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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 1, 204, 205, 211, 212, 214, 216, 223, 233a, 235, 242, and 245

[Order No. 1294-88]

## Marriage Fraud Amendments Regulations

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Immigration Marriage Fraud Amendments of 1986 (Pub. L. 99-639) became effective on November 10, 1986. This act provides for conditional permanent resident status for certain alien spouses, sons and daughters of United States citizens and lawful permanent residents; for the removal of the conditional basis of such residence upon the filing of a joint petition by the conditional resident and the petitioning spouse; and for the termination of an alien's lawful permanent residence for failure to file the necessary petition or for other reasons. This rulemaking creates final regulations necessary for the implementation of the law.

**EFFECTIVE DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3946.

**SUPPLEMENTARY INFORMATION:** On January 27, 1988, the Immigration and Naturalization Service ("the Service") published proposed regulations relating to the Immigration Marriage Fraud Amendments of 1986 (IMFA) in the Federal Register at 53 FR 2426 and requested that interested parties submit comments on the proposed regulations by February 26, 1988. IMFA, and the proposed regulations relating thereto, deal with a number of aspects of the issue:

First, IMFA creates a conditional basis of lawful permanent residence for aliens obtaining permanent residence within two years of marriage to a United States citizen or lawful permanent resident. It provides that the conditional basis shall be placed on the alien's permanent residence for a period of two years, and establishes a procedure by which the alien may seek removal of the conditions at the end of the two-year period. It further permits the revocation of an alien's permanent resident status under any of three conditions:

(1) If it is determined within the two-year period that the marriage was entered into for the purpose of obtaining an immigration benefit or has been judicially annualled or terminated, or that a fee or other consideration was given for the filing of a petition for an immigration benefit;

(2) If the alien and his/her spouse fail to file a joint petition for removal of the conditional status within the 90 days immediately preceding the second anniversary of the alien's having obtained conditional permanent residence, although such failure may be excused; or

(3) If the petition to remove the conditional basis of the alien's resident status is denied.

Second, section 2(b) of Pub. L. 99-639 provides for the deportation of an alien whose permanent resident status is revoked.

Third, IMFA precludes the approval of a petition filed on behalf of an alien who has conspired to engage in a fraudulent marriage or who has attempted to obtain an immigration benefit on the basis of such marriage.

Fourth, IMFA prevents an alien against whom an administrative or judicial proceeding is pending concerning his or her right to enter or remain in the United States from obtaining an immigrant benefit on the basis of a marriage occurring during such proceedings.

Fifth, IMFA precludes the approval of a spousal immigrant visa petition filed by an alien who obtained permanent residence through marriage unless:

(1) The alien petitioner has been a permanent resident for at least five years; or,

(2) The alien establishes by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading immigration laws; or,

(3) The alien's prior marriage was terminated through the death of his/her spouse.

Sixth, IMFA provides for criminal penalties for individuals who are convicted of having engaged in a fraudulent marriage.

Seventh, IMFA requires that the petitioner and beneficiary of a Petition to Classify Status of Alien Fiance or Fiancee for Issuance of Nonimmigrant Visa (Form I-129F) have met within the two-year period immediately preceding the filing of the petition, unless such requirement is waived.

Eighth, IMFA requires that an alien finance or fiancee of a United States citizen must apply for permanent residence through the normal adjustment procedures contained in section 245 of the Immigration and Nationality Act, as amended (the Act), instead of the automatic procedures formerly contained in section 214(d) of the Act.

Ninth, IMFA creates a new section, 245(d), which precludes an alien who obtained conditional permanent residence as the spouse of a citizen or lawful permanent resident from adjusting status on any other basis. It also precludes an alien who entered the United States as a nonimmigrant under section 101(a)(15)(K) of the Act and failed to marry the citizen petitioner from obtaining permanent residence on any other basis.

In addition to creating new regulations, this rulemaking revises existing regulations, including those sections relating to:

(1) Revocation of visa petitions to allow for revocation of petitions approved contrary to the provisions of IMFA,

(2) Documentary requirements for immigrants to permit the readmission of an otherwise eligible conditional resident,

(3) Reentry permits and refugee travel documents to allow issuance of such documentation to conditional residents,

(4) Admission of aliens to provide procedures for the admission or readmission of conditional residents, and

(5) Deportation proceedings to provide for cancellation of an Order to Show Cause under certain circumstances and to specify the conditions under which an immigration judge shall grant

conditional residence in a deportation hearing.

During the comment period, the Service received a total of sixteen comments from interested parties. Ten comments were received from private law firms or attorney associations, four from Service employees, one from a citizen's group interested in immigration reform and one from a religious denomination. Most commenters chose to comment on several aspects of the regulations. All of the suggestions and opinions submitted by the commenters were carefully reviewed and given full consideration. Many of the comments suggesting minor changes in the rulemaking have been incorporated into the final regulations. The Service appreciates the time and effort devoted by each of the interested parties in this regard. A summary of these comments and the Service response follow (because most people made more than one comment, the total number of comments exceeds the number of commenters):

(1) *Comment:* Three parties wrote to express their disagreement with the basic purpose of IMFA (and, by extension the regulations) and to question the constitutionality of the statute.

*Response:* The Service fully supports IMFA; however, the rulemaking process is not the proper forum to discuss the issues of constitutionality.

(2) *Comment:* Two people wrote that the two forms mentioned in the rulemaking (Forms I–751 and I–752) should be included in 8 CFR 299, and their fees published in 8 CFR 103.1. Three other felt that the Service was remiss in not publishing regulations pertaining to section 212(a)(19), an exclusion ground which was amended by IMFA.

*Response:* The information about the forms will soon be published under a separate rulemaking. When the proposed rulemaking was drafted, the forms had not yet been developed, nor had the fees been determined. The separate rulemaking will reflect that the fee for filing the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (From I–751) will be $35.00, and the fee for filing the Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) will be $65.00.

Likewise, the Service will consider publishing a proposed rulemaking relating to section 212(a)(19) of the Act. In so doing, the Service will solicit comments from the public on the proposal.

(3) *Comment:* A number of interested parties requested clarification about the effects of IMFA on the ability of a resident alien to file a relative visa petition for a new spouse within five years of obtaining status through another marriage. Specifically, one asked if the Service could deny a petition based on information in the petitioner's file without affording the petitioner an opportunity to review and rebut the information, and another argued that the standard of proof regarding the nonfraudulent nature of the petitioner's prior marriage (through which status was acquired) is higher in the proposed regulations than in the statute.

*Response:* The first concern is unfounded, since existing regulations at 8 CFR 103.2(b)(2) require that an alien be given an opportunity to review and rebut any derogatory evidence upon which a decision is based and of which the alien is unaware (with the exception of classified information). With regard to the second concern, the language of the regulation has been changed to comport with the statutory language.

(4) *Comment:* Three commenters felt that the regulations do not adequately explain what procedure should be followed by an alien who cannot file the I–751 due to the termination of the marriage through divorce or annulment, or through the death of the petitioning spouse, or if the petitioning spouse refuses to join in the filing. Another requested that 8 CFR 216.4(a) be clarified to show that an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) could be filed in lieu of the joint petition (Form I–751) within the 90 days immediately preceding the second anniversary of the date on which the alien obtained conditional permanent resident status.

*Response:* The proper procedure is to file the I–752. The regulations have been revised at § 216.4(a) to clarify this point. 8 CFR 216.4(a) has been clarified as requested.

(5) *Comment:* Three persons wrote that the list of documents which may be submitted in support of the petition or waiver is too restrictive and does not take into account differences in culture, economic status or lifestyle which may affect a couple's ability to document their relationship.

*Response:* Recognizing that cultural, economic and other differences affect the documentation which is available to support the joint petition, the Service did not intend that the list be all inclusive. Accordingly, the regulation allows for the submission of "other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States" (§ 216.4(a)(5)(vi)). However, as with all other applications and petitions, it is the responsibility of the applicant or petitioner to show that the documentation is both relevant and convincing.

(6) *Comment:* Two parties stated that prior to terminating status under the provisions of section 216(b) or 216(c) of the Act, the Service should issue a Notice of Intent to terminate status in all cases, not just those based upon information "which the alien cannot reasonably be expected to have." They reasoned that this will allow the alien an opportunity to rebut the evidence and may prevent the Service from terminating the status of a conditional resident inappropriately.

*Response:* The proposed regulation has been modified to state that the director must allow the alien an opportunity to review and rebut the evidence upon which the termination is based, in accordance with 8 CFR 103.2(b)(2). Although this will normally necessitate a written Notice of Intent to Terminate, the regulation does not preclude situations in which written notification is not needed (e.g., if the alien is the source of the Service's information).

(7) *Comment:* Some commenters wrote concerning the bar to approval of a petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws (section 204(c) of the Act). One writer asked whether there is a time limit or if there is a waiver that may be granted. Another expressed concern that the Service might base denials on information contained in its files without allowing the petitioner an opportunity to review and rebut the information.

*Response:* The law does not provide for either a waiver or an expiration of the bar. The restriction is both permanent and not waivable. As stated earlier, 8 CFR 103.2(b)(2) precludes decisions being based on information which the alien has not had an opportunity to review and rebut.

(8) *Comment:* Several questions arose regarding the requirement in section 204(h) of the Act that an alien who marries while in proceedings reside outside the United States for two years before an immigrant visa petition may be approved in his or her behalf. One writer (although recognizing that the language of the statute is mandatory) urged "the most humanitarian interpretation" of the requirement. Another could not understand whether the two year period began with the alien's departure from the United States

or with the marriage. Two others felt that the Service should accept petitions during the prohibited period and hold them for approval after the two years has elapsed, arguing that the statute prohibits petitions being approved, not filed. One commenter felt that the provisions of section 204(h) should not apply to marriages occurring after the issuance, but before the service, of the Order to Show Cause. Four others wrote that they should only apply to marriage occurring during the course of the actual hearing before the Executive Office for Immigration Review (EOIR) which includes both the Immigration Judge and the Board of Immigration Appeals, or during judicial review of the decision by the EOIR (i.e., that they should not apply to marriages celebrated during the period from the issuance of the Order to Show Cause to the opening of court by the judge, or from the time of the judge's decision to the alien's departure). Five parties felt that the provisions should only relate to exclusion and deportation proceedings, not rescission proceedings. Five others asked for clarification of the language of the rulemaking whereby the provisions of section 204(h) do not apply if the Order to Show Cause is terminated.

*Response:* The statute does not allow the Service any latitude in determining whether to apply the provisions of section 204(h) of the Act. If an alien marries during proceedings, a petition cannot be approved in his or her behalf until the requirement of two years of residence outside the United States has been met. Since this two year period begins with the alien's departure following the marriage, any period(s) of residence outside the United States prior to the marriage cannot be credited toward this requirement. However, it should be noted that the statute does not require that the alien remain outside the United States continuously for an uninterrupted time period, meaning that the alien could comply with the requirement by completing two or more periods of residency outside the United States as long as the aggregate total of such periods reached two years.

The suggestion that the Service accept petitions prior to the completion of the two year period for approval once the requirement is met must be rejected. The Service has long held that a petition must be approvable at the time that it is filed, not merely at some subsequent time. Allowing a petitioner to file a petition before it is approvable would enable the beneficiary to obtain a priority date to which he is not entitled, thereby giving the beneficiary an unfair advantage over other immigrant visa applicants.

Section 204(h) prohibits the approval of petitions based on marriages celebrated during the period described in section 245(e)(2), which is "the period during which administrative or judicial proceedings are pending regarding the alien's right to enter or remain in the United States," until the alien has completed the foreign residence requirement. This phrase encompasses more than just the period when the matter is pending before an immigration judge, on appeal to the Board of Immigration Appeals or under judicial review. It does not end when the order of the judge becomes final or when the time allotted for appeal or judicial review expires. Had Congress intended that the period described in section 245(e)(2) be limited to the period when the matter was pending before the EOIR or before the courts on judicial review, it would have so stated. Instead, Congress chose the broader concept including all administrative (Service or EOIR) and judicial (the Federal court system) proceedings, including Service proceedings occurring before and after EOIR of judicial proceedings. The application of this broader concept for this purpose in no way affects the long-established application of narrower concepts relating to the finality of orders, periods for judicial review, and so forth.

On the other hand, the Service agrees with those who feel that the period described in section 245(e)(2) does not include rescission proceedings, and references to such proceedings have been removed from the final regulations.

Normally, the departure of an alien from the United States terminates proceedings to exclude or deport the alien; however, the Board of Immigration Appeals has held that under certain situations the departure of an alien does not terminate proceedings (e.g., if the alien merely slips across the border and then reenters surreptitiously). The language of the regulation has been clarified to reflect that a departure which does not terminate the deportation or exclusion proceedings does not terminate the period described in section 245(e)(2) either.

(9) *Comment:* A few comments were received concerning the admission of aliens under the K–1 nonimmigrant category as fiances of U.S. citizens. One religious organization requested that such fiances be admitted for longer than 90 days, as the pre-marital counselling program of that denomination normally lasts at least four months; another commenter suggested that the regulations specify that aliens admitted in this category are authorized to accept employment; a third felt that the Service should preclude the approval of a fiance petition arising out of an "arranged marriage" situation, finding that arranged marriages are "cruel and barbaric" and that permitting them in the regulations encourages fraud; and a fourth felt that district directors should have the authority to approve petitions as a matter of discretion when the petitioner and beneficiary have been precluded from seeing each other for more than two years.

*Response:* The 90 day period for the admission of a K–1 nonimmigrant is set by statute. Although it was previously possible for an alien to adjust under a separate provision of the law if the marriage took place more than 90 days after admission, IMFA now prohibits (by statute) such separate adjustment. Regardless of the benefits of a pre-marital counselling program, the Service cannot allow by regulation that which is precluded by statute.

K–1 nonimmigrants (and their dependent children admitted under the K–2 category) are already authorized to accept employment under 8 CFR 274a.12(a)(6), and it is not necessary to restate that authorization in this rulemaking.

Neither the letter nor the spirit of IMFA precludes fiance relationships based upon arranged marriages. It is therefore beyond the scope and the intent of the rulemaking to prohibit the approval of a fiance petition filed in such cases. It is within the intent of both the statute and the regulations to ensure, to the extent possible, that the marriage has not been arranged in order to circumvent the immigration laws of this country. Accordingly, the discretionary authority of the district director should be exercised to waive the "have met" requirement only when he or she is satisfied that the petitioner and beneficiary are not seeking to enter a fraudulent relationship, and that either all conditions of the arrangements have been complied with (in arranged marriages) or that extreme hardship to the petitioner would result (in other situations).

District directors already have, by statute and regulation, the authority to waive the requirement that the parties have previously met in person (section 3(a)(2) of IMFA and 8 CFR 214.2(k)(2) of this rulemaking). Inherent in this authority is the power to waive the requirement when the parties last met more than two years before the filing of the petition.

(10) *Comment:* One writer pointed out that there are now two sections 216 in the Act, the one created by the Marriage Fraud Amendments and another created by the Immigration Reform and Control Act of 1986 (IRCA). The IRCA section 216 relates to temporary agriculatural workers, commonly referred to as "H–2As".

*Response:* The writer is correct. However, it should also be pointed out that the regulations pertaining to the H–2A program are contained in 8 CFR 214 (not 8 CFR Part 216) and that technical amendments to IRCA have been introduced in Congress which, if enacted, would redesignate the H–2A statutory provisions as section 218 of the Act.

(11) *Comment:* Several parties wrote concerning Service procecdures for termination of the status of a conditional resident and issuance of an Order to Show Cause. Two commenters wrote that in terminating an alien's status pursuant to section 216 of the Act, the Service should not terminate "all rights and privileges thereto (including authorization to accept or continue in employment in this country)" at the same time. Instead, they felt that the Service should allow the alien to continue working until his case has been reviewed by an Immigration Judge in a deportation hearing. Another person believed that the issuance of an Order to Show Cause should not be mandatory in every termination case.

*Response:* The statute provides that the termination of status takes effect when the Attorney General reaches his decision, but that that determination may be reviewed in deportation proceedings. Because the alien's status is terminated, the basis for the alien's employment authorization as a permanent resident must also terminate at the same time. This does not preclude the alien from seeking and being granted employment authorization on another basis, specifically under 8 CFR 274a.12(c)(13) as an alien against whom deportation proceedings have been instituted. Any request for employment authorization on this basis would be adjudicated in accordance with the provisions of that regulation.

The only forum in which an alien may seek review of the Service's decision to terminate his or her status is during a hearing before an immigration judge. For this reason, the regulations provide that the district director shall issue an Order to Show Cause (which initiates the deportation proceeding) whenever an alien's status is terminated. Because of other factors, such as the need for the alien to request employment authorization, the issuance of the Order to Show Cause should normally occur simultaneously with the issuance of the Notice of Termination; however, the Service cannot rule out the possibility that in some cases it may be to the advantage of both the Service and the alien for the issuance of the Order to Show Cause to be delayed.

(12) *Comment:* Believing that some aliens were incorrectly admitted to the United States without conditions between November 1986 and January 1987, one writer was concerned that aliens might be deprived of their status for failure to petition for removal when the alien did not know of the conditional basis of his status or of the requirement to file the petition.

*Response:* Immediately upon enactment of IMFA, the Service notified all ports of entry and all offices adjudicating applications for adjustment of the need to grant status conditionally under the provisions of the law, and of the need to notify the alien of the removal requirements. The Service will also mail written notification to all conditional residents reminding them of the need to seek removal of the conditions. These notifications will be sent to each conditional resident approximately 30 days before the beginning of the 90 day period during which he or she (and the spouse) must file the joint petition. Accordingly, the Service does not anticipate that a large number of aliens will be unaware of their obligations under the law. It should be noted that if an alien establishes that his failure to file the petition on time was for reasons beyond his control, the Service may accept a tardy petition.

(13) *Comment:* Three parties felt that the Service should not require a written request for rescheduling prior to the interview date if an alien and spouse are unable to appear for an interview in connection with the Form I–751. The statute does not require that it be submitted in advance, and the reasons preventing the couple from appearing may not arise until the last minute.

*Response:* The prior notification requirement has been deleted from the regulation. If the alien establishes good cause for rescheduling or waiving the interview, the Service may do so, even if the request is not received in advance. This applies to interviews conducted in conjunction with either the joint petition for removal (Form I–751) or the application for waiver of the requirement to file the joint petition (Form I–752).

(14) *Comment:* Several comments were received concerning the filing of a waiver by an alien whose marriage has been terminated. One writer objected to the use of the phrase "terminated by the alien spouse" in the statute and similar language in the rulemaking, since the judge granting the divorce or annulment is the one who actually terminated the marriage. Another writer felt that the Service should allow the filing of a "good faith and good cause" waiver when the conditional resident was not the party initiating the divorce proceedings. A third commenter wrote that "fundamental fairness and due process require that in *any* instance where a finding has been made by a court of competent jurisdiction regarding actions of a U.S. citizen spouse, that the Service should accept those as fact and not attack them collaterally, save in those instances where compelling circumstances dictate otherwise. Even when the court's determinations are accepted as fact, the Service could still say that even based on these facts, they do not see that the alien was without fault."

*Response:* IMFA states that in order to apply for a "good faith and good cause" waiver, the qualifying marriage must have been "terminated (other than through the death of the spouse) by the alien spouse". This statutory language precludes the Service from granting a waiver when the divorce or annulment proceedings were initiated by the spouse of the conditional resident. For purposes of clarification, the language of the regulation has been modified slightly to show that the alien spouse must be the initiating party in the proceedings, not the terminating authority.

Although the Service will normally give considerable weight to the finding of the divorce court as to grounds for the action, the Service cannot be bound by the findings in all cases. It would simply be too easy for two parties to engage in a fraud marriage scheme involving concocted grounds which are not contested by the respondent. For this reason, the Service must be free to reach its own conclusions regarding the issue of "good cause". Since any decision by the Service on this issue is subject to review by the EOIR and then by the Federal courts, there is no reason to fear that the Service will not give appropriate weight to the findings of the divorce court.

(15) *Comment:* Two commenters wrote about the need for regulations concerning aliens who must be outside the United States during the period in which the joint petition (Form I–751) must be filed or while it is being adjudicated by the Service. One writer pointed out that the Service should provide for the admission of alien commuters (i.e., permanent residents who reside or work in contiguous

territory and commute to work across the border daily). Another requested clarification regarding procedures to be followed by aliens outside the United States pursuant to military or civilian orders of the United States government.

*Response:* The regulations have been modified to provide that a conditional resident alien (including an alien commuter) may be admitted to the United States with an expired Form I–551 if he is also in possession of a receipt showing that he has filed a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) within the six months immediately preceding the application for admission, provided the joint petition or application is still pending before the Service.

The regulations have also been clarified to explain that an alien travelling outside the country on government orders is deemed to be constructively within the United States for purposes of filing the joint petition.

(16) *Comment:* One commenter asked for clarification of the terms "extreme hardship", "good cause" and "pertinent" as they relate to applications for waivers of the requirement to file the joint petition. Another asked for clarification of the phrase "involved in a conspiracy" as used in 8 CFR 204.1 and of the phrase "within a reasonable time" as used in 8 CFR 212.7(a)(2).

*Response:* The terms and phrases in question are all used in the regulation in accordance with their common, everyday meaning. The modifiers "extreme", "good" and "reasonable" all call for the use of the director's discretion. By their nature, these regulations cannot further restrict that discretion. However, the review procedure (through the Executive Office for Immigration Review and the Federal courts) will safeguard against that discretion being improperly applied.

The phrase "involved in a conspiracy" would only apply to individuals who are found to have participated in the activity. It would not apply, for example, to an individual who introduced two people who later conspired on their own to commit fraud without the knowledge or participation of the first individual.

(17) *Comment:* One commenter requested that the Service explain the consequences if it fails to notify the alien of the requirement to file the petition or if it fails to adjudicate the petition or interview the petitioner within 90 days of its being filed, or within 90 days of the interview. Another requested that the Service provide the attorney of record with a copy of the notification required at or about the beginning of the 90 day filing period.

*Response:* The language of the statute is explicit that the Service "shall provide notice" at the time of the alien's admission and "shall attempt to provide notice" at or about the beginning of the 90 day filing period respecting the requirements to file the petition to remove. The statute further provides that failure of the Service to meet these notification requirements does not relieve the alien of his or her obligations. Likewise, the statute requires that a determination on the merits of the petition be made within 90 days of the interview (unless the interview is waived).

(18) *Comment:* Finally, one writer opposed what he understood as the Service's intent to bar from adjustment of status an alien lawfully admitted to the United States as a conditional permanent resident.

*Response:* The regulatory language comports fully with the provisions of section 245(d) of the Act as amended by section 2(e) and 3(b) of IMFA. Section 245(d) prohibits the adjustment of an alien who is already a (conditional) permanent resident or of an alien who entered the United States as a K–1 or K–2 nonimmigrant (except as the spouse or step-child of the citizen who filed the fiance petition upon which the K–1 or K–2 visa was issued). Perhaps the commenter failed to read the new section 245(d) of the Act, or perhaps he misinterpreted the regulation as prohibiting a conditional resident from becoming a "full" or "non-conditional" permanent resident through the removal of conditions procedure set forth in section 216.

Additional technical amendments are included to correct typographical errors.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this document have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under 8 CFR 299.5 which will be published in the near future.

**List of Subjects**

*8 CFR Part 1*

Administrative practice and procedure, Immigration.

*8 CFR Part 204*

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 205*

Administrative practice and procedure, Immigration.

*8 CFR Part 211*

Immigration, Passports and visas, Reporting and recordkeeping requirements.

