This is often done by subscription.

Tariffs are used by shippers to shop for the best rate and service. They also are used extensively by carriers and conferences to see what their competition is doing.

Some of the practical consequences of a tariff-filing requirement are:

- The tariff provision must be in writing (or, in the case of ATFI, the electronic equivalent) and not a verbal quote. Moreover, there can be only one "writing" used for a particular period of time.

This prevents one shipper from being charged a rate different from that "quoted." It also prevents one shipper being charged a rate different from that charged to another shipper for the same cargo at the same time.

- Tariffs are filed and maintained in a central place.

This permits the interested person to access any tariff from one location, without having to obtain copies from every carrier in a relevant trade. The third-party vendors assist in this function by using tariff date filed at the Commission.

- If there is a dispute over a tariff provision, the official evidence needed to resolve the dispute is retrieved from the central repository.

With the tariffs filed with and maintained by the Government, there can be no argument that a tariff page, maintained by a commercial firm in the normal course of business, was not the same tariff page used in booking the shipment. The shipment in question could have occurred over three years before final adjudication of the dispute. During fiscal year 1987, FMC cases involving problems between shipper and carrier and which required evidentiary tariff materials from the FMC's official files, included 125 Special Dockets and 42 Informal Dockets.

In order to prevent discrimination among shippers and unfair competition among carriers, there are substantial penalties for not filing, or if properly filed, for not adhering to the provisions of a tariff or service contract, See, e.g., 46 U.S.C. app. 812, 815, 818, 1708 and 1709.

In addition to enforcing these penalties, the Commission uses the filed tariff data for surveillance and other regulatory purposes and, in its proceedings, adjudicates tariff issues raised by private parties. For Commission proceedings, as well as in any court case throughout the country, the tariff provision, on file at the FMC and in effect, is official evidence of the applicable tariff rate, charge or rule, when so "certified" by the Commission.

Accordingly, as relevant to ATFI and as set forth in the Notice, the Commission has the responsibility under the shipping statutes to:

1. Accept the filing of common carrier tariffs and service contracts containing rates and charges governing transportation of cargo in U.S. waterborne domestic offshore and foreign commerce. (Marine terminal operators also file tariffs of their rates and charges.)

2. Ensure that tariffs and service contract data comply with basic statutory requirements before they are accepted for filing.

3. Maintain the official file of tariffs and service contracts and certify authentic and accurate tariff data to courts and other tribunals.

4. Ensure that tariffs and the essential terms of service contracts are available for public inspection.

In addition to its basic duties under the shipping statutes, the Commission is required to comply with the terms and policies of other statutes and regulations, such as the Freedom of Information Act. 5 U.S.C. 552. Therefore, because filed tariffs are public records, the Commission is under a legal

obligation to make these records promptly available to any person. Making these records "available" includes making copies upon written request at reasonable fees. *See* 46 CFR 503.31, 503.32(c), and 503.41–503.43. This type of activity is a routine matter when a member of the public requests tariff materials from the Commission's public reference room. Also, tariffs are required to be filed at the FMC in duplicate or triplicate (*see* 46 CFR 515.3, 550.3(g), and 580.3(f)), and as an accommodation, the Commission provides one copy of all tariff materials to be shared by commercial tariff services.

(b) ATFI and EDGAR

Other than the fact that the FMC and the Securities and Exchange Commission (SEC) are both attempting to resolve their paper filing, processing and retrieval problems by means of ADP technology, there is little similarity between the FMC's ATFI system and the SEC's EDGAR system. ("EDGAR" stands for "Electronic Data Gathering and Retrieval System.")

While both agencies need to examine and process data obtained from regulated industries, the purposes and products of the two systems are quite dissimilar and control all system functions.

EDGAR handles financial reports which are designed to disclose to the public as much accurate information as possible concerning potential investments. The 9,000,000 pages of materials which EDGAR must handle annually remain pages when distributed in the form of complete copies in sufficient number to meet demand. A filed report does not change and may be amended only by the filing of another, complete report.

On the other hand, the tariffs to be handled by ATFI contain the legal purchase cost or contract-of-carriage price from which neither shipper nor carrier can legally deviate. The 800 new tariffs filed each year start to become obsolete almost immediately as rates are changed by the filing carrier. Shippers and carriers, therefore, want to know the most recent amendment of a particular rate within the tariff. The 700,000 pages of tariff amendments which are filed each year will be restructured by ATFI into a data base format. The shipping public will be able to retrieve only the item(s) they request.

If the information handled by ATFI is analogous to anything in which SEC is involved, it would be the stock market, itself, where a computer must try to keep up with frequent and rapid price changes for voluminous items. The carrier's rate is like a "sell order," which the buyer, the shipper, can utilize for the transportation of its cargo.

Unlike the stock market, however, the carrier's "sell order" or rate must be filed and effective at the FMC before it can be legally used in a sales or booking transaction. Until that rate is effective, the previous effective rate, whether higher or lower than the proposed rate, must be used if the shipper wants to utilize that carrier.

(c) Federal Policies Considered in ATFI

Throughout the development of the plans for an automated tariff system, the Commission has considered and will continue to consider all applicable Federal policies. In addition to the procurement regulations, the major policy sources for the project are contained in the following (and statutes cited therein):

- OMB Circular No. A–76 (Revised), *Performance of Commercial Activities* ("A–76");
- The April 29, 1986 English Subcommittee's Report, *Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview* (28th Report by the Committee on Government Operations, House Report 99–560, 99th Cong., 2d Session) ("English Report"); and
- OMB Circular No. A–130, *Management of Federal Information Resources*, December 24, 1985 (50 FR 52730); and subsequent proposed *Notice of Policy Guidance on Electronic Collection of Information*, August 7, 1987 (52 FR 29454) ("A–130").

The Commission, in its Feasibility Study, determined that conditions favor the electronic collection of tariff information for public access. A substantial proportion of the firms involved already possess the necessary information technology. Otherwise, the computer equipment needed to be acquired will be relatively inexpensive. Both filing and retrieval of tariff data should eventually be more convenient for interested firms, including small businesses. There is a large volume of tariff data, filed by a large number of firms, and accessed by a large number of people. The filings are very frequent, especially by the larger carriers and conferences and, while the rates will change, the format of the information sought will not vary substantially over several years.

The draft RFP calls for use of existing software to the extent available. It appears that no other agency with the responsibility of maintaining public tariffs has developed software with the edit checks required by the shipping statutes. The extent to which Government- or private-sector-developed software can be readily adapted to meet the Commission's needs should be reflected in the proposals received through the procurement phase. The draft RFP requires the proposals to use Federal Information Processing and Telecommunications Standards.

The ATFI system is designed to integrate filing and retrieval of tariff data insofar as possible. It will allow the Commission to upgrade its own ability to access, copy, and manipulate data and to perform its information management activities in an efficient, effective and economical manner. Moreover, the system will promote the free flow of information between the Government and its citizens.

The Commission is, therefore, actively pursuing the design of this electronic collection system through technical assistance from several private-sector firms and is acquiring the technology for the development of the system by competitive procurement.

Other efforts by the Commission to further comply with Federal policies are briefly described as follows:

(1) A–76. Appendix IV to A–130 indicates that the circular in no way intends to abrogate any "inherent governmental function" policy. The FMC, therefore must ensure that such functions are properly carried out.

Under the guidelines in A–76, the Commission has considered the idea of "franchising" its tariff functions to private sector firms. The purely ministerial functions of retention and distribution of tariff data could be delegated under the Circular. Accordingly, the FMC intends to contract with a private firm to maintain the ADP facility and allow third-party vendors to continue selling value-added data to the public. The Commission's discretionary decisionmaking authority, however, is an inherent governmental function which cannot be delegated to private parties, and includes the following statutory functions:

- Rejection by the Commission of tariffs not filed in accordance with Commission-prescribed form and manner (governed by statutory provisions). 46 U.S.C. app. 844 and 1707(f).
- Special permission to depart from statutory notice of 30 days for tariff rate increases. 46 U.S.C. app. 844 and 1707(d).
- Suspension and disapproval of controlled carrier rates below a just

and reasonable level. 46 U.S.C. app. 1708(d).

- Enforcement of adherence to filed rates and charges. 46 U.S.C. app. 812, 815, 817, and 1709.
- Furnishing data requested under the FOIA.

If the private contractor is limited to maintaining the ADP facility and FMC personnel remain responsible for the review of all input/output operations and any other tariff functions requiring the exercise of judgment or discretion, the ATFI system will comply with the legal and policy requirements of A-76.

(2) Public access to agency records. Because the electronic data will be made available to the public at the marginal cost of reproduction, which is anticipated to be relatively inexpensive, the public user will share in the benefits of automation. Tariff data in paper form will be made available upon request under the Freedom of Information Act, usually for certification to a court as evidence of a rate in effect at a particular time. Also, for tariff filers who cannot economically file in an electronic format, the Commission will consider granting exemptions and will facilitate the utilization of tariff services, but will ensure that the electronic data base is complete.

(3) Copyright policy. The Commission's public data base of tariff material required to be filed by statute cannot be copyrighted. The copyrights to any other materials associated with the ATFI system will be controlled by the Government.

(4) Consulting with public users. The Commission took positive steps at very early stages of this project to identify the needs of users of its proposed automated tariff filing and information system.

In 1983, the Commission conducted a survey of industry views on tariff automation. This was followed with the publication of a notice in *Commerce Business Daily* seeking sources for an electronic filing, storage, and retrieval system for tariffs. This notice attracted a response from 31 parties.

Following establishment of an internal FMC task force under the chairmanship of James J. Carey, Vice Chairman of the Commission, another survey was conducted among those entities expressing an interest in tariff automation and a sampling of carriers, conferences, freight forwarders, and shippers.

Subsequently, the Commission established an industry advisory committee "to make continuing recommendations on the implementation of an automated tariff filing and information system." The advisory committee included representatives of all parts of the industry.

The Commission is continuing to consult with all parties affected by or interested in ATFI, e.g., communications with the Transportation Data Coordinating Committee; a presolicitation conference with 130 potential offerors, for comment and questions on a draft RFP for the ATFI system procurement; and soliciting comments from the shipping and information industry in this Notice of Inquiry proceeding.

The Commission is considering the need to provide for the transition from paper tariffs to an ADP data base system. A prototype operation and gradual phase-in stage are planned for this purpose. Many tariff filers already have some type of ADP capability. The ATFI system will be designed to minimize the cost of ADP equipment needed to access the data base and for the conversion of existing data.

(5) Open, competitive procurements. The Commission has provided substantial advance notice of the nature and functions of its intended system and is planning a competitive procurement in compliance with all Government laws, regulations and guidelines.

(6) User fees. In order that the Commission can supervise the integrity of its tariff files, a single automated data base is planned for both filing and retrieval of the tariffs. User fees will be considered in a public rulemaking proceeding pursuant to 31 U.S.C. 9701, to be initiated during the prototype operation. Retrieval fees will be based on the marginal cost of reproduction. Filing fees will be based primarily on the benefit to the recipient but may be minimal because of the depressed economic situation in the shipping industry. Several carriers and conferences have volunteered to participate in the prototype operation and would not be charged filing fees during this phase.

It is intended that private sector contractors will not pay for the costs of governmental functions involved in ATFI.

(7) Competition with the private sector. The Commission has examined private sources for both filing and retrieval functions. In this connection, it is noted that a substantial portion of the Commission's tariff files are created by firms which, as the legal agents of regulated parties, specialize in the business of filing tariffs. It is not the Commission's intention to jeopardize the economic bases of these firms, but to replace the manual method or manner in which tariffs are filed and retrieved with more modern technology. The Commission believes that the functions of tariff filing services will be enhanced by automation and that the communications features of ATFI will encourage the development of additional products and services.

The Commission is aware of the substantial investments to facilitate automated retrieval made by a number of the 15–20 commercial firms which have offered various types and levels of rate retrieval based upon the Commission's tariff records. Accordingly, the ATFI proposal has been designed to avoid competition with private sector automated value-added vendors.

Rather, the ATFI system will provide current and future commercial firms with access to the Commission's data base through computer tape. This should facilitate a continuing role for such firms in the providing of value-added services.

Under this arrangement, as further described elsewhere in this report, neither the Commission nor the agency contractor would exercise monopoly power over agency data.

(8) Oversight. The Commission's activities in planning and developing the ATFI project have received coordinating direction from, *inter alia*, the Congress, General Services Administration (GSA), Office of management and Budget (OMB), the Office of Information and Regulatory Affairs (OIRA) within OMB, and the General Accounting Office (GAO).

(9) Cost Benefit analysis. The ATFI electronic tariff filing system will reduce the paperwork burden on filing parties (carriers and conferences) and the cost burdens on both regulated entities and the Government.

In order to obtain procurement authority from GSA, the FMC certified that a cost benefit analysis was performed and considered by the Commission. For budgetary requirements, the "Benefit Cost Analysis" was developed by a private-sector contractor and submitted to OMB. OMB advised the Commission that the study was "procurement sensitive" because its release to the public at this stage of the procurement could artifically peg the proposed prices submitted in response to the RFP. This means that the study will not be public until at least the best-and-final-offer procurement stage, when a supplemental cost benefit analysis will be conducted.

The disclosure of just the benefit data could also indirectly reveal cost estimates because the study calculated

the extent to which the public and private benefits derived from the system will exceed the public and private costs.

The Benefit Cost Analysis was made before development of the draft RFP. More meaningful cost estimates must depend on the content of proposals, the contract price, and the resolution of the issues which are subject to this Notice of Inquiry proceeding.

(10) Security features. The ATFI system will properly safeguard sensitive material. It is not contemplated that the system will contain any identifiable information on individuals. Access to sensitive service contract data and pre-effective tariff filings will be appropriately limited by security coding.

(11) Compatibility. The new system is designed to be readily compatible with existing computer systems through connectibility.

(12) *Records management.* The FMC is incorporating records management and archival considerations in the design, development, and implementation of the system, in accordance with the Federal Records Act (44 U.S.C., Chapters 29, 31, and 33).

(13) *Strategy and controls.* With ATFI, the Commission has established a multiyear strategy for meeting program and mission needs. The draft RFP reflects budget constraints and the phasing of the system will form the bases for future budget requests. The draft RFP also documents the requirements of the system and provides for its periodic review over the full term of the contract.

(d) Dissemination and Access to Information

The proposed ATFI function which most closely resembles "dissemination" is the availability upon request of the unprocessed, full data base tapes to potentially numerous members of the public. This feature was originally intended primarily for third party vendors but, because the raw tariff data contained in the data base is public, the Commission must also make these tapes available to all persons on equal terms and conditions.

Rather than dissemination, however, *all* electronic retrieval features of the proposed system provide public access to government information, consistent with the Freedom of Information Act. A–130, § 8.a.(6).

Comments in this proceeding which cite A–130 do not make reference to the essential distinction between "dissemination" and allowing access, nor do they challenge the function of furnishing the data base tapes.

The term "dissemination of information" refers to the function of distributing government information to the public, whether through printed documents or electronic or other media. The term does not include responding to requests for "access to information." A–130, § 6.g. Appendix IV to A–130 further refines this term:

> "Dissemination," in the Circular's usage, refers to the function of distributing government information; dissemination connotes an active outreach by a government agency. Dissemination refers to those situations in which the government provides the public with information without the public having to come and ask for it.

One example of a legally-required dissemination would be where a statute provides that "* * * the President or head of an agency shall make reports to the Congress on given subjects." Appendix IV to A–130.

On the other hand, the term "access to information" refers to the function of providing to members of the public, upon their request, the government information to which they are entitled under law. A–130. § 6.f. Appendix IV states:

> Access refers to those situations in which the government agency's role is passive; access is what the government's responsibilities are when the public comes to the government and asks for information the government has and the public is entitled to.

Appendix IV to A–130 continues:

> The distinction between access and dissemination is posed in order to elaborate the responsibilities of Federal agencies for providing information to the public. Two fundamentally different situations exist: one in which the public goes to the agency to ask for information the agency holds and may or may not have disseminated; and one in which the agency chooses to take the information it holds to the public. In the first instance—access—Congress has provided specific statutory policy in the Freedom of Information Act (FOIA) and in the Privacy Act. These laws and policies concerning access to government information are explicit, well known, and now so widely accepted in practice by Federal agencies as not to require policy elaboration in this Circular. Agencies should know that, if members of the public ask for information subject to FOIA or the Privacy Act, the agencies should normally provide the information forthwith, because the public has a formal legal process for forcing the agencies to yield the information.

Appendix IV to A–130 indicates that tariffs are subject to access upon request under provisions of agency statutes or the Freedom of Information Act:

> Similarly, the fact that an agency has created or collected information is not itself a valid reason for creating a program, products, or service to disseminate the information to the public. Agencies create and collect much information, often for purely internal governmental purposes, that is not intended for dissemination, for which there is no public demand, and the dissemination of which would serve no public purpose and would not be cost-justified: e.g., compilations of routine time and attendance records for Federal employees, or publication of the thousands of pages of common carrier tariff filings by regulatory agencies. While such information may be subject to access upon request under provisions of agency statute, the Freedom of Information Act, or the Privacy Act, the agency must demonstrate in each case the need actively to disseminate such information.

How A–130 can group tariffs with time and attendance records is a mystery. The nature of tariffs, and the entire ATFI project, especially the comments in this proceeding, demonstrate conclusively that the tariff information is not created by the agency for purely internal purposes.

However, the Commission is not disseminating, but rather making tariff materials available upon request.

Thus, it is difficult to see how the Commission under A–130 has no legal right to make public information available to the public. If, for some unknown reason, requested information is not disclosed, both the FOIA and the Shipping Acts provide an ample legal basis for lawsuits against the Commission, not commercial firms, to compel access to the information.