*8 CFR Part 212*

Administrative practice and procedure, Aliens, Immigration, Passport and visas, Reporting and recordkeeping requirements.

*8 CFR Part 214*

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

*8 CFR Part 216*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 223*

Aliens, Reporting and recordkeeping requirements.

*8 CFR Part 223a*

Immigration, Refugees, Reporting and recordkeeping requirements.

*8 CFR Part 235*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 242*

Administrative practice and procedure, Aliens.

*8 CFR Part 245*

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Title I of Chapter 8 of the Code of Federal Regulations is amended as set forth below.

## PART 1—DEFINITIONS

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

Authority: 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. In § 1.1, new paragraph (o) is added to read as follows:

**§ 1.1 Definitions.**

* * * * *

(o) The term "director" means either district director or regional service center director, unless otherwise specified.

## PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

3. The authority citation for Part 204 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255.

4. In § 204.1 existing paragraphs (a)(2) through (a)(4) are redesignated (a)(3) through (a)(5), respectively, and a new paragraph (a)(2) is added to read as follows:

**§ 204.1 Petition.**

* * * * *

(2) *Ineligible alien petitioners and beneficiaries*—(i) The Service may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence unless:

(A) A period of five years has elapsed after the date the alien acquired permanent resident status; or

(B) The alien establishes by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained lawful permanent resident status) was not entered into for the purpose of evading the immigration laws; or

(C) The marriage through which the petitioner obtained permanent residence was terminated through the death of the petitioner's spouse.

(ii) In determining whether the petitioner has met the burden of establishing that the marriage through which he or she obtained permanent residence was not entered into for the purpose of evading immigration laws, the director shall take into account such factors as the length of time the petitioner and the prior spouse resided together, the existence of children born of the marriage, joint ownership of assets and assumption of liabilities, the grounds for which the marriage was terminated and other factors which the director may deem relevant. Because section 204(a)(2)(A)(ii) of the Act places the burden on the petitioner to establish "by clear and convincing evidence" that the prior marriage was not entered into for the purpose of evading the immigration laws, failure to meet this standard must result in the denial of the petition; however, such a denial will be without prejudice to the filing of a new petition once the petitioner has acquired five years of lawful permanent residence. The director may choose to initiate deportation proceedings against the petitioner based upon information gained through the adjudication of the petition, but failure to initiate such proceedings shall not establish that the petitioner's prior marriage was not for the purpose of evading immigration laws. Unless the petition is approved, the beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal second preference petition filed within the prohibited period.

(iii) The Service may not approve a visa petition filed on behalf of an alien by a United States citizen or lawful permanent resident spouse, which is based upon a marriage occurring after November 10, 1986 and while the alien is in either exclusion or deportation proceedings, or judicial proceedings relating thereto, until the alien has resided outside the United States for two years after the date of the marriage. The period during which the alien is in such proceedings commences with the issuance of the Order to Show Cause (Form I–221) or the Notice to Applicant for Admission Detained for Hearing before Special Inquiry Officer (Form I–122), and terminates when the alien departs from the United States while an order of deportation is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation under 8 CFR 243.5, or pursuant to an order of exclusion, or when the alien is found not to be excludable or deportable from the United States, or if the order to show cause or Form I–122 is cancelled by the district director or terminated by the immigration judge, Board of Immigration Appeals, or Federal court on judicial review. Any petition filed during this period shall be denied without prejudice to the filing of a new petition once the beneficiary has resided outside the United States for the required period of two years following the marriage. Furthermore, any such denial shall be without prejudice to the reopening of petition proceedings should the beneficiary be found not deportable or excludable from the United States, or if the order to show cause or notice of hearing is cancelled by the district director or terminated by immigration judge, Board of Immigration Appeals or Federal court on judicial review. The beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal petition filed within the prohibited period.

(iv) Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any immigrant visa petition for immigrant visa classification filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 3 of this chapter.

* * * * *

5. In § 204.1, existing paragraphs (d)(2) through (d)(4) are redesignated as (d)(3) through (d)(5), respectively, and a new paragraph (d)(2) is added to read as follows:

**§ 204.1 Petition.**

* * * * *

(d) * * *

(2) *Ineligible beneficiaries.* Section 204(c) of the Act prohibits the approval of an immigrant visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any petition filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 103 of this chapter.

* * * * *

## PART 205—REVOCATION OF APPROVAL OF PETITIONS

6. The authority citation for Part 205 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 180, 182; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1186a.

7. In § 205.1, a new paragraph (a)(10) is added to read as follows:

**§ 205.1 Automatic revocation.**

(a) * * *

(10) Upon a determination by the Service that it has approved a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under exclusion or deportation proceedings, or judicial proceedings relating thereto, and prior to the beneficiary's having resided outside the United States for at least two years in accordance with section 204(h) of the Act.

* * * * *

## PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

8. The authority citation for Part 211 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 181, 182, 194, 198, 218; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1181, 1182, 1186a, 1203, 1225, 1257.

9. In § 211.1, paragraph (b)(1) is revised to read as follows:

**§ 211.1 Visas.**

* * * * *

(b) * * *

(1) *Alien Registration Receipt Card (Form I–151 or I–551)*—(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 of the Act, or within six months of that second anniversary if the alien is in possession of a receipt showing that he or she properly filed a Joint Petition for Removal of the Conditional Basis of Alien's Permanent Resident Status (Form I–751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) pursuant to Part 216 of this Chapter, and:

(A) Is returning after a temporary absence abroad not exceeding one year, or

(B) Is an alien crewman regularly serving aboard an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman.

(ii) *Alien travelling pursuant to government orders.* An Alien Registration Receipt Card, including an expired Alien Registration Receipt Card issued to a conditional permanent resident may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, and:

(A) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(B) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

* * * * *

## PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

10. The authority citation for Part 212 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 182, 189, 198, 200, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1182b, 1182c, 1184, 1186a, 1225, 1226, 1228, 1252.

11. In § 212.7, paragraph (a) is revised to read as follows:

**§ 212.7 Waiver of certain grounds of excludability.**

(a) *Section 212(h) or (i)*—(1) *Filing procedure—(i) Immigrant visa or fiance(e) nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I–601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I–601 to the Service for decision.

(ii) *Adjustment of status applicant.* An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I–601 with the director or immigration judge considering the application for adjustment of status.

(2) *Termination of application for lack of prosecution.* An applicant may withdraw the application at any time prior to the final decision, whereupon the case will be closed and the consulate notified. If the applicant fails to prosecute the application within a reasonable time either before or after interview the applicant shall be notified that if he or she fails to prosecute the application within 30 days the case will be closed subject to being reopened at the applicant's request. If no action has been taken within the 30-day period immediately thereafter, the case will be closed and the appropriate consul notified.

(3) *Decision.* If the application is approved the director shall complete Form I–607 for inclusion in the alien's file and shall notify the alien of the decision. If the application is denied the applicant shall be notified of the decision, of the reasons therefor, and of the right to appeal in accordance with Part 103 of this chapter.

(4) *Validity.* A waiver granted under section 212(h) or section 212(i) of the Act shall apply only to those grounds of excludability and to those crimes, events or incidents specified in the application for waiver. Once granted, the waiver shall be valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident status, except that any waiver which is granted to an alien who obtains lawful permanent residence on a conditional basis under section 216 of the Act shall automatically terminate concurrently with the termination of such residence pursuant to the provisions of section 216. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under section 216 of the Act, and no appeal shall lie from the decision to terminate the waiver on this basis. However, if the respondent is found not to be deportable in a deportation proceeding based on the termination, the waiver shall again become effective. Nothing in this subsection shall preclude the director from reconsidering a decision to approve a waiver if the decision is determined to have been made in error.

* * * * *

## PART 214—NONIMMIGRANT CLASSES

12. The authority citation for Part 214 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1186a.

13. In § 214.2, paragraph (k) is revised to read as follows:

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

* * * * *

(k) *Fiancees and fiances of United States citizens*—(1) *Petition and supporting documents.* To be classified as a fiance or fiancee as defined in section 101(a)(15)(K) of the Act, an alien must be the beneficiary of an approved

visa petition filed on Form I–129F. The petition with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(2) *Requirement that petitioner and beneficiary have met.* The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice. Failure to establish that the petitioner and beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and beneficiary have met in person.

(3) *Children of beneficiary.* Without the approval of a separate petition on his or her behalf, a child of the beneficiary (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him or her.

(4) *Notification.* The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(5) *Validity.* The approval of a petition under this paragraph shall be valid for a period of four months. A petition which has expired due to the passage of time may be revalidated by a director or a consular officer for a period of four months from the date of revalidation upon a finding that the petitioner and beneficiary are free to marry and intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States.

(6) *Adjustment of status from nonimmigrant to immigrant*—(i) *Nonimmigrant visa issued prior to November 10, 1986.* If the beneficiary contracts a valid marriage with the petitioner within 90 days of his or her admission to the United States pursuant to a valid K–1 visa issued prior to November 10, 1986, and the beneficiary and his or her minor children are otherwise admissible, the director shall record their lawful admission for permanent residence as of the date of their filing of an application for adjustment of status to lawful permanent resident (Form I–485). Such residence shall be granted under section 214(d) of the Act as in effect prior to November 10, 1986 and shall not be subject to the conditions of section 216 of the Act.

(ii) *Nonimmigrant visa issued on or after November 10, 1986.* Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K visa issued on or after November 10, 1986, the beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

* * * * *

14. A new Part 216 is added to read as follows:

## PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

Sec.



**Authority:** 66 Stat. 166, 173, 179, 184, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1154, 1184, 1186a.

### § 216.1 Definition of conditional permanent resident.

A conditional permanent resident is an alien who has been lawfully admitted for permanent residence within the meaning of section 101(a)(20) of the Act, except that a conditional permanent resident is also subject to the conditions and responsibilities set forth in section 216 of the Act and Part 216 of this chapter. Unless otherwise specified, the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including but not limited to the right to apply for naturalization (if otherwise eligible), the right to file petitions on behalf of qualifying relatives, the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed; the duty to register with the Selective Service System, when required; and the responsibility for complying with all laws and regulations of the United States. All references within this chapter to lawful permanent residents apply equally to conditional permanent residents, unless otherwise specified.

### § 216.2 Notification requirements.

(a) *When alien acquires status of conditional permanent resident.* At the time an alien acquires conditional permanent residence through admission to the United States with an immigrant visa or adjustment of status under section 245 of the Act, the Service shall notify the alien of the conditional basis of the alien's status, of the requirement that the alien apply for removal of the conditions within the ninety days immediately preceding the second anniversary of the alien's having been granted such status, and that failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States.

(b) *When alien is required to apply for removal of the conditional basis of lawful permanent resident status.* Approximately 90 days before the second anniversary of the date on which the alien obtained conditional permanent residence, the Service should notify the alien a second time of the requirement that the alien and the

petitioning spouse must file a petition to remove the conditional basis of the alien's lawful permanent residence. Such notification shall be mailed to the alien's last known address.

(c) *Effect of failure to provide notification.* Failure of the Service to provide notification as required by either paragraph (a) or (b) of this section does not relieve the alien and the petitioning spouse of the requirement to file a joint petition to remove conditions within the 90 days immediately preceding the second anniversary of the date on which the alien obtained permanent residence.

**§ 216.3 Termination of conditional resident status.**

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) of the Act are true. Prior to issuing the Notice of Termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and of all rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the district director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the district director shall issue an order to show cause why the alien should not be deported from the United States, in accordance with Part 242 of this chapter. During the ensuing deportation proceedings, the alien may submit evidence to rebut the determination of the district director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) of the Act are true.

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the district director determines that the alien obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or deportation proceedings under section 242 of the Act.

**§ 216.4 Petition to remove conditional basis of lawful permanent resident status.**

(a) *Filing the petition*—(1) *General procedures.* Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiance/fiancee petition through which the alien obtained permanent residence must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) with the Service. The petition shall be filed within this time period regardless of the amount of physical presence which the alien has accumulated in the United States. Before Form I–751 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b) of this chapter and by documentation as described in paragraph (a)(5) of this section, and it must be properly signed by the alien and the alien's spouse. If the joint petition cannot be filed due to the termination of the marriage through annulment, divorce, or the death of the petitioning spouse, or if the petitioning spouse refuses to join in the filing of the petition, the conditional permanent resident may apply for a waiver of the requirement to file the joint petition in accordance with the provisions of § 216.5 of this part.

(2) *Dependent children.* Dependent children of a conditional permanent resident who acquired conditional permanent resident status concurrently with the parent may be included in the joint petition filed by the parent and the parent's petitioning spouse. A child shall be deemed to have acquired conditional residence status concurrently with the parent if the child's residence was acquired on the same date or within 90 days thereafter. Children who cannot be included in a joint petition filed by the parent and parent's petitioning spouse due to the child's not having acquired conditional resident status concurrently with the parent, the death of the parent, or other reasons may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752).

(3) *Jurisdiction.* Form I–751 shall be filed with the director of the regional service center having jurisdiction over the alien's place of residence.

(4) *Physical presence at time of filing.* With the exception of an alien who is outside the United States pursuant to military or civilian orders (including a dependent of a serviceperson or civilian employee who is included on the official orders of that serviceperson or civilian employee), an alien must be physically present in the United States at the time of filing the joint petition. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien and the petitioning spouse comply with the interview requirements described in § 216.4(b). An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(5) *Documentation.* Form I–751 shall be accompanied by evidence that the marriage was not entered into for the purpose of evading the immigration laws of the United States. Such evidence may include:

(i) Documentation showing joint ownership of property;

(ii) Lease showing joint tenancy of a common residence;

(iii) Documentation showing commingling of financial resources;

(iv) Birth certificates of children born to the marriage;

(v) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or

(vi) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

(6) *Termination of status for failure to file petition.* Failure to properly file Form I–751 or Form I–752 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States. In such proceedings the burden shall be on the alien to establish that he or she complied with the requirement to file the joint petition within the designated period. Form I–751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I–751 within the required time period. If the joint petition is filed prior to the jurisdiction vesting with the immigration judge in deportation proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent residence status, remove the conditional basis of such status and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the joint

petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(b) *Interview*—(1) *Authority to waive interview.* The director of the regional service center shall review the Form I–751 filed by the alien and the alien's spouse to determine whether to waive the interview required by the Act. If satisfied that the marriage was not for the purpose of evading the immigration laws, the regional service center director may waive the interview and approve the petition. If not so satisfied, then the regional service center director shall forward the petition to the district director having jurisdiction over the place of the alien's residence so that an interview of both the alien and the alien's spouse may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

(2) *Location of interview.* Unless waived, an interview on the Form I–751 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office, files control office or suboffice having jurisdiction over the residence of the joint petitioners.

(3) *Termination of status for failure to appear for interview.* If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the reasons therefor, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirements. If the alien submits a written request that the interview be rescheduled or that the interview be waived, and the director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the interview is rescheduled at the request of the petitioners, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) *Adjudication of petition.* The director shall adjudicate the petition within 90 days of the date of the interview, unless the interview is waived in accordance with paragraph (b)(1) of this section. In adjudicating the petition the director shall determine whether—

(1) The qualifying marriage was entered into in accordance with the laws of the place where the marriage took place;

(2) The qualifying marriage has been judicially annulled or terminated, other than through the death of a spouse;

(3) The qualifying marriage was entered into for the purpose of procuring permanent residence status for the alien; or

(4) A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) in connection with the filing of the petition through which the alien obtained conditional permanent residence.

If derogatory information is determined regarding any of these issues, the director shall offer the petitioners the opportunity to rebut such information. If the petitioners fail to overcome such derogatory information the director may deny the joint petition, terminate the alien's permanent residence and issue an order to show cause to initiate deportation proceedings. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval.* If the director approves the joint petition he or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate office of the Service for processing for a new Alien Registration Receipt Card (if necessary), at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial.* If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in deportation proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true and that the petition was properly denied.

**§ 216.5 Waiver of requirement to file petition to remove conditions.**

(a) *General.* A conditional resident alien who is unable to meet the requirements for removal of the conditional basis of his or her permanent residence status may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752), if the alien was not at fault in failing to meet the filing requirement and the conditional resident alien is able to establish that:

(1) Deportation from the United States would result in extreme hardship, or

(2) The marriage upon which his or her status was based was entered into in good faith on the conditional resident alien's part, but the conditional resident sought termination of the marriage for good cause.

(b) *Fee.* Form I–752 shall be accompanied by the appropriate fee required under § 103.7(b) of this Chapter.

(c) *Jurisdiction.* Form I–752 shall be filed with the regional service center director having jurisdiction over the alien's place of residence.

(d) *Interview.* The regional service center director may refer the application to the appropriate district, files control office or suboffice and require that the alien appear for an interview in connection with the application for a waiver. The director shall deny the application and initiate deportation proceedings if the alien fails to appear for the interview as required, unless the alien establishes good cause for such failure and the interview is rescheduled.

(e) *Adjudication of waiver application*—(1) *Application based on claim of hardship.* In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's deportation from the United States, the director shall take into account only those factors which arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any deportation from the United States is likely to result in a certain degree of hardship, and that only in

those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

(2) *Application for waiver based upon the alien's claim that the marriage was entered into in good faith.* In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include—

(i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;

(ii) The length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) The grounds for which the marriage was terminated, except that a finding by the court that the petitioning spouse was at fault shall not be deemed to be conclusive evidence that the alien spouse sought termination of the marriage for good cause, nor shall a divorce obtained in an area which does not require the determination of fault be deemed to be evidence that the alien spouse sought termination of the marriage for good cause; or

(iv) Other evidence deemed pertinent by the director.

(f) *Decision.* The director shall provide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefor, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Alien Registration Receipt Card issued by the Service and issue an order to show cause placing the alien under deportation proceedings. No appeal shall lie from the decision of the director; however, the alien may seek review of such decision in deportation proceedings.

## PART 223—REENTRY PERMITS

15. The authority citation for Part 223 is revised to read as follows:

**Authority:** 66 Stat. 173, 194, 100 Stat. 3537; 8 U.S.C. 1103, 1186a, 1203.

16. Section 223.2 is revised to read as follows:

**§ 223.2 Period of validity.**

A reentry permit is valid for a maximum period of two years unless otherwise restricted. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act is not valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained conditional permanent residence) unless and until the conditions have been removed. The period of validity commences on the date of issuance and not on the date the application for the permit was submitted to the Service. A reentry permit cannot be renewed.

## PART 223a—REFUGEE TRAVEL DOCUMENT

17. The authority citation for Part 223a is revised to read as follows:

**Authority:** 66 Stat. 173, 181, 182, 200, 201, 100 Stat. 3537; 8 U.S.C. 1103, 1181, 1182, 1186a, 1225, 1226, 1227, 1251, and Protocol Relating to the Status of Refugees (TIAS 6577).

18. Section 223a.4 is revised to read as follows:

**§ 223a.4 Application.**

An application for a refugee travel document shall be submitted on Form I–570 at least 45 days prior to the proposed date of departure from the United States. The application shall be submitted to the district director having jurisdiction over the applicant's place of residence and shall be accompanied by Form I–94 or Form I–151 or Form I–551. The applicant shall be notified of the decision on the application. If the application is approved, the refugee travel document shall be issued and the immigration status which may be accorded to the alien upon his or her return to the United States shall be specified therein. Unless the applicant is in the United States as a conditional entrant or lawful permanent resident, the status of "Parolee" shall be specified. If the applicant is in the United States as a conditional entrant, that status shall be specified. If the applicant is a lawful permanent resident, that status shall be specified. If the applicant is a lawful permanent resident subject to the conditions of section 216 of the Act, that status and the conditional basis of that status shall be specified. If the application is denied, the applicant shall be notified of the reasons therefor and of the right to appeal in accordance with the provisions of part 103 of this chapter.

19. Section 223a.5(a) is revised to read as follows:

**§ 223a.5 Validity of refugee travel document.**

(1) *General.* A refugee travel document shall be valid for not more than two years from the date of issuance and shall not be renewable. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act may not be valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained permanent residence) unless and until the conditions have been removed. The document may be used for one or more applications for admission to the United States. It shall have no effect under the immigration laws except to show that during the period of its validity the lawful holder thereof may be accorded the status specified in the refugee travel document upon returning to the United States.

* * * * *

## PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

20. The authority citation for Part 235 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 182, 188, 191, 198, 200, 201, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1183, 1186a, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

21. Section 235.11 is added to read as follows:

**§ 235.11 Admission of conditional permanent residents.**

(a) *General.* An alien seeking admission to the United States with an immigrant visa as the spouse, son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and the petitioning spouse must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence (Form I–751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien admitted as a lawful permanent resident on a conditional basis if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the

marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional resident alien status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) or of an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in Part 211.1(b)(1) of this Chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) of the Act, shall be placed under exclusion proceedings. However, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition is filed jointly by the alien and petitioning spouse and approved by the Service, or if an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) is filed by the alien and approved by the Service.

## PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

22. The authority citation for Part 242 is revised to read as follows:

**Authority:** 66 Stat. 173, 208, 214, 235, 100 Stat. 3537; 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362.

23. In § 242.7, paragraph (a) is revised to read as follows:

**§ 242.7 Cancellation proceedings.**

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause prior to jurisdiction vesting with the Immigration Judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States;

(5) The respondent was placed under proceedings for failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act; or

(6) The Order to Show Cause was improvidently issued.

* * * * *

24. In § 242.17, paragraph (a) is revised to read as follows:

**§ 242.17 Ancillary matters, applications.**

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of Parts 244, 245 and 249 of this chapter. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 of the Act. However, the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status required by section 216(c) of the Act shall be made to the director in accordance with Part 216 of this chapter. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes he meets the eligibility requirements for a waiver of the ground of inadmissibility, he may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes he or she can do so consistently with safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

* * * * *

## PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

25. The authority citation for Part 245 is revised to read as follows:

**Authority:** 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218, 100 Stat. 3359; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255 and 1257.

26. In § 245.1 paragraphs (b)(12), (b)(13), (b)(14) and (h) are added to read as follows:

**§ 245.1 Eligibility.**

* * * * *

(b) * * *

(12) Any alien who is already an alien lawfully admitted to the United States for permanent residence on a conditional basis pursuant to section 216 of the Act, regardless of any other quota or non-quota immigrant visa classification for which the alien may otherwise be eligible.

(13) Any alien admitted to the United States as a nonimmigrant fiance as defined in section 101(a)(15)(K) of the Act, unless the alien is applying for adjustment of status based upon a marriage which was contracted within 90 days of entry with the United States citizen who filed a petition on behalf of the alien pursuant to § 214.2(k) of this chapter.

(14) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986 and after the issuance of an Order to Show Cause (Form I–221) issued pursuant to Part 242 of this chapter, or after the issuance of a Notice to Alien Detained for Hearing by an Immigration Judge (Form I–122) issued pursuant to Part 235 of this chapter, unless he has resided outside the United States for two years following the marriage. However, this restriction shall no longer apply if the alien is found not to be deportable in deportation proceedings, if

the alien is found to be admissible in exclusion proceedings, or if the Order to Show Cause is cancelled pursuant to § 242.7 of this chapter.

* * * * *

(h) *Conditional basis of status.* Whenever an alien spouse (as defined in section 216(g)(1) of the Act) or an alien son or daughter (as defined in section 216(g)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status on a conditional basis subject to section 216 of the Act.