To enable it to better carry out its statutory responsibilities of providing access to public tariff data, the Commission has followed the proposed *Notice of Policy Guidance on Electronic Collection of Information*, August 7, 1987 (52 FR 29454), which provides:

> [3.g] Where electronically collected records are subject to disclosure under the Freedom of Information Act or are to be made publicly accessible for any other reason, agencies should provide for such access in the design and development of the collection system.

(e) The Feasibility Study

The *Comprehensive Study of the Feasibility of an Automated Tariff System*, the Final Report to the Commission by a GSA feasibility-study contractor, was delivered on October 28, 1986, after almost a year of work.

In addition to finding that ATFI is technologically and economically feasible, the Study established the basic approach to the system that is being followed in the RFP. This includes the "functionality" as described in the Notice and in Chapter A of this report.

In October 1986, the cost estimates for ATFI were described as follows:

> Development costs are estimated to be $3.5 million. Operating costs are estimated to be

$82 thousand per month. Total costs, expressed in present value, over a 5-year timeframe, are estimated to be $7.3 million. This cost estimate is relatively conservative. In addition, the actual cost may be lower as a result of the competitive procurement process and as some of the advanced system features may be excluded (e.g., download capability to microcomputers). Page V–17.

The feasibility-study contractor warned, however, that "[i]t is difficult to estimate costs for large, complex systems at such an early stage of the development process, so naturally these cost estimates should not be interpreted as being precise."

(f) The ATFI Advisory Committee

The membership of the Commission's ATFI Industry Advisory Committee included carriers, conferences, shippers, freight forwarders, port authorities and tariff service firms, including a representative from the Information Industry Association. In order to serve on the Committee, members signed waivers of compensation and the right to bid on the project.

Firms and associations commenting in this proceeding, who were also on the Advisory Committee, are: USECA, Sea-Land, the spokesman for PCC, and IIA.

The ATFI Advisory Committee met three times in 1986 to discuss the Feasibility Study. On February 9, 1987, the Interim Report of the ATFI Advisory Committee was submitted to the Commission. The Interim Report indicated a draft of it had previously been sent to the Committee members for review, comment and approval and that the report included their actions and comments, where applicable. The Interim Report also noted that "* * * the Chairman and Members of the ATFI Advisory Committee have reviewed and approved the content" of the report. The positions of the Interim Report follow:

(1) Tariff automation is feasible and the Commission should proceed with, at least, the next phase of the project.

(2) The Commission should consider certain models and/or alternative approaches.

(3) The system should provide for some sort of standardization in formatting.

(4) Cost-benefit analyses should be prepared for both the Commission and the industry.

(5) Filers of tariff data should be required to pay only minimal user fees, if any at all, for filing and for retrieving their own data. The data should be made readily available to all users at reasonable user fees.

(6) The Commission should retain a system of hard copy filing for only those entities that require it for economical reasons. The Commission should consider a system whereby the Commission, itself, or its contractor, transfers hard copy tariff material to the electronic data base.

Most of the functionality of the system was developed in the feasibility study, considered by the Advisory Committee, and incorporated in the draft RFP. This draft RFP for a competitive procurement was sent to members of the Advisory Committee and potential bidders for their comments and questions, which will be considered at the presolicitation conference. Based on the advice of the General Accounting Office, the Commission chose this approach, rather than have the Advisory Committee, alone, meet and comment on the draft RFP. A contract for the system can be awarded in the Summer of 1988, if offers are received which are cost-competitive and can satisfy Commission requirements.

Alternative approaches were considered in the Feasiblity Study and in the Benefit Cost Analysis. Further alternatives, including the option to relinquish remote retrieval to commercial firms, will be considered herein, during the procurement process, and in the prototype phase.

While the Advisory Committee recommended that no standardized formatting be required in the early implementation of the system, it indicated that the system be adaptable to incorporate this feature later, when feasible. This is being planned.

The Benefit Cost Analysis submitted to OMB in October 1987, analyzes the costs to both the government and the industry of the proposed system, to the extent possible and without knowing a final contract price.

Other Advisory Committee recommendations are discussed elsewhere in this report.

2. Functionality

The specifics of the proposed functionality of the ATFI system, as reflected in the Notice and comments, are discussed in the following sections. The topics correspond to the sections in Chapter A of this report.

(a) Basic System

The TDCC has now developed EDI standards for the transmission of tariff data for the ocean transportation industry. These are included in the RFP for the programming of the ATFI software and should facilitate the contractor's design and implementation of the system. The data-element concept is the best approach for ATFI because it will not only allow amendment and retrieval on an item basis, but also improve the speed and accuracy of filing.

While primarily a data base system, the Commission also intends to address the problem of page formatting of the Tariff Line Items when it is necessary to print a tariff in paper format for countries which do not have adequate computer capability. Page formatting will also be necessary for the official certification of tariff materials to courts. This will be done during the prototype phase.

(b) Standardized Coding

The TDCC EDI standards provide for individualized coding by filer of such items as commodities and geographic locations. When standardized coding becomes feasible, the system will be able to incorporate this function.

(c) Implementation—Exemptions

The Commission is pleased that carriers and conferences are volunteering to participate in the prototype phase where many of the system's working details will be resolved.

As mentioned in the Notice, implementation will be in phases, depending on the difficulties encountered. Exemptions will be addressed on both an individual and category basis.

At the same time, however, it is desirable to have as much of the industry's tariffs in the electronic system as soon as possible. The Commission encourages filers not having ADP capability to utilize commercial firms for that purpose. Then, as now, the Commission will provide the names of all tariff services to each filer with a specialized problem.

The electronic system will naturally require electronic equipment which will be relatively inexpensive, e.g., an off-the-shelf microcomputer, modem and printer. Training, developed by the Contractor in accordance with Commission specifications, will be available to assist firms on equipment and procedural questions.

(d) Compatibility—Security

The ATFI RFP and eventual contract will require the contractor to ensure compatibility with existing equipment and systems, to the extent possible. This will be done primarily through "connectibility," as mentioned in the Notice.

Security features are also a major design subject of the RFP to be implemented and tested during the prototype phase.

(e) Filing—Edit Checks

As mentioned in the comments, the Notice is not clear about "batch filing." This was unintentional and this feature will be included in the new system.

"Interactive filing" will also be provided for. Both types of filing will be by modem directly from the filer to the system, for which ten modem ports are specified in the draft RFP. The filer can be a carrier or conference, or a tariff service acting as tariff-filing agent for the carrier or conference.

Batch filing will be ideal for the user with frequent and voluminous tariff changes. The software provided will allow the filer to process its tariff material before transmitting it to the ATFI system.

With interactive filing, special software is not needed. The filer needs only a terminal and modem with which to access its own tariff on the ATFI system for occasional changes. This type of filing is also intended for the small operator who might be inexperienced in computer operations or tariff regulations. The interactive prompts will lead the filer's computer operator through all the necessary steps.

Automatic edit checks will be applied to both types of filing. During interactive filing, for example, a rate increase on less than 30-days notice would not be accepted and the filer could change the date on-screen. For batch filing, such an edit check would be built into the software that is made available by the Commission to the filer, and the 30-day-effective-date problem would be resolved before transmission of the tariff begins.

Other types of "edit checks" will continue to be made by tariff analysts to check such things as ambiguities and conflicts with other tariff items.

Edit checks are not solely for the internal benefit of the Commission. If shippers and carriers did not use rates in their daily business activities, it might be feasible to allow the tariff filer to assume the risk of being assessed the statutory civil penalty for tariff form and content violations. To enforce its regulations, the Commission could theoretically rely upon reports of violations long after they occurred.

The fact is, however, that both carriers and shippers need accurate rate information as soon as possible in order to effectively do business. The current paper system invites tariff discrepancies that cause confusion in the industry and often result in cases that have to be adjudicated.

In fiscal year 1987, there were about 9,000 rejections of tariff materials filed. Although approximately 750,000 pages were filed during the fiscal year, a few entire tariffs were rejected. Commercial firms filing on behalf of carrier clients also have some rejections, even in cases where they receive the tariff electronically and convert it into paper for filing at the Commission.

Many rejections are due to date discrepancies, such as a retroactive effective date, or an increase on less than 30-days notice. While some of these rejections may have been due to administrative error, many of these mistakes are due to delay in filing caused by the current paper system.

Because rate reductions may be effective upon filing, the carrier will usually use these rates immediately. Frequently, the rate is filed to accommodate the urgent needs of a particular shipper. When the tariff page is filed, the filer will often submit an extra copy of the page to be stamped with a receipt date to provide the carrier with evidence of filing and when it can use the rate. Moreover, an extra copy is made available to commercial tariff services.

Then, perhaps the same day, a rate might be rejected because it does not comply with statutory requirements and the filer is immediately notified. In the meantime, the same page, revised again to show a different decreased rate, has been filed. This may, in turn, result in other reasons for rejection of this page as well, all because of the original mistake. Such derivative causes for rejection include "carrying forward rejected material" and improper revised-page numbers.

ATFI's edit checks will reduce original errors and, because the item, not the page, will be amended, will almost entirely eliminate "derivative" errors. The data-element approach is indispensable for the electronic edit checks and will substantially facilitate the search by tariff specialists for other rejectable materials.