27. Section 245.8 is revised to read as follows:

**§ 245.8 Medical examination.**

Pursuant to section 234 of the Act, an applicant for adjustment of status shall be required to have a medical examination by a selected civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status under the provisions of the Act of October 28, 1977, who was paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act and who was medically examined when processed for parole by a Service officer in the United States or abroad, unless medical grounds for exclusion existed when the applicant was processed for parole or such grounds presently appear to exist. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a non-immigrant fiance or fiancee of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

Dated: August 4, 1988.

Edwin Meese III,

*Attorney General.*

[FR Doc. 88-17999 Filed 8-9-88; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 88-ASW-24; Amdt. 39-5964]

## Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires an initial inspection, a repetitive pilot's preflight check, the removal of damaged parts, and a repetitive inspection of the tail rotor transmission/tail boom extension mounting studs on all MDHC Model 369D, E, F, and FF helicopters. This AD is prompted by several reports of tail rotor transmission/tail boom extension mounting studs having failed due to fatigue, which could result in the loss of the tail rotor assembly in flight with subsequent loss of the helicopter.

**EFFECTIVE DATE:** August 24, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1988.

Compliance: As indicated in the body of this AD.

**ADDRESSES:** The applicable service information notice may be obtained from Mr. Barry Hautz, LH3/G35, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797.

A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring St., Long Beach, California 90806; telephone (213) 988-5233.

**SUPPLEMENTARY INFORMATION:** There have been reports of the tail rotor transmission/tail boom extension mounting studs having failed due to fatigue. In some cases, a considerable loss of the mounting studs clamping force has occurred which allowed prohibitive amounts of vibratory motion of the tail rotor transmission relative to the tail boom casting. In one documented case, the tail rotor assembly came off in flight. MDHC has issued Mandatory Service Information Notice No. DN-151/EN-39/FN-28, dated October 10, 1987, detailing the inspection requirements.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires: (1) An initial inspection of the studs prior to further flight; (2) a pilot's repetitive preflight visual check of tail rotor transmission/tail boom extension mounting studs and torque paint striping; (3) the removal of all mounting studs which are damaged or deformed; and (4) a repetitive inspection of the torque on each nut at intervals not to exceed 100 hours' time in service on MDHC Model 369D, E, F and FF helicopters.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

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

The 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**

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

Adoption of the Amendment

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

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

**§ 39.13 [Amended]**

2. By adding the following new AD:

**McDonnell Douglas Helicopter Company (MDHC)** (Hughes Helicopters, Inc.): Applies to Model 369D, E, F, and FF helicopters, certificated in any category, which have tail rotor transmission/tail boom extension mounting studs Part Number (P/N) MS51992A803–13 or –14 installed (Docket No. 88–ASW–24).

Compliance is required as indicated unless previously accomplished.

(a) To prevent failure of the tail rotar transmission mounting studs (P/N MS51992A803–13 or –14) on MDHC Model 369 D/E helicopters, accomplished the following:

(1) Prior to further flight after the effective date of this AD, conduct an initial inspection of the tail rotor transmission attachment to the tail boom casting for any indications of relative motion between the parts in accordance with MDHC Service Information Notice (SIN) DN–151/EN–39/FN–28, Part I, paragraphs a, b, c, d, and e, dated October 10, 1987.

(2) Prior to each flight after the effective date of this AD, check the tail rotor transmission installation for security in accordance with MDHC SIN DN–151/EN–39/FN–28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

**Note.** The authorized person that performs the check must make an entry as required by § 43.9, and the record must be maintained as required by FAR §§ 91.173, 121.380, or 135.439.

(3) If there are indications of relative motion between the tail rotor transmission and the tail boom casting found by the inspection and check of paragraphs (a)(1) and (a)(2) of this section, prior to further flight, remove the tail rotor transmission and replace all four mounting studs in accordance with MDHC SIN DN–151/EN–39/FN–28, Part III, paragraphs a thru j, dated October 10, 1987

(4) At intervals not to exceed 100 hours' time in service from the last inspection after the effective date of this AD, conduct repetitive inspections of the torque of each mounting nut and reapply torque stripe paint in accordance with MDHC SIN DN–151/EN–39/FN–28, Part IV paragraphs a and b, dated October 10, 1987

(b) To prevent failure of the tail boom extension mounting studs (P/N MS51992A803–13 or –14) on MDHC Model 369 F/FF helicopters, accomplish the following:

(1) Prior to further flight after the effective date of this AD, conduct an initial inspection of the tail boom extension attachment to the tail boom casting for any indications of relative motion between the parts in accordance with MDHC (SIN) DN–151/EN–39/FN–28, Part I, paragraphs a, b, c, d, and e, dated October 10, 1987.

(2) Prior to each flight after the effective date of this AD, check the tail boom extension installation for security in accordance with MDHC SIN DN–151/EN–39/FN–28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

**Note.** The authorized person that performs the check must make an entry as required by § 43.9, and the record must be maintained as required by FAR §§ 91.173, 121.380, or 135.439.

(3) If there are indications of relative motion or fretting products between the tail boom casting and the tail boom extension found by the above inspections or checks, prior to further flight, remove tail boom extension and replace all four studs in accordance with MDHC SIN DN–151/EN–39/FN–28, Part III, paragraphs b thru j, dated October 10, 1987.

(4) At intervals not to exceed 100 hours' time in service from the last inspection after the effective date of this AD, conduct repetitive inspections of the torque of each mounting nut and reapply torque stripe paint in accordance with MDHC SIN DN–151/EN–39/FN–28, Part IV, paragraphs a and b, dated October 10, 1987.

(c) An alternate means of compliance which provides an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring St., Long Beach, CA 90806.

(d) In accordance with §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance may be accomplished.

These inspections and procedures shall be done in accordance with MDHC Mandatory SIN DN–151/EN–39/FN–28, dated October 10, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from MDHC, Attention: Mr. Barry Hautz, LH3/G35, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. A copy may also 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 August 24, 1988.

Issued in Fort Worth, Texas, on June 20, 1988.

L.B. Andriesen,

*Acting Director, Southwest Region.*

[FR Doc. 88–17806 Filed 8–9–88; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 87–ANE–46; Amdt. 39–5943]**

## Airworthiness Directives; Teledyne Continental Motors Models IO–520–BA, BB, IO–550–B, and TSIO–520–BE, LB, UB, and WB Series Engines Equipped With Air Conditioners

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment supersedes an existing Airworthiness Directive (AD) 87–26–01, which required the removal of the air conditioner compressor drive belt from Teledyne Continental Motors Models IO–520–BA, BB, IO–550–B, and TSIO–520–BE, LB, UB, and WB series engines equipped with an air conditioner. The amendment is needed to return the air conditioner to service in all affected airplanes.

**DATES:** Effective—August 10, 1988.

Compliance—As required in the body of the AD, unless already accomplished.

Comments for inclusion in the docket must be received on or before September 9, 1988.

Incorporation by Reference—Approved by the Director of the Federal Register as of August 10, 1988.

**ADDRESSES:** Comments on the amendment may be mailed in duplicate to, Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87–ANE–46, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Rules Docket Number 87–ANE–46".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Teledyne Continental Motors Service Bulletins (SB's) No. M88–5 and No. M88–6, may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601.

A copy of each SB is contained in Rules Docket Number 87–ANE–46, in the Office of the Reginal 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:** This amendment supersedes Amendment 39-5882 (53 FR 9866; March 28, 1988) AD 87-26-01, which currently requires, as an interim measure, the removal of the air conditioner compressor drive belt on Teledyne Continental Motors Models IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB series engines equipped with air conditioners. After issuing Amendment 39-5882, the FAA has determined that Teledyne Continental Motors has redesigned the starter adapter shaftgear which had failed due, in part, to loads imposed by the air conditioner drive belt. The redesigned shaftgear is incorporated in the starter drive assembly provided by Teledyne Continental Motors.

Compliance with AD 87-14-02 (52 FR 36754; October 1, 1987), issued against the starter drive assembly is not required when compliance with this AD is accomplished since both AD's pertain to the same assembly, and this AD requires the replacement of the assembly with the latest design.

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 that 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Although this action is in the form of a final rule which involves requirements mandating action and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited to the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ANE-46". The post card will be dated/time stamped and returned to the commenter.

*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 procedure 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) which supersedes AD 87-26-01, Amendment 39-5882 (53 FR 9866; March 28, 1988), as follows:

**Teledyne Continental Motors (TCM):** Applies to IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB series engines equipped with air conditioners.

Compliance is required as specified in the body of the AD, unless already accomplished.

To prevent possible starter adapter shaftgear assembly failure, accomplish the following:

(a) Before further flight, remove the top engine cowl and gain access to the air conditioner (freon compressor) drive pulley and with a light and mirror, determine if the sheave attach nut is a steel locking type (Reference paragraph II of TCM Service Bulletin (SB) M87-24, dated December 15, 1987).

(1) If the nut is a steel locking type, remove the freon compressor drive belt.

(2) If the nut is castellated, determine via log books and maintenance records that the castellated nut is the original nut and has not been substituted for a steel locking type nut.

(i) If the castellated nut is the original, no further action is required.

(ii) If the castellated nut is not the original, but a substitution for the original installed steel locking type nut, remove the freon compressor drive belt.

(iii) If it cannot be determined that the castellated nut is the original, remove the freon compressor drive belt.

**Note.**—Compliance with paragraph (b) below before further flight, may be accomplished in lieu of paragraph (a) above.

(b) Within the next 25 flight hours, after the effective date of this AD, remove the starter adapter assembly (starter drive assembly) and replace in accordance with the following table:

| Engine model | Replacement starter drive assembly P/N |
|---|---|
| IO-520-BA, BB, IO-550-B | 642087A23R |
| TSIO-520-LB, WB | 642087A22R |
| TSIO-520-BE..... | 642087A24R |
| TSIO-520-UB..... | 646757A4R |

**Note.**—Return the starter drive assembly less drive sheave) to the manufacturer for replacement.

(1) Install the replacement assembly in accordance with paragraph 3 of TCM SB M88-5, dated April 4, 1988, and appropriate maintenance manuals.

(2) Install the drive belt and insure proper alignment of the sheaves in accordance with paragraphs 1 through 3 of TCM SB M88-6, dated April 4, 1988.

(c) Replace top engine cowl.

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

Note.—Compliance with AD 87-14-02 issued against the starter drive assembly is not required when compliance with this AD is accomplished.

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

(f) 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.

(g) Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Atlanta Aircraft Certification Office, may adjust the compliance time specified in this AD.

Notes.—1. New or rebuilt TSIO-520-BE engines (used on Piper PA46-310P Malibu) shipped from TCM as a replacement engine in conjunction with compliance to AD 87-26-08 (TCM SB M87-25) should not order a replacement starter drive assembly as these engines already have the replacement starter drive assembly installed.

2. Installation of the replacement starter drive assembly on the TSIO-520-BE engine (used on Piper PA46-310P Malibu) does not require engine removal (Piper Aircraft Corporation SB 876B refers to this subject).

TCM SB M88-5, dated April 4, 1988, and TCM SB M88-6, dated April 4, 1988, identified and described in this document, are incorporated herein and made a part hereof 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. The documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 87-ANE-46, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on August 10, 1988.

Issued in Burlington, Massachusetts, on June 23, 1988.

**Timothy P. Forte,**

*Acting Director, New England Region.*

[FR Doc. 88-17807 Filed 8-9-88; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Part 399

[Docket No. 80466-8066]

## Chlorendic Anhydride; Reduction in Export Control

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Export Administration maintains the Commodity Control List (CCL), which lists those items subject to Department of Commerce export controls. Chlorendic anhydride, an organic chemical produced from hexachloropentadiene and maleic anhydride, is currently controlled for national security reasons under Export Control Commodity Number (ECCN) 5799C on the CCL. The chemical nomenclature for chlorendic anhydride is 1, 4, 5, 6, 7, 7 hexachloro-5-norborene-2, 3 dicarboxylic anhydride.

In response to an exporter's petition, the Department of Commerce undertook a review of the rationale for the controls and decided to terminate the control of chlorendic anhydride on the grounds that the availability of this chemical to controlled countries would no longer make a significant contribution to the military potential of those countries. This decision was made in consultation with the Departments of Defense, Energy and State pursuant to section 5(a) of the Export Administration Act of 1979, as amended. This chemical remains subject to export controls to Country Groups S and Z for foreign policy reasons. To implement this decision, this chemical is now being added to 15 CFR 399.2, Supp. No. 1, Interpretation 24, and, as a result, will be covered by ECCN 6799G.

**FOR FURTHER INFORMATION CONTACT:** Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration, (Telephone: (202) 377-5695).

**SUPPLEMENTARY INFORMATION**

### Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule removes a burden under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) by eliminating the requirement for a validated license to Country Groups Q, W, Y, the People's Republic of China, and Afghanistan. The reporting requirement for validated licenses has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

### Lists of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

## PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L.

99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.2 [Amended]

2. In Supplement No. 1 to § 399.2, under Interpretation 24, in the list entitled "Organic Chemicals" add the following chemical in alphabetical order:

Chlorendic anhydride

Dated: July 21, 1988.

**Michael E. Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 88-18048 Filed 8-9-88; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 154, 157, 260 and 284

**[Docket No. RM87-17-001, Order No. 493-A]**

## Natural Gas Data Collection System

Issued August 1, 1988.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order on rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is granting rehearing in part and denying rehearing in part of Order No. 493 (53 FR 15023 (Apr. 27, 1988)), a final rule requiring natural gas companies to use an electronic medium when filing certain rate filings, certificate and abandonment applications and FERC Forms. This order extends the implementation dates for electronic data submission of certain FERC Forms and stays the implementation of electronic data submission of rate filings and certificate and abandonment applications. This order on rehearing also provides that an implementation conference will be held on September 12 and 13, 1988.

Finally, on July 1, 1988, OMB approved the information collection provisions in Order No. 493. This order on rehearing provides notice of the OMB approval and a list of the OMB control numbers.

**DATES:** This order on rehearing is effective September 1, 1988. The implementation conference will held on September 12-13, 1988.

The implementation date for FERC Form Nos. 8 and 11 is November 30, 1988; for FERC Form No. 16 is April 30, 1989; and for rate, tariff and certificate applications is March 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** The Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this order on rehearing is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa,[1] Charles G. Stalon and Charles A. Trabandt.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting rehearing in part and denying rehearing in part of Order No. 493, a final rule requiring natural gas companies to use an electronic medium when filing certain rate filings, certificate and abandonment applications and FERC Forms.[2] This order extends the implementation dates for electronic data submission of certain FERC Forms and stays the implementation of electronic data submission of rate filings and certificate and abandonment applications. This order on rehearing also provides that an implementation conference will be held on September 12 and 13, 1988.

Finally, on July 1, 1988, OMB approved the information collection provisions in Order No. 493. This order on rehearing provides notice of the OMB approval and a list of the OMB control numbers.

### II. Background

The Commission issued Order No. 493 on April 5, 1988. The final rule amended the Commission's regulations to require that on or after September 30, 1988, rate filings, including the affected tariff sheets, submitted pursuant to § 154.63; certificate and abandonment applications, including the affected tariff sheets, under Subparts A, E and F of Part 157; blanket certificate applications under Subpart G of Part 284; and FERC Form Nos. 8, 11 and 16 in Part 260, must be filed on an electronic medium. Additionally, on or after September 30, 1988, the final rule required any natural gas company filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff rate pursuant to § 154.303(e), to make a one-time only filing which submits the company's entire tariff, except for executed service agreements, on an electronic medium. The final rule also required natural gas companies to submit FERC Form Nos. 2, 2A, 14 and 15 on an electronic medium on or after December 30, 1988. The final rule provided a waiver for natural gas companies that do not have any electronic capability to comply with the electronic data submission requirement. The final rule also revised the Commission's confidentiality procedures in § 388.112 to provide procedures for protecting confidential data filed on an electronic medium.

Finally, the rule severed FERC Form No. 591 from this rulemaking docket and established a new docket number RM88-12-000 in which to consider it. This action provided the Commission additional time to address concerns raised by the comments to the proposed FERC Form No. 591.

The Commission granted rehearing for the purpose of further consideration on May 2, 1988.[3] The order granting

[1] Commissioner Sousa resigned effective July 31, 1988; however, he was present and voted on this item at the meeting of July 27, 1988.

[2] 53 FR 15023 (Apr. 27, 1988), III FERC Stats. & Regs. ¶ 30,808 (Apr. 5, 1988); order granting rehearing for the purpose of further consideration and suspending effective date, 53 FR 16058 (May 5, 1988), III FERC Stats. & Regs. ¶ 30,813 (May 2, 1988); order providing new effective date, 53 FR 19283 (May 27, 1988), III FERC Stats. & Regs. ¶ 30,817 (May 19, 1988).

[3] 53 FR 16058 (May 5, 1988), III FERC Stats. & Regs. ¶ 30,813.

rehearing provided applicants filing timely petitions for rehearing an additional period of time to review the record formats for Order No. 493.[4] Additionally, the order suspended the effective date of Order No. 493 until the record formats were available.[5] Seventeen requests for rehearing and twelve supplemental comments were filed.[6] For the reasons provided below, the Commission is granting rehearing in part and denying rehearing in part of Order No. 493, providing certain implementation dates and scheduling the implementation conference.

### III. Notice of OMB Control Numbers

The Paperwork Reduction Act [7] and the Office of Management and Budget's regulations [8] require that OMB approve certain information collection requirements imposed by agency rules. On July 1, 1988, OMB approved the information collection requirements in FERC Form No. 2 under OMB Control No. 1902–0028; FERC Form No. 2A under OMB Control No. 1902–0030; FERC Form No. 8 under OMB Control No. 1902–0026; FERC Form No. 11 under OMB Control No. 1902–0032; FERC Form No. 14 under OMB Control No. 1902–0027; FERC Form No. 15 under OMB Control No. 1902–0037; FERC Form No. 16 under OMB Control No. 1902–0025; FERC Form No. 537 under OMB Control No. 1902–0060; FERC Form No. 542 under OMB Control No. 1902–0070 and FERC Form No. 577 under OMB Control No. 1902–0128. Therefore, Order No. 493 is effective on August 1, 1988. No amendment of OMB Control Numbers in 18 CFR 389.101(b) is required.

### IV. Implementation Issues

#### *A. Timetable for Implementation*

Order No. 493 requires that, on or after September 30, 1988, rate filings, including the affected tariff sheets, submitted pursuant to § 154.63; certificate and abandonment applications, including the affected tariff sheets, under Subparts A, E and F of Part 157; blanket certificate applications under Subpart G of Part 284; and FERC Form Nos. 8, 11 and 16 in Part 260, must be filed on an electronic medium. On or after September 30, 1988, any natural gas company filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff rate pursuant to § 154.303(e), must make a one-time only filing which resubmits the company's entire tariff, except for executed service agreements, on an electronic medium. Additionally, on or after December 30, 1988, FERC Form Nos. 2, 2A, 14 and 15 must be submitted on an electronic medium.

A number of applicants for rehearing [9] request the Commission to revise this implementation schedule to reflect a phased-in approach.[10] Specifically, the Interstate Natural Gas Association of America (INGAA) proposes an alternative timetable for implementation of Order No. 493.[11] Alternatively, Natural Gas Pipeline Co. of America requests the Commission to provide a one year transition period. Additionally, INGAA and ANR & CIG propose that the Commission establish a joint FERC/INGAA Task Force to work with the Commission in implementing the order. ANR & CIG also propose a pilot program for testing and processing electronic filings during 1989, before the Commission implements the electronic data submission requirements in Order No. 493.

ANR & CIG argue that the Commission should adopt the formats in Order No. 493 with the modifications and clarifications suggested by the applicants in their petitions for rehearing and supplemental comments and provide that proposed FERC Form No. 591 will not duplicate any information provided pursuant to Order No. 493. They argue that, if the formats proposed in Order No. 493 are modified and clarified, it will no longer be necessary to change or duplicate the formats when and if FERC Form No. 591 is issued. They conclude that, in the event the Commission proceeds with the issuance of FERC Form No. 591, it should require reporting on an electronic medium in Order No. 493 only those forms which are not going to be changed or eliminated by FERC Form No. 591.

Finally, Enron requests the Commission to consider a five year moratorium on any further changes to electronic data submission of the information in the formats in Order No. 493.

The Commission is extending the implementation dates for electronic data submission of certain FERC Forms. The new implementation dates are: FERC Form Nos. 8 and 11, November 30, 1988; and FERC Form No. 16, April 30, 1989. Implementation dates for forms filed annually (FERC Form Nos. 2, 2A, 14 and 15) will not be extended. Additionally, the Commission is staying the implementation dates for the rate and tariff filings and certificate and abandonment applications. Revised record formats for rates, tariffs and certificates will be available on November 30, 1988 and the new implementation date will be March 31, 1989.

The Commission, however, declines to adopt any proposals to limit future action on either the formats covered in Order No. 493 or the format for proposed FERC Form No. 591. The Commission must be able to update its forms and reporting requirements as changes occur in the natural gas industry.[12] The Commission declared in Order No. 493 that it will begin the transition to electronic data submission in Order No. 493 by implementing procedures to computerize the receipt, processing and analysis of a portion of the information that the Commission presently uses to regulate the natural gas industry. At the same time, the Commission provided in Order No. 493 that it will continue to pursue in the new rulemaking docket the proposal to standardize, consolidate and update the information the Commission requires from natural gas companies and to simplify the format in which data is submitted as proposed in FERC Form No. 591.

#### *B. Implementation Conference*

Some of the applicants for rehearing request the Commission to schedule the implementation conference provided in Order No. 493 as soon as possible to

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[4] Supplemental comments were due on or before July 5, 1988.

[5] On May 19, 1988, the Commission issued a notice of availability of record formats and an order providing a new effective date of August 1, 1988. 53 FR 19283 (May 27, 1988), III FERC Stats. & Regs. ¶ 30,817.

[6] The list of applicants for rehearing is attached as Appendix A.

[7] 44 U.S.C. 3501–3520 (1982).

[8] 5 CFR Part 1320 (1988).

[9] *See, e.g.*, ANR Pipeline Co. & Colorado Interstate Gas Co. (ANR & CIG), Arkla, Inc. (Arkla), CNG Transmission Corp. (CNG), Columbia Gas Corporation (Columbia Gas), El Paso Natural Gas Co. (El Paso) Enron Interstate Pipelines (Enron) and Natural Gas Pipeline Co. of America (Natural Gas).

[10] On June 30,1988, ANR & CIG filed a separate motion for an extension of the implementation dates in Order No. 493 for at least 90 days. ANR & CIG argue that this action needs to be taken by the Commission before issuance of an order on rehearing. On July 15, 1988, High Island Offshore System filed an answer in support of ANR & CIG's motion. Additionally, Interstate Natural Gas Association of America (INGAA) and Texas Eastern Transmission Corp. (Texas Eastern) in their supplemental comments requested the Commission to immediately stay the implementation dates pending issuance of an order or rehearing. Since this order extends the implementation dates, the requests have been rendered moot.

[11] A similar timetable was proposed by ANR & CIG. INGAA's timetable was supported by El Paso, Texas Eastern & Algonquin and Transcontinental Gas Pipe Line Corp. (Transco).

[12] For example, the Commission has issued a notice of proposed rulemaking in Docket No. RM88–18–000, proposing to replace the Statement of Financial Position with the Statement of Cash Flows in FERC Form Nos. 1, 1F, 2, 2A and 6.

work through the technical problems associated with the new electronic data submission requirement.[13] An implementation conference will be held on September 12 and 13, 1988. The Commission will issue a separate notice providing details on this conference.

*C. Filing Paper Copies with Electronic Data Submission*

Under Order No. 493, natural gas companies are required to continue filing the traditional number of required paper copies. The Commission noted in Order No. 493 that it will consider in a year reducing the number of paper copies to be filed with the electronic data submission. Applicants argue that filing both electronic data and the traditional paper copies for a year is burdensome and unnecessary.[14] INGAA requests the Commission to allow filings to be submitted in only one of the two media (*i.e.*, paper or electronic) on the date the filing is due with a 30-day grace period to submit duplicate data on the alternate medium. Transco and Enron propose that the Commission should allow natural gas companies to submit each filing first in paper copy format and 30 days later in an electronic medium. According to the applicants, this would allow additional time for uploading the data into a single electronic medium.

The Commission declines to adopt these proposals. The requirement to file paper copies is a transitional requirement that is necessary to ensure a smooth and orderly transition from filing paper copies to filing on an electronic medium. As the Commission and natural gas companies develop procedures to handle electronic data submission, the Commission will be able to reduce the number of paper copies required to be filed. Additionally, the Commission notes that the paper copies must correspond with the data submitted on the electronic medium. If natural gas companies separate the filing of the paper copies and the electronic medium, there is a greater likelihood for discrepancies between the two filings. Once the data are entered on an electronic medium, the Commission believes there will be little hardship in requiring a natural gas company's computer to generate the paper copies. The Commission, therefore, rejects these proposals.

*D. Acceptable Hardware*

Order No. 493 provided a list of electronic media suitable for filing electronically with the Commission. Apple Computer requests the Commission to expand the list of acceptable hardware suitable for electronic data submission. At this time, the Commission cannot accommodate Apple Computer's request. The list of acceptable hardware provided in Order No. 493 represents the types of hardware currently available to the Commission. The Commission notes, however, that as new hardware becomes available and is in general use throughout the Commission, it will expand the list.

*E. Waiver Provision and Potential for Penalties*

Order No. 493 specifically provides that natural gas companies lacking any electronic capability to comply with the electronic data submission requirement may apply for a waiver from the electronic data submission requirement.[15] Order No. 493 also provides that companies denied a waiver will have 30 days from the date of the denial to submit their filings on an electronic medium. Applicants request the Commission to expand this waiver provision to include reasons other than lack of computer capability.[16] For example, ANR & CIG request the Commission to expand the waiver provision to encompass situations where a company requires short-term waivers due to an inability to meet the present implementation schedule, a requirement to make other electronic filings (*i.e.*, the electronic filing requirement for FERC Form No. 592) or an inability to resolve problems with the record formats. Northwest specifically requests the Commission to enlarge the period to comply with the electronic data submission requirement after denial of a waiver pursuant to § 385.2011(e) of the Commission's regulations from 30 days to 120 days. Noting that in most instances a request for waiver will be triggered by a natural gas company's lack of computer capability and by its inability to expeditiously gather the data requested, Northwest argues that the 30-day period will not be long enough.

The Commission declines to adopt these proposals. Enlarging either the standards for granting a waiver or the 30-day time period provided for compliance after denial of a waiver could unduly delay natural gas company efforts to make data submissions on an electronic medium. Natural gas companies that cannot comply in the 30-day period may seek an extension of time to submit their filings. The Commission will review these requests for extensions of time on a case-by-case basis. The Commission anticipates, however, that as natural gas companies make the transition to electronic data submission there will be no problem with the 30-day filing rule after denial of a waiver.

Applicants argue, further, that a natural gas company's good faith efforts to comply with the electronic data submission requirement should suffice as protection from penalties when the filing is in some way deficient.[17] The Commission disagrees. Current regulations permit the rejection of deficient filings.[18] The Commission does not believe that there is a need for a separate standard to reject deficient filings made on an electronic medium. The Commission, therefore, will continue its present practice of rejecting deficient filings based on the standards provided in the Commission's current regulations.

*F. Electronic Data Submission by Local Distribution Companies*

Iowa-Illinois Gas and Electric Company requests the Commission to exclude state-regulated local distribution companies (LDC) from the electronic data submission requirement in Order No. 493. Iowa-Illinois argues that Order No. 493 requires LDC's subject to limited Commission jurisdiction, because of their multistate distribution service areas, to comply with the electronic data submission requirement. According to Iowa-Illinois, this is burdensome. The Commission declines to make this specific exemption. To the extent that LDC's are required to make any of the filings specified in § 385.2011 of the Commission's regulations, these companies will be required to file on an electronic medium. Electronic data submission by all natural gas companies must be uniform to ensure an orderly transition to the filing of all data electronically. To the extent that LDC's are unduly burdened by the electronic data submission requirement, the Commission will consider waivers on a case-by-case basis.

*G. Software Programs*

In Order No. 493, the Commission stated that on July 30, 1988, the Commission would have software available to produce a paper copy for

[13] *See, e.g.*, INGAA and Transco.

[14] *See, e.g.*, ANR & CIG and Natural Gas.

[15] *See* 18 CFR 385.2011(e)(4).

[16] *See, e.g.*, ANR & CIG and Northwest Pipeline Corp. (Northwest).

[17] *See, e.g.*, ANR & CIG, Algonquin Gas Transmission Company (Algonquin), Columbia Gas Transmission Corp. (Columbia Gas), El Paso, INGAA, Natural Gas and Transco.

[18] *See, e.g.*, 18 CFR 154.63(c), 157.8 and 385.2001(b) (1987).

rate filings under §§ 154.63 and 154.303(e) of the Commission's regulations, for certificate and abandonment applications under Subparts A, E and F of Part 157 and Subpart G of Part 284, and for FERC Form Nos. 8, 11 and 16 in Part 260. The Commission also stated that on October 30, 1988, it would have software available to produce a paper copy for FERC Form Nos. 2, 2A, 14 and 15.

Applicants argue that the number and complexity of the record formats require further review and analysis before software development can begin.[19] Applicants argue, further, that the Commission should make its data checking routines public.[20] The Commission does not presently have data edit criteria developed for the record formats. The Commission will make these data edit criteria publicly available when they are developed. The Commission will have its software programs for producing paper copy of the electronic filing available 60 days prior to the implementation date for each filing required in Order No. 493. To the extent the record formats are revised as a result of the technical corrections at the implementation conference in September, revised software programs incorporating these changes will also be available 60 days prior to the implementation date.

The Commission notes, however, that these software programs for report writing and data editing are not interchangeable on all computers without adaptation. The Commission does not make any guarantee, express or implied, as to the accuracy of the Commission's software or data edit criteria on the natural gas company's computer. The Commission's software is provided as public software for the convenience of the natural gas companies. Natural gas companies may be required to make adaptations to the Commission's software and data edit criteria in order to provide a copy of the electronic data submission that can be read by the public. Additionally, the Commission notes that natural gas companies are free to prepare their own programs using the record formats provided by the Commission.

Enron requests the Commission to clarify whether a natural gas company can convert software generated text to an ASCII file for submission to the Commission on PC diskette. The Commission will accept text-only files in ASCII 128 character set as defined in the Federal Information Processing Standards Publication (FIPS Pub. 1–2). To the extent natural gas companies file text-only data on PC diskettes, they may use the ASCII character set.

*H. Use of Mixed Electronic Media for Electronic Data Submission*

Northwest asks the Commission to clarify whether natural gas companies will be allowed to make electronic data submissions in mixed media. Under the Commission's current regulations, natural gas companies are required to use one type of electronic medium for electronic data submission. The Commission will continue to accept only one type of electronic medium for a filing. The Commission believes that use of only one electronic medium decreases the likelihood for discrepancies or missing data. Additionally, the requirement decreases the burden on the Commission to create a complete copy of a natural gas company's electronic filing.

*I. Confidentiality Procedures*

Applicants argue that the Commission should provide specific rules to protect the confidentiality of sensitive data and to assure against unauthorized disclosure.[21] They argue that the confidentiality provisions in Order No. 493 may be inadequate. They argue that the Commission should include a detailed explanation of how the confidentiality of sensitive information will be protected to ensure against unauthorized disclosure of the data by the Commission and the Commission's staff.

In Order No. 493, the Commission amended its confidentiality procedures in § 388.122 to protect confidential data filed on an electronic medium. These procedures are similar to the Commission's current procedures for protecting paper copies containing confidential data. The Commission believes these procedures are sufficient to protect paper copies filed with an electronic medium. The Commission will protect confidential data stored in the Commission's computer data bases in compliance with standards developed by the National Bureau of Standards pursuant to the Computer Security Act of 1987.[22] Additionally, the Commission's record formats provide natural gas companies the capability to indicate whether the information in a record is confidential. The Commission believes these procedures are sufficient to protect confidential information in the Commission's computer data bases.

*J. Procedural Defects*

Applicants argue that Order No. 493 contains fundamental procedural defects, including failure to demonstrate that the present system needs to be changed, failure to provide adequate notice and comment and failure to address comments in the rulemaking docket.[23] According to applicants, the Commission should reissue the final rule with these flaws corrected.

Order No. 493 is a procedural rule revising procedures for reporting information to the Commission. The Commission believes that Order No. 493 is a logical outgrowth of the original, duly noticed rulemaking proposal.[24] The Commission noted in Order No. 493 that a number of natural gas companies in their comments on the notice of proposed rulemaking (NOPR) generally supported the proposal that jurisdictional natural gas companies make all or a part of their rate, certificate and report filings electronically. The Commission concludes, therefore, the Order No. 493 is clearly within the scope of the proposals in the NOPR. The changes made in Order No. 493 were made in response to these comments submitted on the NOPR.

Finally, the Commission notes that most of the comments filed in this rulemaking docket addressed proposed FERC Form No. 591. Based on its review of these comments in Order No. 493, the Commission severed proposed FERC Form No. 591 into a separate rulemaking docket, in Docket No. RM88–12–000. The record pertaining to proposed FERC Form No. 591, including the extensive comments addressing the proposed form, was transferred to the new rulemaking proceeding. The Commission will address those comments when a final rule is issued in that rulemaking docket.

## V. Technical Questions on the Record Formats

The Commission notes that numerous specific technical questions were raised on the record formats for the FERC Forms and the rate and tariff filings and certificate and abandonment applications. The Commission is including as Appendix B to this order on rehearing responses to the technical questions on the FERC Forms record

[19] *See, e.g.*, Columbia Gas and Transco.

[20] *See, e.g.*, INGAA and Transco.

[21] *See, e.g.*, INGAA and Natural Gas.

[22] Public Law No. 101–235 Stat. 1724, codified at 15 U.S.C. 278g–e.

[23] *See, e.g.*, ANR & CIG and Texas Eastern.

[24] *See, e.g.*, South Terminal Corp. v. EPA, 504 F.2d 646, 659 (1st Cir. 1974); BASF Wyandotte Corp. v Costle, 598 F.2d 637, 642 (1st Cir. 1979), *cert. denied sub nom.* Eli Lilly & Co. v. Costle, 444 U.S.C. 1096 (1980) and Small Refiner Lead Task Force v EPA, 705 F.2d 506, 547 (D.C. Cir 1983).

formats. Responses to the technical questions on the rate, tariff, and certificate record formats will be attached to the notice of the implementation conference. Additionally, the Commission will address all these questions at the implementation conference. The Commission notes that, to the extent these technical questions have identified new reporting requirements, the record formats will be revised to delete all such new reporting requirements.

Revised record formats for the FERC Forms incorporating changes and additional corrections identified by Commission staff are now available in the Commission's Public Reference Room. A list of these corrections is attached to this order as Appendix C. The Commission will issue revised record formats for rates, tariffs, and certificates after the implementation conference, incorporating changes in response to both the technical questions raised on rehearing and any further issues identified by natural gas companies during the conference.

List of Subjects

*18 CFR Part 154*

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

*18 CFR Part 157*

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

*18 CFR Part 260*

Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 284*

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 154, 157, 260 and 284, Title 18, Chapter I, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

*Acting Secretary.*

## PART 154—RATE SCHEDULES AND TARIFFS

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

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

**§ 154.1 [Amended]**

2. In § 154.1, paragraphs (b) and (c), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.26 [Amended]**

3. In § 154.26, paragraph (b), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.31 [Amended]**

4. In § 154.31, paragraphs (a) and (b), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.32 [Amended]**

5. In § 154.32, paragraphs (a) and (b), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.34 [Amended]**

6. In § 154.34, paragraphs (a)(i) and (a)(ii), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.61 [Amended]**

7. In § 154.61, the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.62 [Amended]**

8. In § 154.62, the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.63 [Amended]**

9. In § 154.63, paragraphs (b)(1)(iv), (b)(5), (c)(1)(i), (c)(1)(ii), (d)(3) and (e)(4)(i), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 154.303 [Amended]**

10. In § 154.303, paragraph (e)(1)(ii), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

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

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

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

**§ 157.6 [Amended]**

12. In § 157.6, paragraph (a)(1), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 157.14 [Amended]**

13. In § 157.14, paragraph (a), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 157.17 [Amended]**

14. In § 157.17, paragraphs (a) and (b), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 157.20 [Amended]**

15. In § 157.20, paragraphs (c) and (d), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

**§ 157.205 [Amended]**

16. In § 157.205, paragraph (b)(1), the words "September 30, 1988," are removed and the words "March 31, 1989," are inserted in their place.

## PART 260—STATEMENTS AND REPORTS (SCHEDULES)

17. The authority citation for Part 260 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

**§ 260.3 [Amended]**

18. In § 260.3, paragraphs (b)(1)(i) and (b)(1)(ii), the words "September 30, 1988," are removed and the words "November 30, 1988," are inserted in their place.

**§ 260.11 [Amended]**

19. In § 260.11, paragraphs (b), the words "September 30, 1988," are removed and the words "November 30, 1988," are inserted in their place.

**§ 260.12 [Amended]**

20. In § 260.12, paragraph (b)(1), the words "September 30, 1988," are removed and the words "April 30, 1989" are inserted in their place.

## PART 284—CERTAIN SALES TRANSMISSION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

21. The authority citation for Part 284 continues to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717–717w (1982) as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 1982; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1979 Comp., p. 142.

**§ 284.22 [Amended]**

22. In § 284.221, paragraph (b)(1), the words "September 30, 1988," are removed and the "March 31, 1989," are inserted in their place.

**Note.**—These Appendices Will Not Be Published in the Code of Federal Regulations.

**Appendix A—Petitions for Rehearing of Order No. 493**

(1) Algonquin Gas Transmission Company [1]
(2) ANR Pipeline Company and Colorado Interstate Gas Company [1]
(3) Apple Computer, Inc. [1]
(4) Arkla, Inc. [1]
(5) Citizens Energy Corporation and Citizen Gas Supply Corporation
(6) CNG Transmission Corporation [1]
(7) Columbia Gas Transmission Corporation [1]
(8) El Paso Natural Gas Company [1]
(9) Enron Interstate Pipelines [1]
(10) Interstate Natural Gas Association of America [1]
(11) Iowa-Illinois Gas and Electric Company
(12) Natural Gas Pipeline Company of America
(13) Northwest Pipeline Corporation [1]
(14) Tennessee Gas Pipeline Company [1]
(15) Texas Eastern Transmission Corporation [1]
(16) Transcontinental Gas Pipe Line Corporation
(17) United Gas Pipe Line Company [1]

**Appendix B—Commission Responses to Technical Questions on the Record Formats for the FERC Forms**

*A. General Technical Questions*

INGAA argues that the Commission should not alter existing reporting requirements. According to INGAA, Order No. 493 changes filing requirements and adds to the reporting burden by asking for detailed and narrow codification of reported information and by imposing rigid standards on reporting gas measurement data. INGAA proposes that data currently reported in uncoded form should remain that way, and that codes should be removed from all formats where they do not exist in current forms. INGAA also proposes that the Commission modify forms to allow other pressure and temperature standards in order to continue current filing conventions. Finally, INGAA proposes that the tariff record format allow pipelines to file them using up to all 255 characters in order to reflect that variations in line length in existing tariffs.

ANR & CIG point out that the Commission is requiring companies to provide buyer/seller codes in FERC Form No. 2. ANR & CIG argue, that these codes are not maintained in a schedule Record ID reference. ANR & CIG propose that these codes should be resequenced as appropriate. ANR & CIG also argue that these codes are not maintained in a number of instances and may not be available.

United argues further that utilization of FERC codes requires conversion from current data to an accurate set of codes number, *i.e.*, DOE/EIA Buyer/Seller codes, FIPS State/County Codes, etc.

Enron specifically argues that the sequencing system in FERC Form No. 2 will be difficult to administer. ANR & CIG point ut that the sequence number is presently required to be sequential at the total file level. ANR &CIG argue this is extremely burdensome in developing files and related footnotes and should be modified to be in sequence at the record level. The sequence number is generated at the schedule/record level—not the file level.

The Commission believes the record format for the forms should duplicate the data elements and level of detail on the current paper copy version. Therefore, the Commission is correcting the record formats in those cases where additional data or detail was incorporated in the record formats. Also, the Commission is deleting the requirement to provide Buyer/Seller Codes for companies other than the respondent, where these codes are not required in the existing form. The Commission does not believe that use of the FIPS numeric code for state indentification is an added burden because it is a one time software conversion. Therefore, the FIPS code should be used when specified in a record format. The Commission is providing a list of the FIPS state codes in Appendix B. Additionally, FIPS state codes are listed in FIPS Pub. 6–3, available from the National Bureau of Standards, Department of Commerce. The Commission is also making reporting of gas measurement date consistent with the temperature and pressure base requirements for each form as it now exists in the paper copy. Finally, applicants should note that if they were not required to file cetain data elements or sechedules on the paper copy filing, then they will not be required to file that data on the electronic filing.

Some of the applicants argue that the sequence and cross referencing of records should be revised.[1] Specifically, they argue that the Commission should change the definition of sequence number to refer to record ID item rather than schedule ID. INGAA proposes an alternative approach to footnotes. For each record that reflects a footnote, INGAA suggests that the record formats include a footnote reference number instead of the current footnote indicator. Northwest, Enron, ANR & CIG and United point out that the footnote records provide space for a ten-position reference number in columns 11 through 20. Northwest points out, that the reference number described in the General Instructions contains thirteen positions including schedule ID, record ID, sequence numer and item location number. Arkla also argues that the handling or footnotes is unnecessarily complicated. Arkla proposes that the number of the footnote should be put in the record rather than the number of the record in the footnote.

The Commission is amending the record formats to provide 13 positions for the reference ID is all footnote records, in accordance with the General Instructions. The Commission has used this footnote formatting method for other forms currently filed on an electronic medium with the Commission. (*See* FERC Form Nos. 542 and 592.) The Commission is also clarifying the definition of sequence number to make it clear that sequence numbers are assigned at the schedule/record level rather than at the file or schedule level.

INGAA argues that the treatment of "not applicable" is not the same across the forms. On those forms where it was omitted, the Commission is adding the "NA" requirement for character data which is not applicable.

Texas Eastern argues that the proposed diskette format in Order No. 493 is different from that of other media allowed and is cumbersome and unwieldy. Texas Eastern argues that extra and unnecessary data manipulation is required to reformat the most popular spreadsheet programs into the required ASCII character code. Texas Eastern recommends that natural gas companies be allowed to adjust the record length to either 240 or 255 bytes as necessary. Texas Eastern and INGAA recommend that the diskette format be modified in order that both tape and diskette formats be indentical.

[1] Indicates applicant filed supplemental comments.

[1] *See, e.g.*, INGAA, El Paso, Tennessee Gas, Transco and United Gas Pipeline Co.

The Commission is accepting filings on tape or diskette in the same format, *i.e.*, applicants may use the fixed-length record formats and data layouts specified in the reporting instructions for diskettes as well as tapes.

According to INGAA, the use of the character "|" as a delimiter is unusual and nonstandard. ANR & CIG argue that vertical bar and comma deliminators should be eliminated from the formats because they are unnecessary and require a substantial amount of effort to be included in the development of the formats. The Commission notes that applicants can avoid using the delimiter "|" reporting the required information in the character positions indicated in each schedule/record.

According to Northwest, the general information records for various schedules require entry of the report date/submittal date defined as the date the document is filed. Northwest argues that it cannot guarantee that the date it expects the filing to be made will be the date the filing is actually made. Northwest proposes that either the definition should be changed to call for a submittal date, the field should be left blank for the Commission to filed in upon receipt of the filing, or the Commission should clarify that a "best efforts" forecast of the actual filing date will be sufficient. The Commission is revising the report date/submittal date fields in the record formats to reflect "date completed", instead of "date submitted".

Northwest also notes that its word processing files contain special formatting characters, such as codes for underlining and centering. Northwest requests the Commission to clarify whether it can leave in these codes to avoid editing of schedules which are primarily text, such as tariff and certificate filings.

The Commission points out that most word processing software has an output mode that is pure ASCII. The Commission will accept text files in ASCII format. No standard convention exists at this time for underlining and centering, bold print, italics, or choice of fonts.

ANR & CIG argue that a standard personal computer spread sheet should be developed by the Commission which could be used by natural gas companies in order to develop the required formats

The Commission is committed to providing software to the natural gas industry which is being written for government use and has utility for the industry. At this time, it is not possible for the Commission to develop software which would be of value only to natural gas companies who are personal computer users.

ANR & CIG argue that the Commission should consider making available the option of filing data on a cartridge. The Commission is modifying the filing instructions to specify that filings can be made on 9-track magnetic tape, on 18-track tape cartridge, or on PC diskette.

ANR & CIG point out that the Commission has suggested that all gas volume data be reported at a pressure of 14.73 psia and a temperature of 60° F. ANR & CIG argue that this is a reporting requirement not previously required by the Commission. According to ANR & CIG, the Commission should be aware that many companies report data at pressures other than 14.73 psia. ANR & CIG argue that companies should be allowed to continue reporting their data as they have done in the past.

The Commission does not agree that this represents a new reporting requirement. The Commission points out that, currenty, FERC Form Nos. 2, 8, 11, 14 and 15, with require volumes to be reported at 60° F and 14.73 psia. Additionally, while FERC Form No. 2A does not explicitly require volumes to be reported at these standards, the determination of who must file is based on volumes computed at 60° F and 14.73 psia. FERC Form No. 16 requires all volumes to be reported in MMcf at 14.73 psia and at 60° F. However, dekatherms may be used if a conversion factor based on average heat content is supplied to allow conversion to Mcf. A new data item—average Btu content per cubic foot—will be added to Schedule R7, Record 01 to provide the conversion capability. Respondents can still report in MMcf or dekatherms in the automated format.

According the ANR & CIG, the record formats do not specifically label the record keys. They argue that key identification would enable recognition of sort sequences and record splits caused by key item breaks. United also suggests that clarification is needed to identify the record keys to ensure the correct sort order/sequence of records prior to the assignment of sequence numbers.

The Commission will identify the record key for each schedule/record and will make it available to interested parties when the edit criteria are available.

ANR & CIG note that, with regard to the tape submittals, record layouts are required to be fixed in length at 255 characters. They argue that it would be more efficient to allow variable length records on large files to free up space allocated to blank filled data items. While many natural gas companies may have the capability to use variable length records, others may not. In addition, the Commission is now permitting the same fixed length formats to be used for both types of diskettes. The Commission believes that this will simplify the reporting burden for most respondents. The Commission, therefore, will not accept variable length records.

ANR & CIG note that for its computers, and possibly other companies' computers, the leading negative sign within numeric items requires special handling. According to ANR & CIG, since the tape is acceptable in EBCDIC format, then the numerics should be acceptable in EBCDIC zoned decimal format. ANR & CIG also note that its computers, and possibly other companies' computers, require that positional decimal points be treated in a specific manner. According to ANR & CIG, an implied decimal placement should be used because this decimal position is specified within the item definition.