(f) Availability of Unprocessed Data Base

As indicated in the Notice, once rejection problems have been resolved and the tariff is officially on file, a more accurate data base of all tariffs and amendments on file will be made available to third-party vendors and the public. Under FOIA principles, copies of the data may be sold at the marginal cost of reproduction.

The tariff data, downloaded onto tapes, will be in raw and unprocessed form so as not to compete with value-added vendors that should be able to commercially use this feature. As suggested in the comments, the Commission would consider updating the tapes on a weekly basis.

(g) Value-Added Services

The Commission will leave to third-party vendors such value-added services as the capability of searching across different tariffs, a function that the ATFI system will not allow by public access. The Commission now subscribes to RATES®, which is formatted or tagged from FMC official tariff pages for this and other services. RATES®, and similar market services should be improved by access to the ATFI system, when operational.

The Commission, however, will continue to need processing capability for internal, enforcement purposes and may continue to use value-added services to the extent the new system does not provide such advanced features.

Because there is little, if any, commercial need for certain other features, however, the ATFI system will have to provide them. This includes, for example, maintaining historical tariff information for five years for statutory-penalty purposes, and for up to three years for adjudications of disputes between shipper and carrier. Of course, the Commission can certify the legal and effective tariff rates for these proceedings only from its official files.

Finally on this topic, the Commission may have to ensure that value-added vendors under the new system make provision for certain legal and regulatory features for which there may be little or no commercial need. One such feature would be an electronic "anti-rebate" provision now required in paper tariffs under 46 CFR 580.5(c)(2)(ii).

(h) Retrieval—Public Reference Room

The Commission's Tariff Control Center public reference room now makes available tariff binders to the public and third-party vendors for inspection and copying.

The draft RFP will require the contractor to provide four terminals and two printers for this purpose under the electronic system. The data base accessed by the terminals will be unprocessed and will allow users to "search" only one tariff at a time as is the case under the present paper system.

(i) Remote Retrieval by Modem

Since the electronically collected tariffs are subject to disclosure under the Freedom of Information Act and are to be made publicly accessible under the shipping statutes, the Commission has provided for the required access in the design and development of the system. The terminals in the public reference room electronically provide such access, and the availability of the full data base tapes is an additional means by which the Commission can perform its statutory duties. The major question presented in the Notice is whether the Commission should reconsider

providing further access, i.e., through the function which provides remote access to tariffs by modem.

The basic question, however, is whether, under the Freedom of Information Act and the shipping statutes, the Commission can decline to make public tariff information available to certain segments of the public. Can the Commission legally allow the public doing business in the Washington, D.C. area to have online access, while everyone else has to submit an FOIA request in writing? If the remote retrieval feature would compete with commercial firms, then why not the public reference room?

The remote retrieval feature merely extends the public reference room concept by allowing remote electronic access to one tariff at a time by any member of the public, wherever situated. Once a user obtains access to the system, the configuration and security controls are the same, both for the public reference room and for remote retrieval. There is no "dissemination;" the service is provided only upon request.

True value-added services should be and will be left to commercial firms. A real value-added feature is the ability to search for commodity rates across several tariffs or up-to-date tracking of all rates of a particular carrier in a certain trade. It is not intended that ATFI will do such things for the public. Providing access to one tariff at a time, however, as the Commission does now, can hardly be said to be a value-added feature, whether performed in the public reference room or over the phone. Because a commercial firm provides a similar service now or wants to do it in the future does not make this basic, statutory duty any less of a governmental function.

Even where, as a general policy, services which the Government should not provide in competition with commercial firms happen to be non-value-added, the Commission cannot completely abdicate this statutory duty under FOIA or the shipping statutes. Absent legislation, commercial firms could not be "certified" or "franchised" to perform such a governmental function.

Electronically, the remote access feature is relatively basic and inexpensive. The draft REP calls for 25 ports for this purpose and the user will pay for his or her own call. The difference between providing and not providing the remote retrieval function is basically the size of communications equipment and connect-time and storage charges. The difference in training costs to the Government would be negligible because so little training is required.

In the Notice, the Commission indicated that, even if it decided not to provide the remote retrieval feature for the public, filing carries would still need to access their own tariffs and those for conferences to which they belong. Some comments also challenge these functions.

While tariffs "belong to" the public, once officially filed, they also contain the rates of the filing carrier or conference. The comments suggest that carriers can find out what their own filed rates are without remotely accessing ATFI. True, a filer should know what it filed. Without access to its own tariff, however, it does not immediately know what tariff matter may have been suspended or rejected by the Commission after review by Commission staff. To the extent possible, the ATFI system is designed to resolve such problems before the filed tariff matter goes into the data base. The carrier does not want its competitive tariff information to become public until it is cleared to go into the date base. Thus, only by immediate access to its own tariff data will the carrier know that there is a problem with a particular rate,—in sufficient time, perhaps, for the rate not to be charged to a shipper.

If the Commission decided to not provide the remote retrieval function and to not allow carriers access to their own tariffs, electronic password features can be developed to allow a carrier to batch file by modem, but not be able to access its own tariff. Not so, however, with interactive filing, which requires access to the item desired to be changed by the casual filer. While some comments suggest that interactive filing could be dispensed with, the Commission believes that this feature will be extremely helpful to the small operators, expecially NVOCC's.

The comments do not mention a very important fact. Conference tariffs are filed by conferences, not the carrier members; yet the carrier member is required by law to charge the conference tariff rate. Even though the carrier may have voted for the rate change at a conference meeting, it would not immediately know when the rate was actually filed or became legally effective, unless it had access to the conference tariff.

The arguments against allowing carriers remote access to their own or their conference tariffs lead to the same dilemma as the argument against remote retrieval itself. The carrier on the West Coast could not access its tariffs; but the public and competing carriers in the Washington, D.C., public reference room could.

Commercial firms now provide and will continue to provide services which provide tariff information to the shipping industry and the public. Some of the commenting, shipping-industry firms indicate that such services will satisfy their needs when ATFI becomes operative. Again, the Commission encourages commercial firms to provide tariff services for the carriers, conferences, freight forwarders, terminal operators, and shippers who want them.

On the other hand, some commenters urge the Commission to retain ATFI's remote retrieval feature. The few commercial shippers, represented in the comments, were all in favor of the Commission retaining the function. The Commission has to be and is most concerned about the shipper who is the real customer of tariffs. If shippers want the remote retrieval function, then the Commission should provide it for them.

D. Conclusion

The Notice of Inquiry on Tarriff Automation was published in the **Federal Register** on December 22, 1987 (52 FR 48504). In this outreach effort, the Commission provided opportunity for comment by anyone whose business operation may be affected by the basic functionality of the FMC's Automated Tariff Filing and Information System (ATFI), as described in the Notice, so that the final Request for Proposals can set forth the necessary specifications for the best possible system. Nineteen comments were submitted by representatives from Government, the Congress, carriers, conferences, shippers, freight forwarders, the information industry and associations.

Based on the comments submitted, the Commission has reconsidered how ATFI may affect industry and the public. As further explained in this report, the Commission has decided to continue with the basic functionality of ATFI as described in the Notice. This includes all originally planned methods of providing access to tariff data, such as the availability of the full data base tapes, and on-line access to the data base, both remotely by modem, as well as in the public reference room. The specifications for the system are contained in a draft Request for Proposals which were submitted to potential offerors beginning on March 18, 1988.

The Commission has decided to provide remote retrieval of tariffs by modem, given the policies underlying the Freedom of Information Act and the shipping statutes, and the estimated,

relatively low cost of providing that service. As described in the Notice, members of the general public using this feature would be able to perform only relatively rudimentary retrievals, and essentially no analysis of the data. This means retrieval of only one tariff at a time, in its full format. To retrieve a tariff, the public user would have to specify the specific tariff of a particular carrier that is desired; the public user would not be able to search by keys, e.g., by route or commodity.

In making this decision, the Commission was also impressed by the fact that the few commercial shippers represented in the comments all urged the Commission to retain this function. Shippers are the primary users of tariff data and are the major beneficiaries of the tariff laws.

Otherwise, some commenters indicated that commercial tariff services would meet their needs. The Commission encourages the continuation of such "third-party vendors" and the use of their services by those that desire them.

Throughout its development and eventual operation, the Commission continues to invite comments on ATFI.

By the Commission.

Joseph C. Polking,

Secretary.

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Part V

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Chukchi Sea Oil and Gas Lease Sale 109; Notices

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Chukchi Sea
Oil and Gas Lease Sale 109

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356 (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Alaska OCS Region, Minerals Management Service (MMS), Room 544, 949 East 36th Avenue, Anchorage, Alaska 99508-4302. Bids may be delivered in person to that address between 8 a.m. and 4 p.m., Alaska Standard Time (a.s.t.), until the Bid Submission Deadline at 10 a.m., a.s.t., May 24, 1988. Bids will not be accepted the day of Bid Opening, May 25, 1988. Delivery by mail should be addressed to the above address and must be received by the Bid Submission Deadline. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., a.s.t., May 24, 1988. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., a.s.t., May 25, 1988. Bid Opening Time will be 9 a.m., a.s.t., May 25, 1988, at the Anchorage Hilton Hotel, Alaska Ballroom, 500 3rd Avenue, Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 53 FR 10570, on April 1, 1988.