The Commission points out that the specifications for reporting numeric data are actually picture or display formats similar to what is used to produce printed output. The numeric data reported on tape/diskette should be written utilizing appropriate picture/display formats so that "." and "-" are recorded as required in the reporting instructions. The Commission will not accept zoned decimal numerics.

According to ANR & CIG, General Instruction 3 requires a sequence number to be assigned to all records. The instruction requires the sequence number to be zero filled. ANR & CIG note that certain personal computer software programs, such as Lotus, do not accommodate this requirement. Therefore, ANR & CIG suggest this requirement be made optional. ANR & CIG point out that this General Instruction is also duplicated under General Instruction 5.

Applicants may file the sequence number as an integer, right justified. However, the footnote reference ID must be constructed as specified in the General Instructions. The sequence number to be concatenated [2] with the schedule ID, record ID, and item location to form the footnote reference, must be a 6-digit character numeric with leading zeroes when required.

ANR & CIG point out that General Instruction 4(c) states: "Report all money items rounded to the nearest

[2] Webster's Dictionary defines this term to mean to connect or link in a series or chain.

dollar except where noted." According to ANR & CIG, throughout the record formats this requirement is referred to in various ways. ANR & CIG argue that one consistent reference in the general instruction is all that is required. ANR & CIG argue the record formats should refer back to the general instruction. The Commission is correcting the record formats for consistency. Applicants can refer to Appendix C, List of Record Format Corrections, for specific changes.

ANR & CIG argue that General Instructions 4(d) and (e) indicate new volumetric data should be reported. According to ANR & CIG, some of the individual record formats have the same instructions. (*See, e.g.,* item numbers 476 and 477.) ANR & CIG argue that there is no need to have this instruction in two places. The Commission notes that instructions are repeated in some instances for the sake of clarity. It is not clear to the Commission from ANR & CIG's comments what volumetric data is considered "new data".

ARN & CIG point out that the Commission is now requiring that certain schedules designated as working papers be included in the record formats along with the normally filed rate case schedules. They argue that this represents a new requirement. ANR & CIG argue that the Commission should consider whether this new requirement is appropriate.

The Commission believes this is not a new requirement. Certain of the schedules identified in § 154.63(f) are designated as being included in the working papers. If schedules designated as working papers are required to be filed in paper copy for a particular rate filing, they must now be filed on an electronic medium. Schedules which do not have to be included in the paper copy version will not be required in the electronic version either. The Commission will discuss this issue in the implementation conferences. However, the Commission notes that it has not revised the regulations identifying the materials which must be included in a rate filing—just the medium in which they must be filed.

Arkla argues that a glossary is required to assure the use of consistent terminology and the submission of the data desired. Arkla argues that more explicit explanations are required of what goes into each data field and their intended purpose. Additionally, Arkla argues that the Commission must establish edit rules for the acceptance criteria for all fields, including valid values, ranges of values, and types of characters permitted.

The Commission believes this issue is more significant for rate filings. A glossary should not be necessary for data submitted in the forms since the Commission believes that most natural gas companies have enough experience with the forms to understand the meaning of the data requirements. The Commission will make available edit criteria for each form when they are developed. The Commission will review the need for a glossary, data dictionary, edit rules, etc., for rate filings at the implementation conference.

Arkla also argues that the record layouts are not always correct. Arkla believes that in some instances they are overlapping and in others there are not enough positions defined to hold the data. The Commission is correcting overlapping and abbreviated character position errors.

Arkla points out that the proposed record formats require the creation of edited data fields, even though neither Arkla nor Commission personnel create or store them in this way. Arkla believes this is a situation where the systems are currently compatible and need not be changed.

Arkla is correct that the record formats do require picture/display formats which may be different from the way numeric data are stored on Arkla's computer. However, the electronically filed data should be identical to the paper copy filing. The Commission concludes that there is no inconsistency.

Tennessee Gas argues that there are several fields specified as numeric which would be better specified as character. For example, Tennessee Gas notes that in current filings the term "various" is used in many fields that are defined by the new forms as numeric.

The Commission notes that Tennessee Gas does not cite specific examples. However, other applicants have identified certain fields where this problem occurs. The Commission is changing these fields from numeric to character data to permit applicants to report "various." if "various" is the response the applicant wants to make and the field for recording the information remains a numeric field, applicants should include a footnote to the record to explain or provide the "various" information.

United asks how to include/define special symbols on an electronic medium, *i.e.*, square root, approximately equal, etc. The Commission recognizes that it is not possible to include or define special code symbols such as the square root symbol on an electronic medium using the ASCII code set specified. Where it is necessary to use symbols, applicants should utilize a footnote and describe the reported information in the text of the footnote.

United argues that the format of the paper copy reports to be submitted to the Commission is not specifically outlined in the technical specifications. United believes that clarification is needed to specify that the paper copy formats are identical to those currently being submitted.

For the forms, the paper copy formats should reasonably approximate those currently being submitted. An exact duplicate of the form is not required, *i.e.*, labels and data fields should be arranged as they appear on the form, but vertical and horizontal lines are not necessary if the rows and columns are spaced in an easily-readable format. The Commission will defer specifying a paper copy format for rates, tariffs, and certificates until after the implementation conference in September.

*B. FERC Form No. 2*

Enron argues that the electronic transfer formats needlessly require more detail than is currently requested. The Commission notes that Enron does not provide specific examples. However, the Commission is revising the record formats to correspond as closely as possible to the paper copy version of the forms. The list of corrections to the record formats in Appendix C identifies these changes.

Texas Eastern argues that, in FERC Form No. 2, additional or new information is requested at page 264 and at page 160. Texas Eastern argues that the Commission should not alter existing reporting requirements within the existing forms. The Commission is revising the record format for Revenue From Transportation of Gas For Others (FERC Form No. 2, pages 312 and 313) so that Distance Transported is a character field with 4 spaces. This will allow "various" to be entered in an abbreviated form for distance transported by recording "var" as in prior paper copy filings of FERC Form No. 2. The record format for Transmission System Peak Deliveries (FERC Form No. 2, page 518) contains all of the paper copy data elements for this schedule. However, applicants should follow the same procedures for electronic filings as they follow for paper copy filings. If certain data has not been required or reported on the paper copy version, there should be no change for the electronic version.

Enron argues that in General Instruction Number 3A, the blank field indicator is inconsistent and difficult to

follow. ANR & CIG also argue that, in General Instruction 3.(a)(i)(ii), the Commission requires that "not applicable" numeric fields be identified with ".001" or "0" depending on the type of information. ANR & CIG argue that this is confusing and increases data entry time. ANR and CIG recommend that all "not applicable" numeric fields use "0".

The Commission will make the instructions for reporting that a data element is "Not Applicable" to an applicant consistent on all forms. The Commission needs to ensure that a response is made to each required data element in a schedule/record. In so doing, the Commission believes it is necessary to distinguish between a true value of zero and the case where the applicant is stating that there is no information to report. The Commission believes the general instruction is a reasonable approach to the problem. Since this approach is used consistently in all forms, the same source code can be used for all forms.

Enron argues that, in General Instruction Number 3F, the identification of nonapplicable information is extraneous input and of no value. Presently, Enron simply notes "Not Applicable", which it believes should be sufficient. Additionally, ANR & CIG note that General Instruction 3 (F) states, "For any schedules or records that are not applicable to the respondent, state the reasons in the letter of transmittal." ANR & CIG argue that the stating of reasons is a new requirement and should be omitted if it cannot be justified. The Commission is eliminating General Instruction 3F.

Enron argues that in the Balance Sheet, Schedule 54 (Miscellaneous Gas Plant/-Production Properties), the Commission requests information which is redundant and duplicative of the information provided in the Balance Sheet Schedules 10 and 11. The Commission notes that the two items of data required in Schedule F5, Record 54 correspond to the data presently required on line no. 1 on pages 214 and 215 of the paper copy version of Form No. 2 (Ed. 12–87).

Enron argues that, in the Income Statement Section, Schedule 31 (Exploration and Development Expenses), the Commission requests delivery state FIPS codes. According to Enron, this is a needless new requirement of information not provided before. The Commission points out that the FERC Form No. 2 instructions on page 326 presently require subheadings and subtotals for Exploration and Development Costs for each state. While the Commission has not previously required FIPS codes to identify states in the past, the Commission is adopting this means of reporting states in electronic filings. For the sake of consistency, the Commission will retain the requirement to report the state's FIPS Code in the electronic filing.

Enron notes that all of the transportation schedules are requiring path information. According to Enron, Income Account Schedules (8), (34) and (37) are requiring information by each receipt and delivery point. Enron notes that this will require the reporting of miles and volume for each individual path. According to Enron, data is not currently collected or reported in this manner. Enron believes this change will require substantial changes in data collection and needless voluminous documentation. Enron points out that, previously, information of this nature was shown in less detail by contract number. Enron believes that it is difficult or impossible to present the information in the prescribed manner. The Commission does not intend to impose any new information requirement. The Commission points out that this information is currently required on FERC Form No. 2; however, applicants should use the same level of detail for reporting receipt and delivery points on the electronic filing as for previous paper copy filings.

United notes that a different level of detail is required for FERC Form No. 2 data on the electronic format. United points, for example, to Revenue from Transportation of Gas of Others (Schedule F6 Record Code 08), which requires dollars, volumes and miles transported showing receipt and delivery at the state and county level. United points out that it is currently summarized and reported as "various points in Louisiana and Texas," etc. United also points to Schedule F5, Record 21, Investments, which now requires security name, data acquired and date of maturity. Investments (FERC Form No. 2, pages 222 and 223) is Record ID 22, not 21. The instructions on page 222, at 2a, identify each of the items listed by United. The Commission believes there is no increase in the reporting requirement. There may, however, be a difference in what is requested on the paper copy version of the FERC Form No. 2 and the manner in which United actually reports data on investments.

Enron argues that there is new information required in FERC Form No. 2 and other forms that is not in conformance with Generally Accepted Accounting Principles (GAAP). Enron suggests that information required in such forms should track GAAP. Generally Accepted Accounting Principles are not at issue in this rulemaking docket. Enron did not support its statement with specific examples. However, the Commission notes that, after the modifications in this order, the record formats for the electronic filings will contain the same requirements as the paper copy forms.

In Schedule F4, Record ID 06, page 18, ANR and CIG argue that officers' salaries should be considered confidential. The Commission does not consider the data in FERC Form No. 2 to be of a confidential nature. The Commission will not make an exception for officers' salaries.

ANR & CIG argue that, in Schedule F4, Record Id 06, page 50, "Contra Primary Account Affected" cannot be correlated to any field. The Commission is revising Schedule F4, Record 23 to permit reporting of "Contra Primary Account" for each field as necessary, consistent with the paper copy version of FERC Form No. 2.

ANR & CIG note that Schedule F4, Record ID 24 and 25, page 53–56, should be conformed to FASB No. 95. Additionally, United declares that it cannot commit to a time frame when the reporting requirements continue to change. United points out that, under RM88–18–000, the format for protions of FERC Form No. 2 are being revised. As the applicants have noted, the Commission is addressing this issue in RM88–18–000. The Commission anticipates final action in this separate rulemaking docket in the near future. The Commission will revise these formats to reflect action taken in that rulemaking docket at that time.

ANR & CIG argue that, in Schedule F5, Record ID 33, 35, 39, 40, 44 and 45, pages 110–111, 113, 117–119, 124–127, a record for totals and/or subtotals does not exist. The Commission is including totals and subtotals on the record formats consistent with the paper copy version of FERC Form No. 2. The Commission will include totals on the record formats consistent with the paper copy version of FERC Form No. 2.

ANR & CIG note that, in Schedule F6, Record ID 2, pages 148–150, volumes were not previously required. According to ANR & CIG, the Commission should consider whether this information is necessary. Only those volumes required to be reported on the paper copy version of FERC Form No. 2 (*i.e.*, the unshaded entries on FERC Form No. 2, page 301) need to be reproted on the electronic filing. The Commission believes there is no increase in the reporting requirement.

Also, in Schedule F6, Record ID 6, page 157, ANR & CIG note that Btu

content was not previously required, and therefore request that the Commission consider whether this information is necessary. The Commisison points out that, presently, the paper copy version of FERC Form No. 2 requests the Approx. Btu per Cubic Foot for the volume of gas sold. Some companies report the Btu in a footnote or in parentheses after the volume. The Commission concludes that this is not a new reporting requirement.

ANR & CIG note that, in Schedule F6, Record ID 8, page 160, the Commission is requiring companies to provide information by state and county location for transportation contracts. ANR & CIG note that this information is not presently supplied by ANR. The Commission does not intend to impose any new information requirement. The Commission is modifying this schedule/record to be consistent with existing paper copy reporting requirements of FERC Form No. 2.

ANR & CIG note that, in Schedule F6, Record IDs 8 and 37, page 160–161 and 209–210, the Commission needs to clarify how to report multiple delivery points and to explain why this new information is required. Moreover, according to ANR & CIG, the information for miles transported is not easily attainable. The Commission is revising these schedules/records to enable applicants to report the required information as it is currently reported in paper copy form.

ANR & CIG note that, in Schedule F6, Record ID 42, page 217, the Commisison has failed to provide a field for account or subtotal record for the accounts. The Commission is modifying Schedule F6, Record 42 to permit consistent reporting of information in the electronic filing and paper copy reports.

ANR & CIG point out that, in Schedule F7, Record ID 7, page 232, no field is provided for the account or amount charged for outside professional and other consulting services. The Commission points out that this is a text record in free-form format, corresponding to the existing paper copy version.

ANR & CIG note that, in Schedule F7, Record ID 9–13, pages 235–242, the instructions still require a split between old and new gas. According to ANR & CIG, this requirement was removed pursuant to a Commission letter order dated January 14, 1988. The Commission believes this comment refers to a proposed revision to the paper copy version of FERC Form No. 2. Any changes to FERC Form No. 2 as a result of a final rule in other rulemaking dockets will be incorporated in the electronic version.

ANR & CIG argue that, in Schedule F7, Record ID 16, page 249, the Commission needs to clarify how nongas power is to be correlated to the rest of the data provided. ANR & CIG's problem with this schedule is not clear. However, the Commission believes they are asking how the Commission uses data currently requested in FERC Form No. 2, rather than how applicants need to report the required information electronically. The Commission's use of the data reported is not at issue here.

ANR & CIG not at that, in Schedule F7, Record ID 18, page 252, no subtotal is provided for "Gathering and Storage Field" breakdowns. The Commission is revising Schedule F7, Record 18 to be consistent with the paper copy version of FERC Form No. 2.

ANR & CIG argue that the Commission has changed the item numbers for the current FERC Form No. 2. ANR & CIG argue that unless such change can be justified, the Commission should allow the item numbers to remain the same as the current FERC Form No. 2. The Commission does not understand this comment. The item numbers used to identify data elements on the record formats do not match the line numbers on the paper copy version. The Commission believes this is not feasible since item numbers provide a unique reference to a data element whereas line numbers do not.

United points out that it does not have in every case the name from which gas is received or to which it is delivered. According to United, it only has the shipper's name. (*See, e.g.*, Schedule F6, Record 06; Schedule F6, Record 36 and Schedule F6, Record 37.) The Commission points out that there is no receipt/delivery data requested in Schedule F6, Record ID 36. The Instructions on pages 310 and 332 of FERC Form No. 2 corresponding to Record Id's 06 and 37 identify each of the items listed by United. The Commission believes that there is no increase in reporting requirement. There may, however, be a difference in what is requested on the paper copy version of the FERC Form No. 2 and the manner in which United reports data on investments.

United asks how are certifications to be accomplished. United also asks how the contents on an electronic medium can be attested to by outside auditors.

Outside auditors will be required to certify that the paper copy version is correct. The Commission's regulations at § 385.2011(c) require that the letter of transmittal contain a subscription stating that the paper copy contains the same information as the electronic medium. The burden is on the natural gas companies to ensure that data on the electronic medium is the same as data on the paper copy certified to by an outside auditor.

*C. FERC Form No. 8*

United argues that there are no instructions for character fields which do not apply on both FERC Form Nos. 8 and 15. The Commission is revising the General Instructions to specify that "NA" should be recorded in any character field where the data item is not applicable to the applicant.

United argues that there is a contradiction between the general and technical specifications on record codes associated with initial filing. Texas Eastern also argues that Records 3 and 4 (pages 15 and 16) are inconsistent with the General Instructions on page 2, at Section III, second paragraph.

The Commission is correcting the General Instructions at page 2, section III, second paragraph. The Commission is revising that paragraph to state that Records 01 and 02 must be reported each time the form is submitted and Records 03 and 04 are required on the initial report or when changes or additions occur. Natural gas companies that have already filed the paper copy version of FERC Form No. 8 need not refile the "initial" report again on an electronic medium. Also, in Schedule U1, Record 02, the Commission is deleting "Nov. 1 to date" from Item 13, Type of Gas, Codes 5 (Injections) and 6 (Withdrawals).

United notes that co-owner storage information is requested in the record layout, but this information has not been requested in the previous paper copy submittals. Co-owner storage information (Schedule U1, Record 04) and data on underground storage reservoirs (Schedule U1, Record 03) are required only on the initial FERC Form No. 8 report, and when changes or additions are made to information previously reported. Natural gas companies that have filed at least one FERC Form No. 8 should already have filed this information and will not be required to refile the "initial" report on an electronic medium. These record formats should be used, however, by natural gas companies either filing FERC Form No. 8 for the first time, or revising a previous report.

*D. FERC Form No. 11*

Texas Eastern argues that in Record F9–08 (page 26), final field, "Filler" is not contiguous to prior field. The Commission is revising the character positions for the Filler.

*E. FERC Form No. 15*

Since the Commission is reverting back to the current format for FERC Form No. 15, and allowing it to be used for tape or diskettes, applicants' technical comments on the record formats are moot. The filing instructions for FERC Form No. 15 will be the instructions presently required in the form.

*F. FERC Form No. 16*

Texas Eastern argues that, in Record R7-01 (page 12), character positions of fields from " Data Submitted" and below overlap previous fields. The Commission is correcting the character positions.

United asks whether the paper copy report formats are the same as they were previously? If they are not, what are the new formats? If they are the same, United notes that the paper copies do not match the report formats, contradicting the technical specifications. The Commission notes that United has not indicated specific instances where the paper copies do not match the record formats. However, Commission staff has determined that a schedule/record for reporting detailed information on anticipated new supply was inadvertently omitted. A schedule/record for reporting this information is being added to the FERC Form No. 16 reporting instructions. With this change the electronic filing should be consistent with the paper copy version.

United argues that the column positioning is wrong for Record Codes 01 and 07 (some fields overlap each other in the record layout). The Commission is revising the character position errors in Schedule R7, Records 01 and 07. The corrections are listed in Appendix C.

United believes that there is an incorrect statement on page 2 providing that Schedule R7 should contain, "For one year of actual and projected experience, record Codes 02 through 07." United believes the record codes used for actual and projected experience are 02 through 10. United is correct. The Commission is modifying Section IV of the General Information for FERC Form No. 16, accordingly.

If a data item is not applicable and is a Gas Volume, Gas Cost, or Gas Revenue, United asks whether the numeric value ".001" should be entered in the field for this item rather than leaving it blank. If the item does not contain volumetric data, United argues the value "0" should be entered. The Commission believes that neither of these values match the 1 decimal position format for nonblank entries, requiring a data item to be formatted in two different ways. The Commission is revising the General Instructions to describe more explicity how to report "not applicable" numeric data. United is correct that the Commission is requiring the numeric ".001" to be recorded in any numeric field where the requested data item is not applicable to the applicant and the data item is a volume or revenue item. All other numeric fields which are not applicable to the respondent should have the numeric "0" or "0.0" recorded in the specified character positions. The intention is for the applicant to ensure that any value written to a numeric field is in fact numeric. If necessary, the applicant may want to move the reported information into a character type variable prior to writing the tape to satisfy this requirement.

United notes that this form is filed on either September 1, or April 1, covering a one year period. United points out, however, that the technical specification layouts contain January through December amounts. United asks how will these be processed? The Commission believes that data applicable to a particular month should be placed in the character positions designated for that month regardless of whether the FERC Form No. 16 is filed April 1 or September 1.

Enron argues that, in Schedule 2 (The Supply, Requirements, and Net Deficiency or Surplus Summary—Item Number 24, Basis for Pipeline Requirements), there is a new data request of which Enron has not had sufficient time to determine the degree of difficulty in obtaining this information. The Commission believes this is not a new reporting requirement. The Commission points out that, on page 3 of the current FERC Form No. 16, instructions are provided for entering the "Total Requirements" volume (Schedules I and V, line No. 11), and for indicating how the requirements are determined.

Enron argues that, in Schedule 4 (The Contract and Delivery Volumes by Pipeline Supplier Report), natural gas companies are required to provide buyer-seller codes which have not been supplied previously and do not appear to be needed or useful. The Commission points out that the current FERC Form No. 16 instructions direct the applicant to "Enter seller codes where possible". (*See* FERC Form No. 16 instructions, page 2, Item VI). The Commission, therefore, has provided character positions for seller codes. However, the same guidelines apply—enter the codes where possible.

Enron argues that, in Schedule 7 (Deliveries, Requirements, and Net Deficiency or Surplus by Customer Report—Item Number 93), the County Data has never been requested previously. This report is presently generated from a mainfram computer and the County Data is not currently available. Enron argues that it will be difficult and burdensome to add the county information. Enron requests to the Commission to reconsider whether such information is actually useful or needed. The Commission points out that, on the current paper copy version of FERC Form No. 16, Delivery Point/County information is requested in Column (p) of Schedules IV and VIII. The Commission also notes that there is no specific instruction for identifying delivery points. The electronic record format for these schedules (Schedule R7, Record 07) requests the name of the county where gas is delivered, with no further identification of the delivery point. Delivery Point/County data may not have been reported by Enron previously, but the Commission can find no basis for their claim that it has never been requested.

Enron further asks the Commission to reconsider whether this information is useful or needed. Reconsideration of the data currently required to be reported by the Commission's regulations and on its forms is beyond the scope of this rulemaking docket.

**Appendix C.—Correction Notice; Order No. 493 Record Formats**

This appendix identifies the corrections and revisions to the electronic filing record formats for FERC Form Nos. 2, 2A, 8, 11, 14, 15 and 16. A complete copy of the record formats, as revised by Order No. 493–A, is available from the Commission's electronic bulletin board service—the Commission Issuance Posting System (CIPS)—and on diskettes from the Commission's photocopying contractor in Room 1000, 825 North Capitol Street NE; Washington, DC 20426.

The record formats for rate, tariff, and certificate filings will be discussed at the conferences scheduled on September 12 and 13, 1988. The Commission will reissue corrected record formats for these filings by November 30, 1988.

*General Corrections to Record Formats for All Forms*

1. General Information:

The opening paragraph under "What to Submit" should be revised to:

All data will be submitted on 9-track magnetic computer tape(s), 18-track magnetic computer cartridge(s), or on computer diskette(s).

Delete "9-track" from the first line of paragraph (1) under "What to Submit."

2. General Instructions:

The instruction for the sequence number (Item 3 or 4, refer to form) has been revised to indicate that sequence numbers should be assigned on a schedule/record basis, not on a file or schedule basis, and that sequence numbers should be right justified.

3. Exhibit A:

Item 1, line 1 has been revised to:

All data tapes should be 9-track open reel or 18-track cartridge with American National. . . .

Item 3 should be replaced with:

Recording density may be 1600 BPI (Bits per inch) or 6250 BPI (9-track tape) or 38,000 BPI (18-track tapes).

4. Exhibit B

A new procedure has been inserted after Item #2, which reads as follows:

The information required for this form may be reported on the diskette(s) exactly as specified in the general and specific instructions following the data layout for each schedule/record. Alternatively, the required information may be delimited as specified in Items 4 through 9 of this exhibit B.

Items 3 through 8 have been renumbered 4 through 9.

5. Footnotes

The footnote record has been revised so that the Reference Number is now a 13-character field. Character positions should be revised as follows:

Reference Number: 11–23.

Footnote: 24–155.

Filler: 156–255.

6. State Codes from FIPS Pub. 6–3 are listed on the following page.

### FIPS State Codes

[Reference: Federal Information Processing Standards (FIPS) Publication 6–3]

| State | Code |
|---|---|
| Alabama | 01 |
| Alaska | 02 |
| Arizona | 04 |
| Arkansas | 05 |
| California | 06 |
| Colorado | 08 |
| Connecticut | 09 |
| Delaware | 10 |
| Dist. of Col. | 11 |
| Florida | 12 |
| Georgia | 13 |
| Hawaii | 15 |
| Idaho | 16 |
| Illinois | 17 |
| Indiana | 18 |
| Iowa | 19 |
| Kansas | 20 |
| Kentucky | 21 |
| Louisiana | 22 |
| Maine | 23 |
| Maryland | 24 |
| Massachusetts | 25 |
| Michigan | 26 |
| Minnesota | 27 |
| Mississippi | 28 |
| Missouri | 29 |
| Montana | 30 |
| Nebraska | 31 |
| Nevada | 32 |
| New Hampshire | 33 |
| New Jersey | 34 |
| New Mexico | 36 |
| New York | 36 |

### FIPS State Codes—Continued

[Reference: Federal Information Processing Standards (FIPS) Publication 6–3]

| State | Code |
|---|---|
| North Carolina | 37 |
| North Dakota | 38 |
| Ohio | 39 |
| Oklahoma | 40 |
| Oregon | 41 |
| Pennsylvania | 42 |
| Rhode Island | 44 |
| South Carolina | 45 |
| South Dakota | 46 |
| Tennessee | 47 |
| Texas | 48 |
| Utah | 49 |
| Vermont | 50 |
| Virginia | 51 |
| Washington | 53 |
| West Virginia | 54 |
| Wisconsin | 55 |
| Wyoming | 56 |

Source: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

*FERC Form No. 2*

1. Table of Contents.

New pages have been added after pages 119 and 200. A new table of contents with correct page numbers is included at the end of this section.

2. General Instructions.

Delete Instruction 3(F); reletter Instructions 3(G) through 3(M).

3. Record Formats:

(Note: Page numbers reference the original record formats published with Order 493).

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 10 | 6 | Date of report | Under comments, change "filed" to "prepared". |
| 50 | | Note | Add the following: "Specify contra primary account affected for any item in a footnote." |
| 50 | | Contra primary account affected | Delete this item. |
| 50–52 | 211–228 | All | Decrease each char. pos. by 7. See revised record format for schedule F4, record 23. |
| 52 | | Filler | Change char. pos. to 227–255. |
| 80 | 408 | Date originally included in this account | Change char. pos. to 144–149. |
| 80 | 409 | Date expected to be used in utility service | Change char. pos. to 150–155. |
| 80 | 410 | Balance at end of year | Change char. pos. to 156–167. |
| 80 | | Filler | Change char. pos. to 168–255. |
| 81 | 412 | Date originally included in this account | Change char. pos. to 144–149. |
| 81 | 413 | Date expected to be used in utility service | Change char. pos. to 150–155. |
| 81 | 414 | Balance at end of year | Change char. pos. to 156–167. |
| 81 | | Filler | Change char. pos. to 168–255. |
| 88 | 444 | Total debit or credit items | Change this item to "Total Other Debit or Credit Items". |
| 107 | 547 | Account No | Change char. pos. to 36–42. |
| 107 | 548 | Credit amount | Change char. pos. to 43–54. |
| 107 | 549 | Balance at end of year | Change char. pos. to 55–66. |
| 107 | | Filler | Change char. pos. to 67–255. |
| 110 | Add | Stock code | After sequence number, under character position, add "11"; under data type, add "Numeric"; under comments, add: "Common Stock, Code=1; Prefered Stock, Code=2 Total Common Stock, Code=3; Total Preferred Stock, Code=4". |
| 110–111 | 559a–568 | All | Increase each char. pos. by 1. See revised record format for Schedule F5, Record 33. |
| 113 | | Information reported code | Comments should read: "individual item, code=1; account total, code=2; grand total, code=3". |
| 113 | Add | Account No | Under character position, add "12–18"; Under Data Type, add "Numeric"; Under Comments, add "Specify Account Number Reported". |
| 113 | 573 | Item description | Change char. pos. to 19–150. |
| 113 | 574 | Amount | Change char. pos. to 151–162. |
| 113 | | Filler | Change char. pos. to 163–255. |

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 117 | Add | Account No | Under character position, add "12-18"; under data type, add "Numeric"; under comments, add "Specify Account Number Reported". |
| 117-118 | 585-593 | All | Increase each char. pos. by 7. See revised record format for Schedule F5, Record 39. |
| 118 | | Filler | Change char. pos. to 225-255. |
| 119 | Add | Long-term debt code | Under character position, add "11"; under data type, add "Numeric"; under comments, add: "unamortized debt expense, code=1; unamortized premium on long-term debt, code=2; unamortized discount on long-term debt, code=3; other, code=4". |
| 119 | 593a-601 | All | Increase each char. pos. by 1. See revised record format for Schedule F5, Record 40. |
| 121-122 | | ....do | Assign item Nos. 608a-608f to items in character positions 11-82. |
| 124 | | Information reported code | Comments should read: "Individual Item, code=1; Sub-total, code=2; Grand Total, code=3". |
| 124 | Add | Type of tax | Under character position, add "12"; Under data type, add "numeric; under comments add "Federal Tax, code=1; State Tax, code=2; Other, code=3". |
| 124-125 | 609-616 | All | Increase each char. pos. by 1. See revised record format for Schedule F5, Record 44. |
| 125 | | Filler | Change char. pos. to 229-255. |
| 126 | | Information reported code | Comments should read: "Individual Item, code=1; Sub-total, code=2; Grand Total, code=3". |
| 126 | Add | Type of tax | Under character position, add "12"; under data type, add "numeric"; under comments add "Federal Tax, code=1; State Tax, code=2; Other, code=3." |
| 126-127 | 609-624 | All | Increase each char. pos. by 1. See revised record format for Schedule F5, Record 45. |
| 127 | | Filler | Change char. pos. to 241-255. |
| 136 | | Account subdivision code | Under Comments, the text following "code=8;" should be revised to "other facilities, code=9; total, [federal income tax] code=10; total, [state income tax] code=11; total [local income tax] code=12; total (account 281) code=13." |
| 141 | 690 | Narrative descriptor of item reported | Change char. pos. to 123-222. |
| 141 | | Filler | Change char. pos. to 223-255. |
| 142 | Add | Balance at end of year (account 105) | Assign item No. 690a. |
| 142 | Add | Balance at end of year (account 105.1) | Assign item No. 690b. |
| 148 | | Information reported | Revise comments to: "operating revenues, code=1; Mcf of natural gas sold, code=2, (see note 16a)". |
| 150 | Add | Note 16a | See revised Schedule F6, Record 2. |
| 159 | | Note | Change "Specific Instruction Number 15" to "Specific Instruction Number 42". |
| 159 | 760e | Average revenue per Mcf | Revise comments to: "(item 759a÷item 758a)×100; (in cents), format f(7,2)". |
| 160 | 765c | Receipt county | Change item to "Receipt Point Description". |
| 160 | 765c | ....do | Under comments, after "located", add "or designation of the receipt point on the respondent's pipeline system". |
| 160 | 765f | Delivery county | Change item to "Delivery Point Description". |
| 160 | 765f | ....do | Under comments, after "Located", add "or designation of the delivery point on the respondent's pipeline system". |
| 161 | 766 | Distance transported | Change char. pos. to 166-175; change data type to character; under comments, revise to "(in miles); if various distances enter 'various'". |
| 161 | 767-771 | All | Increase each char. pos. by 6. See revised record format for schedule F6, record 8. |
| 161 | | Filler | Change char. pos. to 234-255. |
| 162 | | ....do | Change char. pos. to 124-255. |
| 200 | Add | Information reported code | Under character position, add "11"; under data type, add "numeric"; under comments, add "individual item, code=1; state total, code=2; grand total, code=3". |
| 200 | 1017 | Field | Change char. pos. to 12-46; revise comments to "field name; leave blank for totals". |
| 200 | 1018 | County | Change char. pos. to 47-76; revise comments to "county where major portion of field is located; leave blank for totals". |
| 200 | 1018a-1023 | All | Increase each char. pos. by 21. |
| 200 | | Filler | Change char. pos. to 131-255. |
| 204 | 1037 | Company name | Change char. pos. to 12-56. |
| 204-205 | 1038a-1048 | All | Decrease each char. pos. by 5. |
| 205 | | Filler | Change char. pos. to 246-255. |
| 206 | | Purpose for which gas was used | Change char. pos. to 11 only. |
| 210 | 1059 | Distance transported | Change data type to character; under comments, revise to "(in miles); if various distances enter 'various'". |
| 217 | Add | Information reported code | Under character position, add "11"; under data type, add "numeric"; under comments add "individual item, code=1; subtotal, code=2; total, code=3". |
| 217 | Add | Account No | Under character position, add "12-18"; under data type, add "numeric"; under comments add "specify account number reported". |
| 217 | 1079 | Item reported | Change char. pos. to 19-150. |
| 217 | 1080 | Income deduction or interest charge | Change char. pos. to 151-162. |
| 217 | | Filler | Change char. pos. to 163-255. |
| 221 | 1087 | Amount charged | Change char. pos. to 197-208. |
| 221 | 1088 | Deferred to account 186 | Change char. pos. to 209-220. |
| 221 | 1089 | Contra account | Change char. pos. to 221-227. |
| 221 | 1090 | Amount amortized during year | Change char. pos. to 228-239. |
| 221 | 1091 | Deferred in account 186, end of year | Change char. pos. to 240-251. |

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 221 | | Filler | Change char. pos. to 252-255. |
| 252 | Add | Information reported code | Under char. pos. add "11"; under data type, add "numeric"; under comments, add "individual item, code = 1; subtotal, code = 2; total, code = 3". |
| 252 | 1267 | Field and storage identification | Change char. pos. to 12-143. |
| 252 | 1268 | Total miles of pipe | Change char. pos. to 144-155. |
| 252 | | Filler | Change char. pos. to 156-255. |
| 268 | 1346a | Total 3-day peak curtailments | Change char. pos. to 89-100. |
| 268 | 1351a | Curtailment of others | Change char. pos. to 177-188. |

4. Additional/replacement pages:

Replace pages i–vi with new pages i–vi.

Table of Contents



Table of Contents—Continued



Table of Contents—Continued

Table of Contents—Continued



Table of Contents—Continued



Table of Contents—Continued



*FERC Form No. 2A*

1. Table of Contents: Schedules.

Record (47) Gas Plant in Service (Accts. 101, 102, 103, and 106)—Part 8 on page 100 has been deleted. Accordingly, all subsequent record numbers and associated page numbers are decreased by one. A new table of contents with the correct record and page numbers is included at the end of this section.

2. Record Formats:

Item 566–570 from deleted Record (47) will be added to the end of Record (46). The complete corrected Record 46 is reprinted at the end of this section.

Other corrections:

(Note: Page numbers reference the original record formats published with Order 493).

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 4 | | | Under the substitute records column, record numbers 47 and above should be reduced by one. |
| 7 | | | Change "eighty (80)" to "seventy-nine (79)". |
| 47 | 235 | BUT content | Change char. pos. to 12-15. |
| 47 | 236 | Natural gas purchase volume | Change char. pos. to 16-27. |
| 47 | 237 | Natural gas purchase cost | Change char. pos. to 28-39. |
| 48 | 238 | Average cost per Mcf | Change char. pos. to 40-49. |
| 48 | | Filler | Change char. pos. to 50-255. |
| 83 | Note | | At end of note text, add "Specify Contra Primary affected for any item in a footnote". |
| 83 | 443 | Balance—beginning of year | Change char. pos. to 11-22. |
| 83 | 444 | Total credits to retained earnings | Change char. pos. to 23-34. |
| 83 | 445 | Total debits to retained earnings | Change char. pos. to 35-46. |
| 83 | 446 | Balance transferred from income | Change char. pos. to 47-58. |
| 83 | 447 | Total appropriations of retained earnings | Change char. pos. to 59-70. |
| 83 | 448 | Total dividends declared—preferred stock | Change char. pos. to 71-82. |
| 84 | 449 | Total dividends declared—common stock | Change char. pos. to 83-94. |
| 84 | 450 | Unappropriated undistributed subsidiary earnings | Change char. pos. to 95-106. |
| 84 | 451 | Unappropriated retained earnings balance—end of year | Change char. pos. to 107-118. |
| 84 | 452 | Total appropriated retained earnings | Change char. pos. to 119-130. |
| 84 | 453 | Total appropriated retained earnings—amortization reserve, Federal. | Change char. pos. to 131-142. |
| 84 | 454 | Total appropriated retained earnings | Change char. pos. to 143-154. |
| 84 | 455 | Total retained earnings | Change char. pos. to 155-166. |
| 84 | 456 | Balance—beginning of year [debit or credit] | Change char. pos. to 167-178. |
| 84 | 457 | Equity in earnings for year—credit | Change char. pos. to 179-190. |
| 84 | 458 | Dividends received—debit (—) | Change char. pos. to 191-202. |
| 85 | 459 | Other charges | Change char. pos. to 203-214. |
| 85 | 460 | Balance—end of year | Change char. pos. to 215-226. |
| 85 | | Filler | Change char. pos. to 227-255. |
| 102 | 582 | Total debit or credit items | Change "Total" to "Other". |
| 159 | | Salary and/or fee | Change char. pos. to 56-62. |
| 159 | | Filler | Change char. pos. to 63-255. |

3. Additional/Replacement Pages:

Replace pages i–iii with new pages i–iii.

Replace pages 98–99 with the following new pages 98–99.

## Table of Contents



## Table of Contents—Continued



## Table of Contents—Continued

Table of Contents—Continued



Table of Contents—Continued



Table of Contents—Continued



(46) Gas Plant in Service (Accounts 101, 102, 103, and 106)—Part 7; SUBSTITUTE SCHEDULE/RECORD

**Note:** See Exhibit D, Specific Instruction Number 10 for information required in this schedule/record.

| Item No. | Item | Character position | Data type | Comments |
|---|---|---|---|---|
| | Schedule ID | 1-2 | Character | Sch=F8. |
| | Record ID | 3-4 | Numeric | Code=46. |
| | Sequence No. | 5-10 | do | Right justified, zero filled, see general instruction 4. |
| | Transaction type | 11 | do | Balance at beginning of year, code=1; balance at end of year, code=2; additions, code=3; retirements, code=4; adjustments, code=5; transfers, code=6. |
| | 6. General Plant | | | |
| 553 | Land and land rights | 12-23 | Numeric | [Account 389.] |
| 554 | Structures and improvements | 24-35 | do | [Account 390.] |
| 555 | Office furniture and equipment | 36-47 | do | [Account 391.] |
| 556 | Transportation equipment | 48-59 | do | [Account 392.] |
| 557 | Stores equipment | 60-71 | do | [Account 393.] |
| 558 | Tools, shop, and garage equipment | 72-83 | do | [Account 394.] |
| 559 | Laboratory equipment | 84-95 | do | [Account 395.] |
| 560 | Power operated equipment | 96-107 | do | [Account 396.] |
| 561 | Communication equipment | 108-119 | do | [Account 397.] |
| 562 | Miscellaneous equipment | 120-131 | do | [Account 398.] |
| 563 | Subtotal | 132-143 | do | Sum of items 553 throu 562. |
| 564 | Other tangible property | 144-155 | do | [Account 399.] |
| 565 | Total general plant | 156-167 | do | Sum of items 563 and item 564. |
| 566 | Total (accounts 101 and 106) | 168-179 | do | Sum of items 464, 495, 528, 537, 552, and 565. |
| 567 | Gas plant purchased | 180-191 | do | See specific instruciton 10, part h. |
| 568 | Gas plant sold (-) | 192-203 | do | Do. |
| 569 | Experimental gas plant unclassified | 204-215 | do | Amount ($). |
| 570 | Total gas plant in service | 216-227 | do | Sum of items 566 thru 569. |
| | Filler | 228-255 | do | Blank filled. |

*FERC Form No. 8*

1. General Information:

Part III, When to Submit, paragraph 2 has been revised to:

All information requested in Schedule U1, Records 01 and 02 must be reported each time the form is submitted.

Information requested in Schedule U1, Records 03 and 04 is required only on the initial report. When changes or additions occur to the information initially reported in Scheduled U1, Records 03 and 04, the information should be resubmitted in its entirety.

2. General Instructions:

After Instruction 2A, insert a new 2(B) as follows:

Enter "NA" wherever a character item is not applicable.

Reletter old Instructions 2(B) through 2(H) to Instructions 2(C) through 2(I).

3. Record Formats:

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 11 | 6 | Date submitted | Change "filed" to "prepared". |
| 13 | 13 | Type of gas | Under comments, delete "Nov 1 to date" from injections, code=5 and withdrawals, code=6. |

*FERC Form No. 11*

1. General Instructions:
After Item 2A, insert a new (B) as follows:

Enter "NA" wherever a character item is not applicable.

Reletter old 2(B) through 2(H) to new 2(C) through 2(I).

2. Record Formats:

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 10 | 6 | Month reported | Change char. pos. to 162-165. |
| 10 | | Date submitted | Change char pos. to 166-171. |
| 10 | | Type of filing reported | Change char. pos. to 172. |
| 10 | | Filler | Change char. pos. to 173-255. |
| 25 | 91 | Volumes of gas purchased from major gas pipelines | Under comments, change "$(000)" to "(MMCF)". |
| 25 | 92 | Volumes of gas purchased from other gas pipelines | Do. |
| 25 | 93 | Volumes of other gas purchases | Do. |
| 25 | 94 | Total volumes of natural gas purchases | Do. |
| 26 | | Filler | Change char. pos. to 210-255. |

*FERC Form No. 14*

1. General Instructions:
After Item 2A, insert a new (B) as follows: Enter "NA" wherever a character item is not applicable.

Reletter old 2(B) through 2(H) to new 2(C) through 2(I).

2. Record Formats:

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 8 | 4 | Date of report | Under Comments, change "filed" to "prepared". |
| 8 | 7 | Contact | Change Char. Pos. to 131-160. |
| 8 | 8 | Title of contact | Change Char. Pos. to 161-175. |
| 8 | 9 | Address of contact | Change Char. Pos. to 176-235. |
| 8 | 10 | Telephone of contact | Change Char. Pos. to 236-245. |
| 8 | | Filler | Change Char. Pos. to 246-255. |
| 9 | 15 | Docket Nos. | Change Char. Pos. to 137-146. |
| 9 | 16 | January peak day | Change Char. Pos. to 147-148. |
| 9 | 17 | January peak quantity | Change Char. Pos. to 149-155. |
| 9 | 18 | January quantity received/shipped (Mcf) | Change Char. Pos. to 156-165. |
| 10 | 19 | January quantity received/shipped (MMBtu) | Change Char. Pos. to 166-175. |
| 10 | 20 | January receipts/costs | Change Char. Pos. to 176-185. |
| 10 | 21 | February peak day | Change Char. Pos. to 186-187. |
| 10 | 22 | February peak quantity | Change Char. Pos. to 188-194. |
| 10 | 23 | February quantity received/shipped (Mcf) | Change Char. Pos. to 195-204. |
| 10 | 24 | February quantity received/shipped (MMBtu) | Change Char. Pos. to 205-214. |
| 10 | 25 | February receipts/costs | Change Char. Pos. to 215-224. |
| 10 | | Filler | Change Char. Pos. to 225-255. |
| 11 | 15 | Docket Nos. | Change Char. Pos. to 11-20. |
| 11 | 26 | March peak day | Change Char. Pos. to 21-22. |
| 11 | 27 | March peak quantity | Change Char. Pos. to 23-29. |
| 11 | 28 | March quantity received/shipped (Mcf) | Change Char. Pos. to 30-39. |
| 11 | 29 | March quantity received/shipped (MMBtu) | Change Char. Pos. to 40-49. |
| 11 | 30 | March receipts/costs | Change Char. Pos. to 50-59. |
| 12 | 31 | April peak day | Change Char. Pos. to 60-61. |
| 12 | 32 | April peak quantity | Change Char. Pos. to 62-68. |
| 12 | 33 | April quantity received/shipped (Mcf) | Change Char. Pos. to 69-78. |
| 12 | 34 | April quantity received/shipped (MMBtu) | Change Char. Pos. to 79-88. |
| 12 | 35 | April receipts/costs | Change Char. Pos. to 89-98. |
| 12 | 36 | May peak day | Change Char. Pos. to 99-100. |
| 12 | 37 | May peak quantity | Change Char. Pos. to 101-107. |
| 12 | 38 | May quantity received/shipped (Mcf) | Change Char. Pos. to 108-117. |
| 12 | 39 | May quantity received/shipped (MMBtu) | Change Char. Pos. to 118-127. |
| 12 | 40 | May receipts/costs | Change Char. Pos. to 128-137. |
| 12 | 41 | June peak day | Change Char. Pos. to 138-139. |
| 13 | 42 | June peak quantity | Change Char. Pos. to 140-146. |
| 13 | 43 | June quantity received/shipped (Mcf) | Change Char. Pos. to 147-156. |
| 13 | 44 | June quantity received/shipped (MMBtu) | Change Char. Pos. to 157-166. |
| 13 | 45 | June receipts/costs | Change Char. Pos. to 167-176. |
| 13 | 46 | July peak day | Change Char. Pos. to 177-178. |
| 13 | 47 | July peak quantity | Change Char. Pos. to 179-185. |
| 13 | 48 | July quantity received/shipped (Mcf) | Change Char. Pos. to 186-195. |
| 13 | 49 | July quantity received/shipped (MMBtu) | Change Char. Pos. to 196-205. |
| 13 | 50 | July receipts/costs | Change Char. Pos. to 206-215. |
| 13 | | Filler | Change Char. Pos. to 216-255. |
| 14 | 15 | Docket Nos. | Change Char. Pos. to 11-20. |

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 14 | 51 | August peak day | Change Char. Pos. to 21-22. |
| 14 | 52 | August peak quantity | Change Char. Pos. to 23-29. |
| 14 | 53 | August quantity received/shipped (Mcf) | Change Char. Pos. to 30-39. |
| 14 | 54 | August quantity received/shipped (MMBtu) | Change Char. Pos. to 40-49. |
| 14 | 55 | August receipts/costs | Change Char. Pos. to 50-59. |
| 15 | 56 | September peak day | Change Char. Pos. to 60-61 |
| 15 | 57 | September peak quantity | Change Char. Pos. to 62-68. |
| 15 | 58 | September quantity received/shipped (Mcf) | Change Char. Pos. to 69-78. |
| 15 | 59 | September quantity received/shipped (MMBtu) | Change Char. Pos. to 79-88. |
| 15 | 60 | September receipts/costs | Change Char. Pos. to 89-98. |
| 15 | 61 | October peak day | Change Char. Pos. to 99-100. |
| 15 | 62 | October peak quantity | Change Char. Pos. to 101-107 |
| 15 | 63 | October quantity received/shipped (Mcf) | Change Char. Pos. to 108-117 |
| 15 | 64 | October quantity received/shipped (MMBtu) | Change Char. Pos. to 118-127 |
| 15 | 65 | October receipts/costs | Change Char. Pos. to 128-137 |
| 15 | 66 | November peak day | Change Char. Pos. to 138-139. |
| 16 | 67 | November peak quantity | Change Char. Pos. to 140-146. |
| 16 | 68 | November quantity received/shipped (Mcf) | Change Char. Pos. to 147-156. |
| 16 | 69 | November quantity received/shipped (MMBtu) | Change Char. Pos. to 157-166. |
| 16 | 70 | November receipts/costs | Change Char. Pos. to 167-176. |
| 16 | 71 | December peak day | Change Char. Pos. to 177-178. |
| 16 | 72 | December peak quantity | Change Char. Pos. to 179-185. |
| 16 | 73 | December quantity received/shipped (Mcf) | Change Char. Pos. to 186-195. |
| 16 | 74 | December quantity received/shipped (MMBtu) | Change Char. Pos. to 196-205. |
| 16 | 75 | December receipts/costs | Change Char. Pos. to 206-215. |
| 16 | | Filler | Change Char. Pos. to 216-255. |
| 17 | | Docket Nos. | Change Char. Pos. to 11-20. |
| 17 | 76 | Total quantity received/shipped (Mcf) | Change Char. Pos. to 21-30. |
| 17 | 77 | Total quantity received/shipped (MMBTU) | Change Char. Pos. to 31-40. |
| 17 | 78 | Total receipts/Costs | Change Char. Pos. to 41-50. |
| 17 | 79 | Annual Weighted Average | Change Char. Pos. to 51-57 |
| 17 | 80 | .....do | Change Char. Pos. to 58-67. |
| 17 | | Filler | Change Char. Pos. to 68-255. |

*FERC Form No. 15*

The record formats from Order No. 493 for Form No. 15 have been deleted. Respondents will continue to file using the previous 9-track magnetic tape format. Respondents may also file on diskette using the same record formats.