3. Method of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease Sale 109, Chukchi Sea (insert Official Protraction Diagram number(s) and name(s), if applicable, and block number(s)) not to be opened until 9 a.m., a.s.t., on May 25, 1988," must be submitted for each block or prescribed bidding unit bid on. For those blocks which must be bid on as a bidding unit, it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. No bid for less than all of a block or bidding unit as described in paragraph 12 will be considered.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Alaska Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $62 or more per hectare or fraction thereof. All leases awarded will provide for a yearly rental payment of $8 per hectare or fraction thereof. All leases will provide for a minimum royalty of $8 per hectare or fraction thereof. Bids on all blocks and bidding units offered in this sale must be submitted on a cash bonus basis with a fixed royalty of 12 1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Program Representation Form, Form MMS-2032 (June 1985). See the Affirmative Action paragraph under "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus of $62 or more per hectare or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. Official Protraction Diagrams (OPD). Blocks or portions of blocks offered for lease may be located on the following OPD's which may be purchased for $2 each from the Records Manager, Alaska OCS Region, Room 502, at the address stated in paragraph 2 of this Notice.

Outer Continental Shelf Official Protraction Diagrams:

NS 2-8	—	(Approved February 25, 1981)
NS 3-7	—	(Approved July 14, 1981)
NS 3-8	—	(Approved January 21, 1981)
NR 2-2	Tison	(Revised August 22, 1986)
NR 3-1	Karo	(Revised August 22, 1986)
NR 3-2	—	(Approved October 12, 1977)
NR 2-4	Studds	(Revised August 22, 1986)
NR 3-3	—	(Revised December 16, 1985)
NR 3-4	Solivik Island	(Revised December 16, 1985)
NR 4-3	Wainwright	(Revised December 16, 1985)
NR 2-6	Chukchi Sea	(Revised October 26, 1987)
NR 3-5	Point Lay West	(Revised September 14, 1987)
NR 3-6	Point Lay	(Revised December 16, 1985)
NR 2-8	Point Hope West	(Revised September 14, 1987)
NR 3-7	Point Hope	(Revised December 16, 1985)

12. Description of the Areas Offered for Bids.

(a) Categories of blocks listed under OPD's:

The lease sale area offered for bids is listed by OPD. Two categories of blocks appear under each OPD listed: (1) whole or partial blocks and (2) blocks which comprise bidding units.

Whole or partial blocks fall entirely under the jurisdiction of the Federal Government. Each block must be bid on separately. Hectares for whole or partial blocks listed in this paragraph may be found on the appropriate OPD.

Blocks which comprise bidding units are a combination of portions of adjacent blocks. The entire bidding unit is listed under the OPD where the first partial block is located. When part of the bidding unit is located on an adjacent OPD, the appropriate OPD number will be listed (e.g., 485 (NS 3-7)). All parts of a bidding unit must be bid on together.

(b) The following blocks or portions of blocks are offered for bids:

Official Protraction Diagram NS 2-8 (approved February 25, 1981)

(1) WHOLE and PARTIAL BLOCKS:

15-20	235-241	455-461	675-681	895-901
59-65	279-285	499-505	719-725	940-946
103-109	323-329	543-549	763-769	984-990
147-153	367-373	587-593	807-813	
191-197	411-417	631-637	851-857	

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
14	406.55	
58	328.60	
102	250.67	
146	172.76	
190	94.86	
234	20.08	1273.52
21	1078.85	
2 (NS 3-7)	1078.85	2157.70
506	43.88	
485 (NS 3-7)	43.88	
550	158.07	
529 (NS 3-7)	158.07	
594	273.17	
573 (NS 3-7)	273.17	
638	388.23	
617 (NS 3-7)	388.23	1726.70
682	503.27	
661 (NS 3-7)	503.27	
726	618.28	
705 (NS 3-7)	618.28	2243.10

Blocks	Hectares	Total Hectares
770	733.26	
749 (NS 3-7)	733.26	1466.52
814	848.21	
793 (NS 3-7)	848.21	1696.42
858	963.13	
837 (NS 3-7)	963.13	1926.26
902	1078.03	
881 (NS 3-7)	1078.03	2156.06
939	1077.42	
983	999.86	2077.28

Official Protraction Diagram NS 3-7 (approved July 14, 1981)

(1) WHOLE and PARTIAL BLOCKS:

3-22	222-242	442-462	662-682	882-902
46-66	266-286	486-506	706-726	925-946
90-110	310-330	530-550	750-770	969-990
134-154	354-374	574-594	794-814	
178-198	398-418	618-638	838-858	

(2) BIDDING UNITS: None

Official Protraction Diagram NS 3-8 (approved January 21, 1981)

(1) WHOLE and PARTIAL BLOCKS:

1-21	221-241	441-461	661-681	881-901
45-65	265-285	485-505	705-725	925-946
89-109	309-329	529-549	749-769	969-990
133-153	353-373	573-593	793-813	
177-197	397-417	617-637	837-857	

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
506	43.88	
550	158.07	
594	273.17	
638	388.23	
682	503.27	
726	618.28	1984.90

Blocks	Hectares	Total Hectares
770	733.26	
814	848.21	1581.47
858	963.13	
902	1078.03	2041.16

Official Protraction Diagram NR 2-2, Tison (revised August 22, 1986)

(1) WHOLE and PARTIAL BLOCKS:

16-22	236-242	456-462	676-682	896-903
60-66	280-286	500-506	720-726	940-947
104-110	324-330	545-550	764-770	984-991
148-154	368-374	588-594	808-815	
192-198	412-418	632-638	852-859	

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
15	922.31	
59	844.79	1767.10
103	764.28	
147	689.79	
191	612.32	2066.39
235	534.87	
279	457.44	
323	380.03	
367	302.64	
411	225.27	
455	147.91	
499	70.58	2118.74
543	6.59	
544	2290.68	2297.27
375	38.10	
353 (NR 3-1)	38.10	
419	150.60	
397 (NR 3-1)	150.60	
463	265.13	
441 (NR 3-1)	265.13	
507	379.63	
485 (NR 3-1)	379.63	1666.92

Blocks	Hectares	Total Hectares
551	494.10	
529 (NR 3-1)	494.10	
595	608.55	
573 (NR 3-1)	608.55	2205.30
639	722.96	
617 (NR 3-1)	722.96	1445.92
683	837.34	
661 (NR 3-1)	837.34	1674.68
727	951.70	
705 (NR 3-1)	951.70	1903.40
771	1066.03	
749 (NR 3-1)	1066.03	2132.06

Official Protraction Diagram NR 3-1, Karo (revised August 22, 1986)

(1) WHOLE and PARTIAL BLOCKS:

2-23	222-243	442-463	662-683	881-903
46-67	266-287	486-507	706-727	925-947
90-111	310-331	530-551	750-771	969-991
134-155	354-375	574-595	793-815	
178-199	398-419	618-639	837-859	

(2) BIDDING UNITS: None

Official Protraction Diagram NR 3-2 (approved October 12, 1977)

(1) WHOLE and PARTIAL BLOCKS:

1-22	221-242	441-462	661-682	881-903
45-66	265-286	485-506	705-726	925-947
89-110	309-330	529-550	749-770	969-991
133-154	353-374	573-594	793-815	
177-198	397-418	617-638	837-859	

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
375	38.01	
419	150.60	
463	265.13	
507	379.63	
551	494.10	
595	608.55	1936.02
639	722.96	
683	837.34	1560.30

Blocks	Hectares	Total Hectares
727	951.70	
771	1066.03	2017.73

Official Protraction Diagram NR 2-4, Studds (revised August 22, 1986)

(1) WHOLE and PARTIAL BLOCKS:

8-15	229-234	449-455	669-675	889-896
52-59	273-279	493-499	713-720	933-940
96-103	317-323	537-543	757-764	977-984
140-147	361-367	581-587	801-808	
185-191	405-411	625-631	846-852	

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
184	1139.92	
228	1062.92	2202.84
235	2297.22	
236	24.45	2321.67
280	131.64	
265 (NR 3-3)	131.64	
324	245.58	
309 (NR 3-3)	245.58	
368	359.49	
353 (NR 3-3)	359.49	1473.42
412	473.37	
397 (NR 3-3)	473.37	
456	587.22	
441 (NR 3-3)	587.22	2121.18
500	701.04	
485 (NR 3-3)	701.04	1402.08
544	814.83	
529 (NR 3-3)	814.83	1629.66
588	928.59	
573 (NR 3-3)	928.59	1857.18
632	1042.32	
617 (NR 3-3)	1042.32	2084.64

Blocks	Hectares	Total Hectares
676	1156.02	
661 (NR 3-3)	1156.02	2312.04
272	985.95	
316	908.99	1894.94
360	832.05	
404	755.14	
448	678.24	2265.43
492	601.37	
536	524.51	
580	447.68	
624	370.87	
668	294.07	2238.50
712	217.30	
756	140.55	
800	63.82	421.67
844	4.23	
845	2286.88	2291.11