*FERC Form No. 16*

1. General Information:

In Part IV, Description of Form, revise "Record 02 through Record 07" to "Record 02 through Record 11" in both (1) and (2).

2. General Instructions:

a. In Item 2(D), change "Schedule R1, Record 01, character positions 80–84" to "Schedule R7, Record 01, character positions 228–231." Change "MDT" to "Mdt"

b. In Item 6, change "Record 11" to "Record 12", where it occurs.

c. A new Item 9D has been added:

D) State Code: Federal Information Processing Standards Publication 6–3 (FIPS Pub 6–3): Counties and County Equivalents of the States of the United States and the District of Columbia. Copies of this publication may be obtained from the National Technical Information Service (NTIS), U. S. Dept. of Commerce, Springfield, Virginia 22161.

3. Specific Instructions:

Item 31 has been added:

31 Anticipated New Supply Volume: Anticipated new supply refers to gas not presently flowing but anticipated to be attached during the projected period. Report the anticipated new supply for each month of the projected period.

4. Record Formats:

A new Record 11 has been added to the Form 16 record formats. This record corresponds to Schedule V, Attachment 1—Anticipated New Supply Sources, on the hardcopy version of Form No. 16. The record code for the footnotes record has been revised from 11 to 12. Records 11 and 12 are reprinted at the end of this section. The list of schedules at page 11 has been modified accordingly.

Other Corrections:

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 11 | | | Insert a new line (11) which reads: (11) The Anticipated New Supply Sources; Renumber old line (11) to (12). |
| 12 | 7 | Date submitted | Change Char. Pos. to 197-202. Under Comments, change "date filed" to "date prepared" |
| 12 | 8 | First Day of actual period covered | Change Char. Pos. to 203-208. |
| 12 | 9 | Last day of actual period covered | Change Char. Pos. to 209-214. |
| 13 | 10 | First day of projected period covered | Change Char. Pos. to 215-220. |
| 13 | 11 | Last day of projected period covered | Change Char. Pos. to 221-226. |
| 13 | 12 | Type of filing reported | Change Char. Pos. to 227 |
| 13 | Add | Conversion factor | Under Character Position, add "228-231"; under Data Type, add "Numeric"; under Comments, add "Enter average Btu content per cubic foot if volumes are reported in Mdt; otherwise, enter 0". |
| 13 | | Filler | Change Char. Pos. to 232-255. |
| 14 | | Month reported | Revise Comments to: (mm); month reported in this record; enter "13" to report annual total data. |
| 17 | | .....do | Revise Comments to: (mm); month reported in this record; enter "13" to report annual total data. |
| 19 | | Deliveries or contract volume | Assign Item No. 48a. |
| 25 | 93 | County | Change "numeric" to "character". |

| Page | Item No. | Item | Correction |
|---|---|---|---|
| 25 | 94 | Service code | Change Char. Pos. to 55. |
| 25 | 95 | January volume | Change Char. Pos. to 56–64. |
| 25 | 96 | February volume | Change Char. Pos. to 65–73. |
| 25 | 97 | March volume | Change Char. Pos. to 74–82. |
| 25 | 98 | April volume | Change Char. Pos. to 83–91. |
| 26 | 99 | May volume | Change Char. Pos. to 92–100. |
| 26 | 100 | June volume | Change Char. Pos. to 101–109. |
| 26 | 101 | July volume | Change Char. Pos. to 110–118. |
| 26 | 102 | August volume | Change Char. Pos. to 119–127. |
| 26 | 103 | September volume | Change Char. Pos. to 128–136. |
| 26 | 104 | October volume | Change Char. Pos. to 137–145. |
| 26 | 105 | November volume | Change Char. Pos. to 146–154. |
| 26 | 106 | December volume | Change Char. Pos. to 155–163. |
| 26 | 107 | Annual total | Change Char. Pos. to 164–175. |
| 26 | | Filler | Change Char. Pos. to 176–255. |
| 27 | | Customer type | Revise Comments to: Interstate Pipeline, code=1; Non-pipeline Customer, code=2; Total for All Customers for All States, code=3. |
| 28 | | Deliveries or contract volume | Assign Item No. 123a. |

5. Additional/Replacement Pages: Replace page 33 with enclosed new pages 33–35; revise page numbers for pages 34–39 to 36–41.

(11) The Anticipated New Supply Sources.

| Item no. | Item | Character position | Data type | Comments |
|---|---|---|---|---|
| | Schedule ID | 1–2 | character | Sch=R7 |
| | Record ID | 3–4 | numeric | Code=11. |
| | Sequence No | 5–10 | numeric | Right justified, zero filled, see general instruction 3. |
| | Information reported code. | 11 | numeric | Individual anticipated supply source, code=1; total anticipated new supply, code=2 |
| 150 | Field name and/or block No. | 12–51 | character | Enter name of field and/or block number. |
| 151 | Docket No | 52–66 | character | Enter docket number if certificate authority is being sought. |
| 152 | January volume | 67–75 | numeric | (mmcf); see specific instruction 31 |
| 153 | February volume | 76–84 | numeric | Do. |
| 154 | March volume | 85–93 | numeric | Do. |
| 155 | April volume | 94–102 | numeric | Do. |
| 156 | May volume | 103–111 | numeric | Do. |
| 157 | June volume | 112–120 | numeric | Do. |
| 158 | July volume | 121–129 | numeric | Do. |
| 159 | August volume | 130–138 | numeric | Do. |
| 160 | September volume | 139–147 | numeric | Do. |
| 161 | October volume | 148–156 | numeric | Do. |
| 162 | November volume | 157–165 | numeric | Do. |
| 163 | December volume | 166–174 | numeric | Do. |
| 164 | Total annual volume | 175–186 | numeric | Sum of items 152 thru 163. |
| | Filler | 187–255 | character | Blank filled. |

(12) The Footnotes.

| Item no. | Item | Character position | Data type | Comments |
|---|---|---|---|---|
| | Schedule ID | 1–2 | character | Sch=R7 |
| | Record ID | 3–4 | numeric | Code=12. |
| | Sequence No. | 5–10 | numeric | Right justified, zero filled, see general instruction 3. |
| | Reference No. | 11–23 | character | Reference item being footnoted; see general instruction 5. |
| | Footnote | 24–155 | character | Enter footnote text, see note 1. |
| | Filler | 156–255 | character | Blank filled. |

Note 1: A total of 132 character positions are provided for entering footnote text. If the respondent chooses to enter information in less than the 132 allowed character positions, the information should be left justified and the remainder of the record (line) should be blank filled through character position 255.

[FR Doc. 88-17944 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

## 18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-000]

## Natural Gas Data Collection System; Availability of Software Programs

August 4, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of Availability of Software Programs.

**SUMMARY:** This notice provides that, on August 3, 1988, the Commission issued software programs to produce a hard copy printout of FERC Form Nos. 8 (Underground gas storage report) and 11 (Natural gas pipeline company monthly statement), when filed on an electronic medium.

**DATE:** Software programs for FERC Form Nos. 8 and 11 were available on August 3, 1988.

**ADDRESS:** Requests for copies of the software programs and accompanying documentation should be directed to: Public Reference Branch, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, (202) 357-8118.

**FOR FURTHER INFORMATION CONTACT:** Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8995.

**SUPPLEMENTARY INFORMATION:** In Order No. 493 (53 FR 15,023 (Apr. 27, 1988)), the Commission stated that, on July 30, 1988, it would make available to the public software to produce a hard copy printout of certain data filed with the Commission on an electronic medium. These filings included FERC Form Nos. 8, 11, and 16 and rate, tariff and certificate applications.

On August 1, 1988, the Commission issued Order No. 493-A, (44 FERC ¶ 61,202) correcting to the record formats, extending the implementation dates for electronic data submission of FERC Form Nos. 8, 11, and 16, and staying implementation for electronic data submission of rate, tariff, and certificate applications.

Software programs to produce a hard copy printout of FERC Form Nos. 8 and 11, when filed in accordance with the record formats as corrected by Order No. 493-A, are now available. The Commission is revising the software program for FERC Form No. 16 to include a schedule omitted from the original record format. The Commission will release the software program for FERC Form No. 16 in mid-August, 1988. (Order 493-A extended the implementation date for electronic data submission of FERC Form No. 16 from September 30, 1988 to April 30, 1989.) Software programs for rate, tariff and certificate applications will not be available until at least 60 days prior to the implementation date for these filings.

The programming language used for the print software is ANSI 1974 Standard COBOL. The source code is available on hard copy and on diskette from the Commission's Public Reference Branch in Washington, DC. Persons requesting this information, in person or by written request, should refer to: "RM87-17-001: Software Programs for Electronic Data Submission of FERC Form Nos. 8 and 11." Although the software is available without charge, the Commission has a fee for photocopying and a fee of $5.00 per diskette.

Test data for both forms are included on the diskette. The diskette also contains object programs for FERC Form Nos. 8 and 11 which can be executed on an IBM-compatible PC. A copy of the output produced by the software and additional information on the use of this software are contained in documentation provided with the hard copy and the diskette.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18016 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

## 18 C.F.R. Part 271

[Docket No. RM86-7-000; Order No. 473]

## Compression Allowances and Protest Procedures Under NGPA Section 110; Correction

Issued: August 5, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final Rule; Correction Notice.

**SUMMARY:** On June 1, 1988, the Federal Energy Regulatory Commission issued a listing of producer contracts with pipelines where the producers were attempting to collect a delivery allowance pursuant to an "area rate clause," as required by 18 CFR 271.1104(h) (1987). 53 FR 21415 (June 8, 1988). This notice is issued to correct that listing in certain particulars.

On May 2, 1988, Northwest Pipeline Corporation (Northwest) revised its listing. This revision was not included in the listing issued on June 1, 1988. In addition the June 1, 1988 listing incorrectly states that Northwest protested the request for delivery allowances by BelNorth Petroleum Corp., contract date August 14, 1976, FERC rate schedule number 100. Northwest concurs in this request.

The June 1, 1988 listing also incorrectly stated that Mountain Fuel Resources, Inc. (MFR) [1] concurred in all of the Producer requests that were listed. MFR concurred only in BelNorth Petroleum Co. Contract No. 429. The list is corrected to state that MFR protests the remaining producers' claims listed. The MFR and Northwest revised listings are attached.

**DATE:** As provided in 18 CFR 271.1104(h)(4)(i) (1987), any protests must be filed by November 8, 1988.

**ADDRESS:** An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Arthur W. Iler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5275.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this correction notice is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's

[1] Mountain Fuel Resources, Inc. has changed its name since its initial filing to Questar Pipeline Company

copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Acting Secretary.*

**Mountain Fuel Resource, Inc. (MFR)**

MFR filed the following:

*Producer-Sellers That MFR Believes Are Entitled to the Delivery Allowance*

First Seller

BelNorth Petroleum Co., [Now Enron Oil & Gas Co.], Contract No. 429

*Producer-Seller That MFR Believes Are Not Entitled to the Delivery Allowance*

First Seller

Amoco Production Co., Rate Schedule 507
BelNorth Petroleum Corp. [Now Enron Oil & Gas Co.], Contract Nos. 125 and 429
BHP Petroleum (Americas) Inc., Rate Schedule 123
Champlin Petroleum Co., Rate Schedule 125
Chevron U.S.A., Inc., Rate Schedule 100
Eason Oil Co.
Getty Oil Co. [Now Texaco, Inc.]
Sante Fe Energy Co., Contract No. 290
Southland Royalty Co., Contract No. 256
Southland Royalty Co. & Tom Marsh Inc., Contract No. 172
Superior Oil Co. [Now Mobil Oil Corp.], Contract No. 200

NORTHWEST PIPELINE CORPORATION'S LIST OF FIRST SELLERS AND GAS PURCHASE CONTRACTS FOR WHICH NORTHWEST PROTESTS THE FIRST SELLER'S ASSERTION OF CONTRACTUAL AUTHORITY TO COLLECT DELIVERY ALLOWANCES PURSUANT TO AN AREA RATE CLAUSE

| First seller | Contract date | Rate schedule No. |
|---|---|---|
| **Sept. 14, 1987, List** | | |
| Arco Oil & Gas Co | Oct. 4, 1967 | 604. |
| | June 12, 1967 | 312. |
| BelNorth Petroleum Corp. | Oct 18, 1977 | 30. |
| | July 1, 1980 | 5 and 6. |
| | Oct. 13, 1980 | N/A. |
| | Nov. 26, 1980 | N/A. |
| | Apr. 17, 1981 | 1. |
| BHP Petroleum | Jan. 31, 1975 | 145. |
| Chandler & Simpson | Nov. 21, 1966 | N/A. |
| Chevron U.S.A., Inc | Jan. 27, 1960 | 99 |
| | Dec. 20, 1965 | 108. |
| | July 27, 1973 | 466. |
| | May 30, 1978 | N/A. |
| | Dec. 18, 1978 | N/A. |
| | July 31, 1980 | N/A. |
| | Mar. 16, 1981 | N/A. |
| | Apr. 1, 1983 | 99. |
| Conoco Inc | Aug. 25, 1961 | 408. |

NORTHWEST PIPELINE CORPORATION'S LIST OF FIRST SELLERS AND GAS PURCHASE CONTRACTS FOR WHICH NORTHWEST PROTESTS THE FIRST SELLER'S ASSERTION OF CONTRACTUAL AUTHORITY TO COLLECT DELIVERY ALLOWANCES PURSUANT TO AN AREA RATE CLAUSE—Continued

| First seller | Contract date | Rate schedule No. |
|---|---|---|
| Exxon Co., U.S.A | Aug. 23, 1957 | 210 |
| | Nov. 20, 1961 | 296 |
| Getty Oil Co | Aug. 28, 1980 | 449. |
| Martin Exploration Management. | May 18, 1979 | N/A |
| | Apr. 6, 1982 | N/A. |
| Mobil Oil Corp | June 6, 1972 | 484. |
| Tenneco Oil Co. [1] | Apr. 5, 1965 | 292. |
| | July 28, 1965 | 180. |
| | Feb. 25, 1966 | 198. |
| Quinoco Petroleum Inc.[2] | Jan. 25, 1977 | 19. |
| | Oct. 5, 1977 | 6 |
| | Oct. 12, 1977 | 9. |
| | Oct. 12, 1977 | 17. |
| | Oct. 12, 1977 | 18. |
| | Sept. 27, 1978 | 11. |
| Santa Fe Energy | May 23, 1972 | N/A. |
| | Aug. 2, 1973 | N/A |
| | July 1, 1980 | N/A. |
| **Apr. 28, 1988, Supplement** | | |
| Amoco Production Co | Oct. 23, 1979 | N/A. |
| | Oct. 31, 1980 | N/A. |
| Dorsey Buttram | Mar. 3, 1980 | N/A. |
| George P. Caulkins | Mar. 7, 1960 | N/A. |
| Crest Oil Co | Jan. 20, 1976 | N/A |
| Thomas A. Dugan | Oct. 7, 1966 | N/A. |

[1] Originally reported as Quinoco Petroleum Inc.
[2] Formerly GEO Oil & Gas Co.

NORTHWEST PIPELINE CORPORATION'S LIST OF FIRST SELLERS AND GAS PURCHASE CONTRACTS FOR WHICH NORTHWEST CONCURS WITH THE FIRST SELLER'S ASSERTION OF CONTRACTUAL AUTHORITY TO COLLECT DELIVERY ALLOWANCES PURSUANT TO AN AREA RATE CLAUSE

| First seller | Contract date | Rate schedule No. |
|---|---|---|
| **Sept. 14, 1987, List** | | |
| BelNorth Petroleum Corp. | Aug. 14, 1976 | 100. |
| **Apr. 28, 1988, Supplement** | | |
| Ambra Oil & Gas Co | Nov. 23, 1982 | N/A. |
| Walter J. Fees, Jr | May 3, 1983 | N/A. |

[FR Doc. 88-18108 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 87F-0331]**

## Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis(*p*-ethylbenzylidene)sorbitol as a clarifying agent in propylene homopolymer and copolymer articles intended for contact with food. This action is in response to a petition filed by Mitsui Toatsu Chemicals, Inc.

**DATES:** Effective August 10, 1988; objections and requests for a hearing by September 9, 1988.

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

**FOR FURTHER INFORMATION CONTACT:** Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of November 6, 1987 (52 FR 42728), FDA announced that a food additive petition (FAP 7B4042) had been filed by Mitsui Toatsu Chemicals, Inc., 140 East 45th St., New York, NY 10017, proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of bis(*p*-ethylbenzylidene) sorbitol as a clarifying agent in propylene homopolymer and copolymer articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the table in § 178.3295 should be revised as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the

agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 9, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearng is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

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

2. Section 178.3295 is amended in the table by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

**§ 178.3295 Clarifying agents for polymers.**

* * * * *

| Substances | Limitations |
|---|---|
| Bis(*p*-ethylbenzylidene) sorbitol (CAS Reg. No. 79072-96-1). | For use only as a clarifying agent at a level not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2, where the copolymers complying with items 3.1 or 3.2 contain not less than 85-weight percent of polymer units derived from propylene, in contact with all food types except alcoholic beverages containing more than 20 percent by weight of alcohol; under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter. |
| * | * * * * * * |

Dated: July 26, 1988.

Fred R. Shank,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88-18065 Filed 8-9-88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 24

**[Docket No. R-88-0831; FR-1676]**

### Governmentwide Debarment and Suspension

**AGENCY:** Department of Housing and Urban Development (HUD).

**ACTION:** Final rule; correction.

**SUMMARY:** HUD is correcting errors in the appeal and hearing procedures set forth at § 24.313(b)(2)(ii) which appeared in the **Federal Register** on May 26, 1988 (58 FR 19179).

**FOR FURTHER INFORMATION CONTACT:** Maryiea W Byrd, (202) 755-7200.

**SUPPLEMENTARY INFORMATION:** In its final governmentwide debarment and suspension regulations, HUD inadvertently omitted actions based on civil judgments from its designation of actions where the hearing is limited to an opportunity to submit documentary evidence and written briefs.

The following correction is made to HUD's Governmentwide debarment and suspension regulations published in the **Federal Register** on May 26, 1988 (58 FR 19179).

**§ 24.313 [Corrected]**

1. Section 24.313(b)(2)(ii), 3rd column on page 19184 which reads:

(ii) Where the action is based solely upon an indictment or conviction, or upon suspension or debarment by another Federal agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

is revised to read as follows:

(ii) Where the action is based solely upon an indictment or conviction, civil judgment, or upon suspension or debarment by another Federal agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

Dated: August 4, 1988.

Grady J. Norris,

*Assistant General Counsel for Regulations.*

[FR Doc. 88-17991 Filed 8-9-88; 8:45 am]

BILLING CODE 4210-32-M

## Office of the Secretary

### 24 CFR Part 24

**[Docket No. R-88-831; FR-1676]**

### Debarment, Suspension and Limited Denial of Participation; Contractors and Participants

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim Rule.

**SUMMARY:** On May 26, 1988, the Department of Housing and Urban Development (HUD) adopted a final common rule on debarment and suspension, and certain HUD-specific,

amendments. At that time HUD was unable to adopt certain interim provisions of the common rule because, under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o), the interim provisions were subject to prepublication review by the House and Senate Banking Committees. The statutory prepublication review requirement has now been met, and this rule will conform HUD's debarment procedures to those applicable to other departments and agencies as provided in the earlier-published common rule.

**DATES:** *Effective date:* October 6, 1988, however applicable from October 1, 1988.

*Comment due date:* October 11, 1988.

**ADDRESS:** Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Marylea W. Byrd, Office of General Counsel, Department of Housing and Urban Development, Room 10266, 451 7th Street SW., Washington, DC 20410, (202) 755–7200 [This is not a toll-free number].

**SUPPLEMENTARY INFORMATION:** On May 26, 1988, 24 Federal departments and agencies, including HUD, joined in the publication of a "Final rule and interim final rule" entitled Nonprocurement Debarment and Suspension (53 FR 19161). However, HUD explained in its agency-specific preamble (53 FR 19179), that it would delay offering the interim rule portions of the common rule (as they applied to HUD) for public comment until after completion of prepublication review of these rules by the House and Senate Banking Committees, as required under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o). This document has now completed that required review.

The coverage of the common rule, as proposed, was limited to *domestic* Federal nonprocurement programs. The interim provisions of the May 26, 1988 common rule remove the references to *domestic* nonprocurement programs and follow more closely the exemption set forth in the Executive Order for foreign governments and public international organizations. The sections affected by this change were published on May 26, 1988 by other Federal agencies on an interim final basis. This rule adopts these same provisions for HUD. These sections are: § 24.105(n), (addition of phrase beginning at "except" through the end of the definition); § 24.110(a) (deletion of the word "domestic" from the first introductory sentence only); § 24.110(a)(2)(ii); and § 24.200(c)(2).

Additionally, § 24.200(e)(i) of the HUD version of the final rule as published on May 26, 1988 is amended here by the removal of the phrase "or the purchase of HUD-owned housing units offered for all-cash sale without qualification at public sales." The all-cash sale exception was created on the theory that sanctioned individuals would pose no threat to the Department's Insurance Fund by participating in HUD all-cash sales, since the properties are sold without FHA mortgage insurance. However, following numerous instances of fraud and abuse of the "all-cash sales," exception, as outlined below, the Department is removing this exception to protect the integrity of the Insurance Fund.