Official Protraction Diagram NR 3-3 (revised December 16, 1985)

(1) WHOLE and PARTIAL BLOCKS:

2-24	223-244	442-464	662-684	881-904
46-68	266-288	486-508	705-728	925-948
90-112	310-332	530-552	749-772	969-992
134-156	354-376	574-596	793-816	
178-200	398-420	618-640	837-860	

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
221	24.45	
222	2297.22	2321.67

Official Protraction Diagram NR 3-4, Solivik Island (revised December 16, 1985)

(1) WHOLE and PARTIAL BLOCKS:

1-23	221-242	441-455	661-675	881-895
45-67	265-284	485-499	705-719	925-939
89-111	309-328	529-543	749-763	969-982
133-155	353-372	573-587	793-807	
177-199	397-416	617-631	837-851	

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
243	2297.22	
244	24.45	2321.67

Official Protraction Diagram NR 4-3, Wainwright (revised December 16, 1985)

(1) WHOLE and PARTIAL BLOCKS:

2-11	134-140
46-55	178-184
90-99	223-228

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
221	24.45	
222	2297.22	2321.67

Official Protraction Diagram NR 2-6, Chukchi Sea (revised October 26, 1987)

(1) WHOLE and PARTIAL BLOCKS:

17-24	237-244	457-464	678-685	898-905
61-68	281-288	502-508	722-729	942-949
105-111	325-332	546-552	766-773	986-992
149-156	369-376	590-597	810-817	1030-1037
193-200	413-420	634-641	854-861	

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
112	2282.78	
113	8.54	2291.32
157	100.67	
134 (NR 3-5)	100.67	
201	214.00	
178 (NR 3-5)	214.00	
245	327.29	
222 (NR 3-5)	327.29	
289	440.56	
266 (NR 3-5)	440.56	2165.04
333	553.79	
310 (NR 3-5)	553.79	1107.58

Blocks	Hectares	Total Hectares
377	666.99	
354 (NR 3-5)	666.99	1333.98
421	780.16	
398 (NR 3-5)	780.16	1560.32
465	893.30	
442 (NR 3-5)	893.30	1786.60
501	1142.98	
545	1066.61	2209.59
509	1006.41	
486 (NR 3-5)	1006.41	2012.82
553	1119.48	
530 (NR 3-5)	1119.48	2238.96
589	990.26	
633	913.93	1904.19
677	837.62	
721	761.34	
765	685.07	2284.03
809	608.83	
853	532.61	1141.44
897	456.41	
941	380.23	
985	304.08	
1029	227.95	1368.67
993	2248.45	
994	.003	2248.453
1038	57.18	
1013 (NR 3-5)	57.18	
26 (NR 2-8)	169.87	
2 (NR 3-7)	169.87	
70 (NR 2-8)	282.52	
46 (NR 3-7)	282.52	
114 (NR 2-8)	395.14	
90 (NR 3-7)	395.14	1809.42

Official Protraction Diagram NR 3-5, Point Lay West (revised September 14, 1987)

(1) WHOLE and PARTIAL BLOCKS:

3-26	223-246	443-466	662-686	838-844
47-70	267-290	487-510	706-730	860-862
92-114	311-334	531-554	750-756	882-888
135-158	355-378	574-598	766-774	926-932
179-202	399-422	618-642	794-800	971-976
			816-818	1014-1017

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
90	8.54	
91	2282.78	2291.32
969	.003	
970	2248.45	2248.453

Official Protraction Diagram NR 3-6, Point Lay (revised December 16, 1985)

(1) WHOLE and PARTIAL BLOCKS:

1-14	221-232	441-449	661-665
45-58	265-275	485-493	705-709
89-101	309-319	529-537	749-752
133-145	353-362	573-581	793-795
177-188	397-406	617-625	837-838

(2) BIDDING UNITS: None

Official Protraction Diagram NR 2-8, Point Hope West (revised September 14, 1987)

(1) WHOLE and PARTIAL BLOCKS:

18-25	238-245	458-466
62-69	282-289	502-510
107-113	326-333	546-554
150-157	370-377	590-598
194-201	414-422	634-642

(2) BIDDING UNITS:

Blocks	Hectares	Total Hectares
17	151.84	
61	75.75	227.59
105	9.35	
106	2294.33	2303.68

Blocks	Hectares	Total Hectares
158	507.73	
134 (NR 3-7)	507.73	
202	620.29	
178 (NR 3-7)	620.29	2256.04
246	732.81	
222 (NR 3-7)	732.81	1465.62
290	845.30	
266 (NR 3-7)	845.30	1690.60
334	957.76	
310 (NR 3-7)	957.76	1915.52
378	1070.18	
354 (NR 3-7)	1070.18	2140.36

Official Protraction Diagram NR 3-7, Point Hope (revised December 16, 1985)

(1) WHOLE and PARTIAL BLOCKS:

3-6	179-182	355-356	530-532
47-50	223-226	398-400	574-576
91-94	267-270	442-444	618-620
135-138	311-312	486-488	

(2) BIDDING UNITS: None

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms of 10 years. Leases will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the first address stated in paragraph 2.

(b) The following stipulations will be included in each lease resulting from this sale.

Stipulation No. 1—Protection of Archaeological Resources

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction, or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RSFO), believes an archaeological resource may exist in the lease area, the RSFO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RSFO, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RSFO for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RSFO that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RSFO. A report on the investigation shall be submitted to the RSFO for review.

(3) If the RSFO determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RSFO will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RSFO has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the RSFO. The lessee shall make every reasonable effort to preserve the archaeological resource until the RSFO has told the lessee how to protect it.

Stipulation No. 2—Orientation Program

The lessee shall include in any exploration or development and production plans submitted under 30 CFR 250.33 and 250.34 a proposed orientation program for all personnel involved in exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) for review and approval by the Regional Supervisor, Field Operations. The program shall be designed in sufficient detail to inform individuals working on the project of specific types of environmental, social, and cultural concerns which relate to the sale and adjacent areas. The program shall be formulated by qualified instructors experienced in each pertinent field of study and shall employ effective methods to ensure that personnel are informed of archaeological and biological resources and habitats, including endangered species, fisheries, bird colonies, and marine mammals, and to ensure that personnel understand the importance of not disturbing archaeological resources and of avoidance and nonharassment of wildlife resources. The program shall be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating. The orientation program shall include information concerning

avoidance of conflicts with subsistence activities. The program shall include presentations and information about all pertinent lease sale stipulations and information to lessees provisions.

The program shall be attended at least once a year by all personnel involved in onsite exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) and all supervisory and managerial personnel involved in lease activities of the lessee and its agents, contractors, and subcontractors.

Stipulation No. 3—Transportation of Hydrocarbons

Pipelines will be required: (a) if pipeline rights-of-way can be determined and obtained; (b) if laying such pipelines is technologically feasible and environmentally preferable; and (c) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple-use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the Regional Technical Working Group or other similar advisory groups with participation of Federal, State, and local governments and industry.

Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Supervisor, Field Operations.

Stipulation No. 4—Oil-Spill Response Preparedness

Lessees must be prepared to respond to oil spills, which includes training of personnel for familiarization with response equipment and strategies, and conducting drills to demonstrate readiness. Prior to approval of exploration or development and production plans, lessees shall submit for review and approval oil-spill-contingency plans (OSCP's) in accordance with 30 CFR 250.42. The OSCP must address all aspects of oil-spill response readiness, including an analysis of potential spills and spill-response strategies, type, location and availability of appropriate oil-spill equipment, and response times and equipment capability for the proposed activities. The plan must also address response drills and training requirements. The lessee shall conduct drills under realistic conditions to the extent necessary to demonstrate continued readiness and response capability for appropriate environmental conditions: e.g., solid ice, open water, and broken ice conditions. For production operations, drills shall be conducted at least semiannually. Drills shall include deployment of on-site response equipment, and additional equipment, available from a cooperative or other sources identified in the OSCP, to the extent necessary to demonstrate adequate response preparedness for the type, location, and scope of proposed activities and anticipated environmental conditions.

Stipulation No. 5—Protection of Biological Resources

If biological populations or habitats that may require additional protection are identified in the lease area by the Regional Supervisor, Field Operations (RSFO), the RSFO may require the lessee to conduct biological surveys to determine the extent and composition of such biological populations or habitats. The RSFO shall give written notification to the lessee of the RSFO's decision to require such surveys.

Based on any surveys that the RSFO may require of the lessee or on other information available to the RSFO on special biological resources, the RSFO may require the lessee to: (1) relocate the site of operations; (2) establish to the satisfaction of the RSFO, on the basis of a site-specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist; (3) operate during those periods of time, as established by the RSFO, that do not adversely affect the biological resources; and/or (4) modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

If any area of biological significance should be discovered during the conduct of any operations on the lease, the lessee shall immediately report such findings to the RSFO and make every reasonable effort to preserve and protect the biological resource from damage until the RSFO has given the lessee direction with respect to its protection.

The lessee shall submit all data obtained in the course of biological surveys to the RSFO with the locational information for drilling or other activity. The lessee may take no action that might affect the biological populations or habitats surveyed until the RSFO provides written directions to the lessee with regard to permissible actions.

Stipulation No. 6—Industry Site-Specific Bowhead Whale Monitoring Program

Lessees shall conduct a site-specific monitoring program during exploratory drilling activities to determine when bowhead whales are present in the vicinity of lease operations and the extent of behavioral effects on bowhead whales due to these activities. The lessee shall provide its proposed monitoring plan to the Regional Supervisor, Field Operations (RSFO), for review and approval no later than 60 days prior to commencement of drilling activities.

Information obtained from this site-specific monitoring program shall be provided to the RSFO in accordance with the approved monitoring plan. This stipulation will remain in effect until termination or modification by the Department of the Interior after consultation with the National Marine Fisheries Service.

This stipulation applies to the following blocks for the following time period:

Spring Migration Area
April 1 to May 31

Official Protraction Diagram	Blocks
NR 2-6	728, 729, 771-773, 814-817, 856-861, 899-905, 941-949, 985-994, 1029-1038
NR 2-8	17-26, 61-70, 105-114, 150-158, 194-202, 238-246, 282-290, 326-334, 370-378, 414-422, 458-466, 502-510, 546-554, 590-598, 634-642
NR 3-4	243, 244, 284, 327, 328, 370-372, 412-416, 454, 455, 497-499, 539-543, 581-587, 624-631, 667-675, 710-719, 753-763, 796-807, 839-851, 882-895, 925-939, 969-982
NR 3-5	25, 26, 68-70, 111-114, 154-158, 197-202, 240-246, 282-290, 324-334, 367-378, 409-422, 451-466, 493-510, 535-554, 578-598, 620-642, 662-686, 706-730, 750-756, 766-774, 794-800, 816-818, 838-844, 860-862, 882-888, 926-932, 969-976, 1013-1017
NR 3-6	1-14, 45-58, 89-101, 133-145, 177-188, 221-232, 265-275, 309-319, 353-362, 397-406, 441-449, 485-493, 529-537, 573-581, 617-625, 661-665, 705-709, 749-752, 793-795, 837, 838
NR 3-7	2-6, 46-50, 90-94, 134-138, 178-182, 222-226, 266-270, 310-312, 354-356, 398-400, 442-444, 486-488, 530-532, 574-576, 618-620
NR 4-3	54, 55, 96-99, 137-140, 179-184, 221-228

Stipulation No. 7—Density Restriction for Protection of Bowhead Whales from Potential Effects of Noise

The Regional Supervisor, Field Operations (RSFO) will review proposed exploration plans for activities occurring in the Chukchi polynyas in the period April 15 through May 15 in the blocks specified below. Exploratory drilling, testing, and other downhole exploratory activities will be prohibited during this period if it is determined by the RSFO that the density of drilling activity is such that the whale migration could be significantly impeded.

The RSFO may determine that continued operations are necessary to prevent a loss of well control or to ensure human safety. This stipulation will remain in effect until termination or modification by the Department of the Interior, after conferring with the State of Alaska and the North Slope Borough, and in consultation with the National Marine Fisheries Service. This stipulation applies to the following blocks:

Official Protraction Diagram	Blocks
NR 3-4	243-244, 284, 327-328, 370-372, 412-416, 454-455, 497-499, 539-543, 581-587, 624,631, 667-675, 710-719, 753-763, 796-807, 839-851, 882-895, 925-939, 969-982
NR 3-5	25-26, 68-70, 111-114, 154-158, 197-202, 240-246, 283-290, 327-334, 370-378, 413-422, 456-466, 499-510, 542-554, 585-598, 629-642, 672-686, 716-730, 766-774, 816-818, 860-862
NR 3-6	1-14, 45-58, 89-101, 133-145, 177-188, 221-232, 265-275, 309-319, 353-362, 397-406, 441-449, 485-493, 529-537, 573-581, 617-625, 661-665, 705-709, 749-752, 793-795, 837-838
NR 4-3	54-55, 96-99, 137-140, 179-184, 221-228

Stipulation No. 8—Subsistence Whaling and Other Subsistence Activities

Federal and State laws recognize subsistence as a priority use of wildlife resources. Therefore, all exploration, and development and production operations shall be conducted in a manner that minimizes any potential for conflict between the oil and gas industry and the subsistence bowhead whale hunt.

Prior to submitting an exploration plan or development and production plan to the lessor for activities proposed during the bowhead whale migration period, the lessee shall contact potentially affected subsistence whaling communities such as Wainwright, Barrow, Point Hope, Point Lay and the Alaska Eskimo Whaling Commission to discuss potential conflicts with the siting, timing, and methods of proposed operations. Through this consultation, the lessee shall make reasonable efforts to assure that exploration, development, and production activities are compatible with whaling activities and will not result in undue interference with the subsistence whale hunt.

A discussion of resolutions reached during this consultation process and any unresolved conflicts shall be included in the exploration plan or the development and production plan. In particular, the lessee shall show in the plan how mobilization of the drilling unit and crew and supply boat routes will be scheduled and located to minimize conflicts with subsistence activities. Communities, individuals, and other entities who were involved in the consultation shall be identified in the plan.

The lessee shall send a copy of the exploration plan or development and production plan to potentially affected whaling communities and the Alaska Eskimo Whaling Commission at the same time they are submitted to the lessor to allow concurrent review and comment as part of the lessor's plan approval process.

Subsistence whaling activities occur generally during the following period:

April to June: Barrow whalers use lead systems off Point Barrow and west of Barrow in the Chukchi Sea. Wainwright whalers use lead systems between Wainwright and Peard Bay. Point Hope and Point Lay whalers use the lead systems south of Point Hope.

14. Information to Lessees

(a) Affirmative Action Requirements. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms contain language that would be superseded by revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(b) Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) Oil Spill Cleanup Capability. Exploratory drilling, testing, and other downhole activities may be prohibited in broken ice conditions unless the lessee demonstrates to the RSFO the capability to detect, contain, clean up, and dispose of spilled oil in broken ice. The adequacy of such oil spill response capability will be determined within the Best Available and Safest Technologies requirements and will be considered at the time that oil spill contingency plans are reviewed. The adequacy of these plans will be determined by the RSFO prior to approval of exploration or development and production plans.

(d) Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders

should consult both Departments for regulations applicable to offshore pipelines.

(e) Bird and Marine Mammal Protection. Lessees are advised that during the conduct of all activities related to leases issued as a result of this sale, the lessee and its agents, contractors, and subcontractors will be subject to, among other laws, the provisions of the Marine Mammal Protection Act (MMPA) of 1972, as amended; the Endangered Species Act (ESA) of 1973, as amended; and International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws. With respect to endangered species, disturbance could be determined to constitute a "taking" situation in violation of the ESA. Under the ESA the term "take" has been defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Incidental takings of depleted marine mammals are only allowed when the statutory requirements of the MMPA and the ESA are met and Letters of Authorization (as contained in Section 101(a)(5) of the MMPA and Section 7(b)(4)(c) of the ESA) are obtained from the National Marine Fisheries Service (NMFS). Activities that are likely to "take" depleted marine mammals will be subject to these regulatory requirements. Violations under these acts and treaties may be reported to the NMFS or the U.S. Fish and Wildlife Service (FWS) as appropriate.

Of particular concern is disturbance at major wildlife concentration areas including bird colonies, marine mammal haulout and breeding areas, and wildlife refuges and parks. Maps locating and identifying major wildlife concentration areas in the lease area are available from the Regional Supervisor, Field Operations (RSFO). Lessees are also encouraged to confer with the FWS and NMFS in planning transportation routes between support bases and leaseholdings.

Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if aircraft and vessels maintained at least a 1-mile horizontal distance from and aircraft maintained at least a 1,500-foot vertical distance above known or observed wildlife concentration areas, such as bird colonies and marine mammal haulout and breeding areas.

For the protection of endangered whales and marine mammals throughout the lease area, it is recommended that all aircraft operators maintain a minimum 1,500-foot altitude when in transit between support bases and exploration sites. Lessees and their contractors are encouraged to minimize or reroute trips to and from the leasehold by aircraft and vessels when endangered whales are likely to be in the area. Human safety should take precedence at all times over these recommendations.

(f) Areas of Special Biological Sensitivity. Lessees are advised that certain areas are especially valuable for their concentrations of marine birds, marine mammals, fishes, or other biological resources. Identified areas of special biological sensitivity include the spring lead system from April through July, the area from Icy Cape to the northern boundary of the sale area east of 162° W. longitude, Peard Bay, Ledyard Bay, Kasegaluk Lagoon, and the open water within 12 miles of the major bird colonies at

Cape Lisburne and Cape Thompson. These areas are among areas of special biological sensitivity to be considered in the oil spill contingency plan as required by the regulations under 30 CFR 250.42(a). Lessees are advised that they have the primary responsibility for identifying these areas in their oil spill contingency plans and for providing specific protective measures. Additional areas of special biological sensitivity may be identified during review of exploration plans and development and production plans.

Consideration should be given in oil spill contingency plans as to whether use of dispersant is an appropriate defense in the vicinity of an area of special biological sensitivity. Lessees are advised that prior approval must be obtained before dispersants are used.

(g) Arctic Peregrine Falcon. Lessees are advised that the arctic peregrine falcon (Falco peregrinus tundrius) is listed as threatened by the U.S. Department of the Interior and is protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). Peregrines are generally present in Alaska from mid-April to mid-September and are most disturbed by human activities in the vicinity of nest sites. The conduct of OCS exploration or development and production activities will not conflict with arctic peregrine falcons if onshore facilities are located away from known nest sites. The lessee should contact the U.S. Fish and Wildlife Service (FWS) for information on locations of known nest sites of peregrine falcons. Aircraft should maintain at least a 1-mile horizontal and 1,500-foot vertical distance from known or potential peregrine nest sites to avoid conflict.

Lessees are advised that the FWS will review exploration plans and development and production plans submitted by lessees to the MMS. The FWS review may determine that certain restrictions could apply to further protect arctic peregrine falcon habitats. Lessees and affected operators should establish regular communication with the MMS and the FWS. Human safety should take precedence at all times over these recommendations.

(h) Chukchi Sea Biological Task Force. Lessees are advised that in the enforcement of the Protection of Biological Resources stipulation, the Regional Supervisor, Field Operations (RSFO), will consider recommendations from the Chukchi Sea Biological Task Force (BTF) composed of designated representatives of the Minerals Management Service, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency. Personnel from the State of Alaska and local communities are invited and encouraged to participate in the proceedings of the BTF. The RSFO will consult with the Chukchi Sea BTF on the conduct of biological surveys by lessees and the appropriate course of action after surveys have been conducted.

(i) Coastal Zone Management. Lessees are advised that the Alaska Coastal Management Program (ACMP) may contain policies and standards that are relevant to exploration and development and production activities associated with leases resulting from this sale. Relevant policies are applicable to ACMP consistency reviews of postlease activities. Lessees are encouraged to consult and coordinate early with those involved in coastal management review.

In addition, the Northwest Arctic Borough (previously the Northwest Alaska Native Association [NANA] Coastal Resource Service Area) and the North Slope Borough (NSB) have developed local coastal management programs. The Northwest Arctic Borough Coastal Management Program (CMP) and the NSB CMP have been adopted by the Alaska Coastal Policy Council and will become part of the ACMP if approved by the U.S. Department of Commerce. The NSB and Northwest Arctic Borough CMP's contain more specific policies related to transportation corridors; energy-facility siting; geologic hazards; and protection of subsistence areas and resources, habitats, and historic and prehistoric resources.

(j) Endangered Whales and MMS Monitoring Program. Lessees are advised that the MMS intends to continue its endangered whale monitoring program in the Chukchi Sea during exploration activities. The program will gather information on whale distribution and abundance patterns and will provide the Regional Supervisor, Field Operations (RSFO), with additional assistance in determining the extent, if any, of adverse effects to the species.

Lessees are further advised that the RSFO has the authority and intends to limit or suspend any operations, including preliminary activities, as defined under 30 CFR 250.31, on a lease whenever bowhead whales are subject to a threat of serious, irreparable, or immediate harm to the species. Should the information obtained from MMS' or lessees' monitoring programs indicate that there is a threat of serious, irreparable, or immediate harm to the species, the RSFO will require the lessee to suspend operations causing such effects, in accordance with 30 CFR 250.10(b). Any suspensions may be terminated at any time when the RSFO determines that circumstances which justified the ordering of suspension no longer exist. A Notice to Lessees, No. 87-1, which specifies performance standards for preliminary activities in the Chukchi Sea, was issued on November 30, 1987.

Information regarding endangered whales will be reviewed annually by the MMS in consultation with the NMFS and the State of Alaska until it is determined that annual reviews are no longer necessary. The sources of information include: the MMS monitoring program; the industry site-specific monitoring required by stipulation No. 6 (including data obtained within 90 days of completion of a drilling season); pertinent results of the MMS environmental studies and other applicable information. The purpose of the review will be to determine whether existing mitigating measures adequately protect the endangered whales. Should the review indicate the threat of serious, irreparable, or immediate harm to the species, the MMS will take action to protect the species, including the possible imposition of a seasonal drilling restriction, or other restrictions if appropriate.

(k) Development and Production Phase Consultation with NMFS to Avoid Jeopardy to Bowhead Whales. The MMS has been advised by the NMFS that, based on currently available information and technology, NMFS believes that development and production activities in the spring lead system used by bowhead whales along the Chukchi Sea coast would likely jeopardize the continued existence of the bowhead whale population. The NMFS has advised that they will reconsider this conclusion when new information, technology, and/or measures become available or are proposed that would effectively eliminate or otherwise mitigate this potential jeopardy situation. Lessees are advised that specific options, alternatives, and/or mitigating measures may be developed for production and development activities during the MMS

consultation with the NMFS as new information or technology is developed for specific development plans but that the possibility exists that development and production on leases in this area may be constrained or precluded.

(1) Information on State Review of Proposed Exploration Plans.

The State of Alaska, in stating its commitment to minimizing potential impacts to the bowhead whale and subsistence harvest activities, has advised MMS that State resource agencies will review Federal lessees' exploration plans for consistency with State policies pursuant to existing State and Federal statutes.

15. New Regulatory Provisions. The regulatory reference to provisions in 30 CFR Part 250 cited in this document refer to the new MMS "Oil and Gas and Sulphur Operations in the Outer Continental Shelf". They were published in the Federal Register at 53 FR 10595 on April 1, 1988. This notice is provided to bidders since any leases issued as a result of this sale will be subject to the April 1, 1988, regulations (not those existing in 30 CFR Part 250, revised as of July 1, 1987, which may be in conflict with the new regulations).

Director, Minerals Management Service

Wm. D. Bettenberg

Approved:

Assistant Secretary for Land and Minerals Management

J. Steven Griles

APR 14 1988

Date

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[FR Doc. 88-8638 Filed 4-19-88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Chukchi Sea

Notice of Leasing Systems, Sale 109

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding system to be used. In the Outer Continental Shelf (OCS) Sale 109, blocks will be offered under the following bidding system as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): bonus bidding with a fixed 12 1/2-percent royalty.

a. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for all blocks proposed for the Chukchi Sea (Sale 109) because these blocks are expected to have high exploration, development, and production costs.

The Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

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2. Designation of Blocks. All blocks in this lease sale will be offered under a 12 1/2-percent royalty system because that system is most appropriate to the resource levels and costs expected in this sale area.

Director, Minerals Management Service
Wm. D. Bettenberg

Approved:

APR 14 1988

Assistant Secretary - Land and Minerals Management
J. Steven Griles

federal register

Wednesday
April 20, 1988

Part VI

The President

Proclamation 5797—Crime Victims Week, 1988

Federal Register
Vol. 53, No. 76
Wednesday, April 20, 1988

Presidential Documents

Title 3—

The President

Proclamation 5797 of April 18, 1988

Crime Victims Week, 1988

By the President of the United States of America

A Proclamation

The principle of liberty and justice for all is one of our Nation's most fundamental goals and responsibilities. The vicious conduct of criminals against innocent, law-abiding citizens, however, continues to victimize millions of Americans each year. Our heritage of liberty and justice for all is threatened by this toll, so all of us—government officials, the criminal justice system, opinion-makers, and members of the public—must heed and help crime victims. Crime Victims Week is a fitting time for reflection on ways to assist fully those of us whose unalienable rights have been violated by criminals.

Victims of crime carry a burden inconceivable to others, and America is turning its attention to their plight. We must always remember that the responsibility for crimes lies with those who commit them, not with the innocent victims. Seven years ago, my Administration took some first steps toward meeting crime victims' needs. Since then, we have made great progress, with the President's Task Force on Victims of Crime, the Attorney General's Task Force on Family Violence, and the President's Child Safety Partnership. The Victims of Crime Act of 1984 established a Crime Victims Fund in the U.S. Treasury that is financed by penalty assessments on all convicted Federal defendants. The same Act also authorized U.S. Attorneys to recover the proceeds of literary endeavors of certain violent criminals.

Across our Nation, private citizens and groups, criminal justice personnel, service providers, and victims of crime themselves are helping—working for legislative reforms, monitoring court procedures, accompanying law officers to crime scenes, offering emotional support to crime victims and their families, and sparing countless people from the unjust burdens imposed by lack of concern or understanding. Those who so successfully attend to the needs and rights of innocent victims of crime deserve our gratitude and our assistance as they seek "liberty and justice for all."

The Congress, by Senate Joint Resolution 234, has designated the week beginning April 17, 1988, as "Crime Victims Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 17, 1988, as Crime Victims Week. I urge government officials and all citizens to continue to help crime victims and to treat them with respect, consideration, compassion, and fairness, for the sake of justice and human dignity.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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