In Denver, for example, individuals who have been sanctioned by HUD have purchased HUD properties at "all-cash sales" and have then obtained inflated appraisals before reselling the properties to "straw buyers" who qualified for FHA insurance. Subsequently, these straw buyers defaulted on the mortgages and HUD was required to pay inflated claims out of its FHA Insurance Fund, in addition to absorbing the holding costs of the reacquired properties. As a result of the exception in the current debarment regulations, the Department is unable to prevent future participation by these sanctioned individuals in all-cash public sales.

HUD's Regional Office in Seattle has reported other fraudulent conduct that more closely resembles a form of equity skimming: individuals assume FHA-insured mortgages, maintain the mortgage payments for a period of time, and then stop making payments while continuing to collect rent from tenants. Upon the assumptor's default, the mortgagee forecloses on the property and HUD pays the insurance benefits. The defaulting assumptor then repurchases the mortgaged property from HUD at an "all-cash" public sale, and repeats the cycle by reselling the property to an individual who qualifies for FHA insurance and assumes the indebtedness. This scheme has been carried out in over 40 instances in the Seattle Region.

HUD's Regional Office in Chicago also has reported approximately two dozen incidents during the past two years involving sanctioned individuals who purchased properties from HUD at "all-cash" public sales. Many of these schemes involved inflated appraisals and the use of straw buyers, similar to HUD's experience in Denver. The loss to the Department's Insurance Fund averages $20,000–$25,000 per home, in addition to the holding cost incurred by HUD in reacquiring these properties.

Given the manner in which sanctioned individuals have manipulated the "all-cash sales" exception to obtain FHA-insured financing for single-family homes, and the substantial losses experienced by the Insurance Fund, HUD is removing this provision from the excepted transactions listed in the final debarment regulation. This will bring HUD single-family, property disposition standards in line with those of multi-family projects which already prohibit sales to sanctioned individuals.

### Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981.

### List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

Accordingly, 24 CFR Part 24 is amended as follows:

## PART 24—[AMENDED]

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

**Authority:** Executive Order 12549, (Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

2. By adopting the interim provisions of the governmentwide debarment and suspension common rule as published

on May 26, 1988 (53 FR 19204). These provisions are republished below.

**§ 24.105 Definitions.**

* * * * *

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

* * * * *

**§ 24.110 Coverage.**

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

* * * * *

(2) * * *

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

**§ 24.200 Debarment and suspension.**

* * * * *

(c) * * *

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

3. By revising § 24.200(e)(1) to read as follows:

**§ 24.200 Debarment and suspension.**

* * * * *

(e) *Other exceptions.* (1) Sanctions under this part shall also not preclude the receipt of benefits from the sale of the personal residence of an excluded individual.

* * * * *

Dated: July 7, 1988.

**Carl D. Covitz,**

*Acting Secretary, Department of Housing and Urban Development.*

[FR Doc. 88-18082 Filed 8-9-88; 8:45 am]

BILLING CODE 4210-32-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[FRL-3427-1; FL-013]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Florida: 111(d) Plan for TRS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is today approving the Florida section 111(d) plan for control of total reduced sulfur (TRS) emissions from kraft pulp mills and tall oil plants which was submitted by the Florida Department of Environmental Regulation (FDER) on May 24, 1985, and was proposed for approval on October 28, 1986 (51 FR 39400). This notice, however, does not address the final approval of sections 17-2.600(4)(c)7 and 8, that allow the State to approve alternative emission limits or an alternative new technology without EPA approval. EPA will act to approve or disapprove these provisions in a later notice. This approach, approving the TRS plan while deferring action on the alternative emission limit and alternative new technology provisions, was requested by the FDER on January 8, 1988, in order to expedite the approval of the other portions of the plan. Since the emission limits and other provisions contained in the rules submitted with the TRS plan agree substantially with the emission limits suggested in the EPA guideline document entitled *Kraft Pulping—Control of TRS Emissions From Existing Mills* (EPA-450/2-78-003b), it is appropriate to move forward with the approval of the other rules as submitted. However, to complete its plan, the State is required pursuant to 40 CFR 60.24(e) to submit for EPA's approval individual compliance schedules containing acceptable increments of progress pursuant to 40 CFR 60.21(h); such schedules must meet the public hearing requirements of 40 CFR 60.23 or ones deemed equivalent by the Administrator pursuant to 40 CFR 60.23(g).

At this time, EPA is also approving a plan revision submited by the FDER on June 10, 1986; this revised a portion of the May 1985 submittal (Rule 17-2.960) which provided that the compliance calendar of events for sources subject to the plan would not start until EPA acted to finally approve the plan. Since EPA had not acted to approve the plan within the year following submission of the plan due to complications, Florida elected to start the compliance calendar of events on May 12, 1986. EPA is including this revision in this notice without previous proposal because EPA views it as a noncontroversial amendment to the plan which provides for earlier compliance with the emission limits that would have otherwise occurred due to delays in approving the plan.

Also, on August 14, 1986, The FDER submitted a revision which removed a portion of the original section 17-2.600(4)(c)8 which provided that the section would become inoperative if EPA should fail to approve it at the same time as it approved the other portions of the plan. This revision is duly noted and will be incorporated in the **Federal Register** notice addressing section 17-2.600(4)(c)7 and 8.

**DATES:** This rule will become effective on September 9, 1988.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301-8241.

**FOR FURTHER INFORMATION CONTACT:** Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347-2864 or FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** In accordance with section 111 of the Clean Air Act, "Standards of Performance for New Stationary Sources," EPA has promulgated standards of performance for criteria pollutants (those for which National Ambient Air Quality Standards have been published) and noncriteria pollutants. The standards apply to "new" sources (i.e., new, modified, or reconstructed sources) which commenced construction after the date on which EPA proposed standards for that particular source category.

A source in existence prior to the date on which EPA proposed new source performance standards for that

particular source category is defined as an "existing source." Paragraph (d) of section 111 of the Clean Air Act requires states to develop plans for the control of emissions of the same non-criteria, or designated, pollutants from such "existing" sources. The requirements for such plans are set forth in Subpart B of 40 CFR Part 60. (November 17, 1975; 40 FR 53346). Since total reduced sulfur (TRS) is a designated pollutant, regulated under section 111(d) of the CAA, states are required to develop section 111(d) plans for the control of TRS emissions from existing kraft pulp mills contained in the state.

The TRS compounds regulated under section 111(d) are considered welfare-related pollutants. This means that although their effects are bothersome, they are not health-threatening, and some leeway may be allowed in their control. In other words, although EPA's guideline document (*Kraft Pulping-Control of TRS Emissions from Existing Mills* (EPA-450/2-78-003b)) suggests emission limits, control technologies, etc., limits other than those recommended by EPA may be adopted by the State provided adequate justification is given.

The FDER submitted its section 111(d) plan for control of TRS emissions from kraft pulp mills and tall oil plants on May 24, 1985. This submittal contained certification that adoption of the plan had been preceded by adequate notice and public hearing.

The plan as submitted contains all the elements needed for an approvable section 111(d) plan pursuant to 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the guideline document. This plan submittal included: regulations establishing emission standards for all affected sources along with the adoption of necessary definitions; regulations establishing the definitions; regulations establishing the procedures for the development of individual source compliance schedules to include increments of progress; regulations establishing test methods and procedures for determining compliance with the emission standards; an emission inventory of all designated facilities; regulations establishing procedures for monitoring the status of compliance with emission standards through record-keeping, periodic inspections, and testing; and documentation that the State has legal authority to carry out the plan.

For a more detailed discussion of the Florida TRS plan, please refer to the October 28, 1986, **Federal Register** (51 FR 39400). Further details pertaining to this plan are contained in the Technical Support Document. These documents are available for public inspection at EPA Regional office in Atlanta, Georgia and the Public Information Reference Unit in Washington, DC, whose addresses are listed above.

For the convenience of the reader, the following Florida Administrative Code Rules were revised as a result of the development of the TRS plan:

1. Rule 17-2.100 (Definitions)
2. Rule 17-2.600(4) (Kraft (Sulfate) Pulp Mills and Tall Oil Plants)
3. Rule 17-2.660 (Standards of Performance for New Stationary Sources (NSPS))
4. Rule 17-2.700 (Stationary Point Source Emissions Test Procedures)
5. Rule 17-2.710 (Continuous Monitoring Requirements)
6. Addition of a new part (Part IX) which includes new Rule 17-2.960 (Compliance Schedules for Specific Source Emission Limiting Standards) and 17-2.971 (Compliance Schedules for Continuous Monitoring Requirements).

Rule 17-2.660 was originally approved as part of the Florida state implementation plan (SIP). However, this action should not have been taken since NSPS regulations are not required by section 110 of the Act to be part of a SIP. EPA has no adverse comments on the proposed changes to Rule 17-2.660, and will use the changed version as the basis for future delegations of authority. However, EPA will take no action on the revisions to the Rule.

On October 28, 1986, EPA proposed to approve the Florida TRS plan in its entirety, but identified points in its bubble provisions which the State would have to clarify prior to EPA's final approval. At that time, the public was invited to submit written comments on the proposed action. Three comment submittals were received. However, two of these submittals were in response to points brought out about the bubble provisions. Since the approval of sections 7 and 8 are not being considered in this notice, consideration of the above comments is deferred until EPA addresses the approvability of the plan's bubble provisions. The third comment urged EPA to reconsider its position stated in the proposal notice that "before EPA can approve the Florida TRS plan, Florida must submit for EPA approval compliance schedules containing acceptable increments of progress; such schedules must be subjected to public hearings." EPA agrees with this comment, since advance submittal is not required by 40 CFR 60.24(e). Therefore, EPA is approving the Florida TRS plan prior to the submittal of compliance schedules by the State. However, the State will still need to submit the compliance schedules for EPA approval in order to have a complete plan.

**Final Action**

EPA is approving the Florida 111(d) plan for control of total reduced sulfur (TRS) emissions from kraft pulp mills and tall oil plants which was submitted to EPA on May 24, 1985, with the exception of sections 17-2.600(4)(c) 7 and 8, on which EPA is deferring action at this time. The approval of sections 17.2.600(4)(c) 7 and 8 will be addressed in a separate notice at a later date. EPA is also deferring action on a revision to section 17-2.600(4)(c)8 submitted on August 14, 1986, which revised a portion of the May 24, 1985, submittal. This revision will be incorporated in the notice addressing the approval of section 17-2.600(4)(c) 7 and 8. In addition, EPA is approving a revision to Rule 17-2.960 submitted on June 10, 1986, which revised a portion of the May 24, 1985, submittal regarding the start of the compliance calendar of events. EPA's final approval of the Florida TRS plan does not relieve the State of Florida from the requirement pursuant 40 CFR 60.24(e) to submit to EPA for approval individual source compliance schedules containing acceptable increments of progress pursuant to 40 CFR 60.21(h); and these schedules must meet the public hearing requirements of 40 CFR 60.23 or ones deemed equivalent by the Administrator pursuant to 40 CFR 60.23(g).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

Date: August 4, 1988.

**Lee M. Thomas**

*Administrator*

## PART 62—[AMENDED]

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows.

### Subpart K—Florida

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 62.2350 is amended by adding paragraphs (b)(2) and (c)(2) to read as follows:

**§ 62.2350 Identification of plan.**

* * * * *

(b) * * *

(2) Control of total reduced sulfur (TRS) emissions from existing kraft pulp mills and tall oil plants (both new and existing) submitted on May 24, 1985, and revision submitted on June 10, 1986, by the Florida Department of Environmental Regulation (FDER). No action is taken on sections 17-2.600(4)(c)7 and 8.

(c) * * *

(2) Kraft pulp mills.

3. A new center heading is added and §§ 62.2353 and 62.2354 are added to read as follows:

**Total Reduced Sulfur Emissions From Kraft Pulp Mills and Tall Oil Plants**

**§ 62.2353 Identification of sources.**

The plan applies to existing facilities at the following existing kraft pulp plants and tall oil plants:

(a) Alton Packaging Corporation in Jacksonville
(b) Buckeye Cellulose Corporation in Perry
(c) Champion International Corporation (Formerly St. Regis Paper Company) in Cantonment
(d) Container Corporation of America in Fernandina Beach
(e) Georgia-Pacific Corporation in Palatka
(f) Jacksonville Kraft Paper Company in Jacksonville
(g) St. Joe Paper Company in Port St. Joe
(h) Southwest Forest Industries in Panama City
(i) Arizona Chemical Company (Tall Oil Plant) in Panama City
(j) Sylvachem Corporation (Tall Oil Plant) in Port St. Joe

**§ 62.2354 Compliance schedules.**

The State of Florida has provided that the individual source compliance schedules would be developed and submitted by the affected sources to the State following plan adoption; and that the increments of progress pursuant to 40 CFR 60.21(h) would be specified at that time; this is an acceptable procedure pursuant to 40 CFR 60.24(e)(2). However, the State must submit these schedules to EPA for approval; and these schedules must meet the public hearing requirements of 40 CFR 60.23 or ones deemed equivalent by the Administrator pursuant to 40 CFR 60.23(g).

[FR Doc. 88-18033 Filed 8-9-88; 8:45 am]
BILLING CODE 6560-50-M

## 40 CFR Part 180

**[OPP-00267; FRL-3425-2]**

## Pesticide Tolerances for Ethoprop; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This correction document adds the entry for pineapples that was inadvertently dropped from 40 CFR 180.262 in a 1975 revision of the section and from subsequent yearly revisions of the Code of Federal Regulations (CFR).

**EFFECTIVE DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia Critchlow, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2262.

**SUPPLEMENTARY INFORMATION:** EPA issued § 180.262 *O-Ethyl S,S-dipropylphosphorodithioate; tolerances for residues* in the **Federal Register** of October 18, 1972 (37 FR 21996), and included in the listings of raw agricultural commodities was pineapples with a tolerance of 0.02 part per million (ppm). In the **Federal Register** of June 23, 1975 (40 FR 26275), EPA revised the chemical name in the section heading to read "Ethoprop," the accepted common chemical name, and added entries for the raw agricultural commodities (RAC) cucumbers, lima beans, potatoes, and snap beans, and set out the section as amended in its entirety. The listing for pineapples was inadvertently omitted from the section in this revision and was inadvertently omitted from subsequent yearly editions of the CFR.

In the **Federal Register** of November 24, 1982 (47 FR 53004), EPA amended § 180.262 by adding the RAC mushrooms and reissuing the listing of commodities in the section in tabular format.

EPA is correcting the error of omitting pineapples from the 1975 revision of § 180.262 (40 FR 26275; June 23, 1975) and subsequent yearly revisions of the CFR by adding and alphabetically inserting the listing for pineapples with a tolerance of 0.02 (N) as follows:

**§ 180.262 Ethoprop; tolerances for residues.**

* * * * *

| Commodities | Parts per mission |
|---|---|
| * * * * * | |
| Pineapples | 0.02 (N) |
| * * * * * | |

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

Dated: July 26, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 88-17568 Filed 8-9-88; 8:45 am]
BILLING CODE 6560-50-M

## 40 CFR Part 180

**[OPP-00266; FRL-3425-1]**

## Pesticide Tolerances For Inorganic Bromides Resulting From Fumigation With Methyl Bromide; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This correction document adds the entry for wheat that was inadvertently dropped from 40 CFR 180.123 when its list of commodities was reissued in tabular form.

**DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jeff Kempter, Product Manager (PM) 32, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-3964.

**SUPPLEMENTARY INFORMATION:** EPA issued § 180.123 *Inorganic bromides resulting from fumigation with methyl bromide; tolerances for residues* in the **Federal Register** of November 25, 1971 (36 FR 22540), and included in the listings of raw agricultural commodities was wheat with a tolerance of 50 parts per million (ppm). In the **Federal Register** of May 4, 1983 (48 FR 20052), EPA revised the listing into a tabular format, and the revised listing inadvertently omitted the entry for wheat. This document corrects that error by adding in alphabetical order the entry for wheat at 50 ppm as follows:

**§ 180.123 Inorganic bromides resulting from fumigation with methyl bromide; tolerances for residues.**

* * * * *

| Commodities | Parts per million |
|---|---|
| • • • • • | |
| Wheat | 50.0 |

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

Dated: July 26, 1988.

Douglas D. Campt,

*Director, Office of Pesticide Programs.*

[FR Doc. 88-17569 Filed 8-9-88; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 272

[FRL-3426-8]

## New Jersey; Final Authorization of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** New Jersey has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New Jersey's application and has made a decision, subject to public review and comment, that New Jersey's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New Jersey's hazardous waste program revisions. New Jersey's application for program revision is available for public review and comment.

**DATES:** Final authorization for New Jersey shall be effective October 9, 1988 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New Jersey's program revision application must be received by the close of business September 9, 1988.

**ADDRESSES:** Copies of New Jersey's program revision application are available 8:00–4:30 at the following addresses for inspection and copying: New Jersey Department of Environmental Protection, Bureau of Regulation, Classification and Technical Assistance, 401 East State Street, Fifth Floor, Trenton, New Jersey 08625; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC, 20460, Phone 202/382–5926; U.S. EPA Region II, Library, Room 402, 26 Federal Plaza, New York, New York, 10278, Phone 212/264–2881; U.S. EPA Region II, Field Office Library, Edison, New Jersey, 08837, Phone 201/321–6762. Written comments should be sent to Mr. Conrad Simon, Director, Air and Waste Management Division, U.S. EPA, Region II, 26 Federal Plaza, Room 1011, New York, New York, 10278.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Becker, Hazardous Waste Programs Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 907, New York, New York, 10278, 212/264–6458.

**SUPPLEMENTARY INFORMATION:**

*A. Background*

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6929(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutorty or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

*B. New Jersey*

New Jersey initially received final authorization on February 21, 1985. On November 24, 1987, New Jersey submitted a program revision application for additional program approvals. On March 21, 1988 and April 18, 1988 New Jersey submitted errata sheets, or addendums to its November 24, 1987 application. These errata sheets make changes to and are therefore part of New Jersey's application. Today, New Jersey is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed New Jersey's application, and has made an immediate final decision that New Jersey's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New Jersey. The public may submit written comments on EPA's immediate final decision up until September 9, 1988. Copies of New Jersey's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of New Jersey's program revision shall become effective 60 days after the date of publication of this notice unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will notify the State and within sixty (60) days after the date of the publication of this notice will publish in the **Federal Register** either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

New Jersey's program revison covers the following federal provisions:

*Non-HSWA Requirements*

- Interim Status Standards Applicability (48 FR 52718, November 22, 1983).
- Chlorinated Aliphatic Hydrocarbon Listing (49 FR 5308, February 10, 1984).
- National Uniform Manifest (49 FR 10490, March 20, 1984).
- Listing of Warfarin and Zinc Phosphide (49 FR 19922, May 10, 1984).

*Non-HSWA Cluster I*

- Exclusion of Household Hazardous Waste (49 FR 44980, November 13, 1984).
- Interim Status Standards Applicability (49 FR 46095, November 21, 1984).

*HSWA Cluster I*

- HSWA codification (50 FR 28702, July 15, 1985).

—Small Quantity Generators

—Delisting

- Listing of TDI, TDA and DNT (50 FR 42936, October 23, 1985).
- Small Quantity Generators (51 FR 10174, March 24, 1986).

New Jersey is in the process of correcting minor discrepancies, that exist in two of the above rules. The discrepancies are non-substantive and do not impact the authorization decision. New Jersey's National Uniform Manifest regulation will be corrected at: (1) N.J.A.C. 7:26—7.3(a) to clarify the requirement to use the instructions on the back of the manifest form; and (2) N.J.A.C. 7:26—7.4(g) to clarify items to be included in annual reports. New Jersey has also proposed an amendment to its small quantity generators rule to

bring the references to Sections of 40 CFR at N.J.A.C. 7:26—8.3(f)3 into line with current citations. This will be accomplished by July 30, 1988. New Jersey is not authorized nor seeking to be authorized to operate the Federal program on Indian lands. This authority shall remain with U.S. EPA.

New Jersey is not seeking or receiving authorization for its waste oil regulations which are broader in scope than the Federal regulations. New Jersey's waste oil regulations and any other New Jersey regulations which do not correspond to the provisions for which New Jersey is seeking authorization are included in the November 24, 1987 program revision application solely for informational purposes.

### C. Decision

I conclude that New Jersey's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New Jersey is granted final authorization to operate its hazardous waste program as revised. New Jersey now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. New Jersey also has primary enforcement responsibilities for the program revision provisions, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

### Compliance with Executive Order 12291

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

### Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Jersey's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 272

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

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 30, 1988.

**Christopher J. Daggett,**

*Regional Administrator*

[FR Doc. 88-18032 Filed 8-9-88; 8:45 am]

BILLING CODE 6560-50-M

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## 40 CFR Part 261

**[SW-FRL-3427-2]**

## Hazardous Waste Management System: Identification and Listing of Hazardous Waste, Final Denials

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is announcing its decision to deny the petitions submitted by seven petitioners to exclude their wastes from the hazardous waste lists contained in 40 CFR Part 261. This action responds to delisting petitions received by the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. These petitions are being denied because they are incomplete (i.e., the Agency does not have sufficient information to determine the hazardous or non-hazardous nature of the waste) despite several requests by the Agency for this information. The effect of this action is that all of these wastes must continue to be handled as hazardous wastes in accordance with 40 CFR Parts 260 through 268, and Parts 270, 271, and 124.

**EFFECTIVE DATE:** August 10, 1988.

**ADDRESSES:** The RCRA regulatory docket for these final petition denials is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-07DF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information on this notice, contact Mr. Scott Maid, Office off Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4783.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is non-hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes.

The Agency requires certain information in order to fully evaluate whether the petitioned waste is hazardous. If a petitioner's initial submission is not complete, the Agency will request the petitioner to submit the needed data. Acquisition and analysis of this additional information is necessary before a tentative determination (i.e., a proposal to exclude or deny a petition) can be made for the petitioned wastes. Most of this information is requested because of the changed requirements in the Hazardous and Solid Waste Amendments (HSWA) of 1984 (i.e., the Agency now must consider all factors that may cause the waste to be hazardous, including additional constituents, if there is a reasonable basis to believe that these factors could cause the waste to be hazardous).

If adequate data are not received in a timely manner, the Agency will remove petitions from the petition review process. On March 3, 1988, EPA published a notice that, among other items, discussed the Agency's policy to dismiss by letter delisting petitions that are still incomplete six months after an Agency request for additional

information. See 53 FR 6822. Facilities whose petitions are dismissed are notified in writing that their petition files are closed; however, these facilities have the option to re-petition the Agency when the required information is obtained. Because the Agency had already proposed to deny the seven petitions discussed in today's notice and had received comments on six of the seven petitions, these petitions are being finally denied rather than dismissed, so that the Agency can respond to the submitted comments.

## II. Disposition of Delisting Petitions

### *1. Proposed Denials*

EPA proposed to deny a number of petitions to exclude certain wastes from the hazardous waste lists on November 20, 1985 (see 50 FR 47763–47765) and January 30, 1987 (see FR 3029–3031). The proposed denials in November 1985 included Texaco U.S.A., located in Port Neches, Texas; Texaco Incorporated, located in El Paso, Texas; Standard Oil Company, located in Lima, Ohio; Standard Oil Company, located in Oregon, Ohio; Chevron U.S.A., Incorporated, located in Kenai, Alaska; and Union Oil Company of California, located in Nederland, Texas.[1] The denial proposed in January 1987 included Bloomfield Refining Company (formerly Plateau, Incorporated), located in Bloomfield, New Mexico.[2]

On April 9, 1986, the Agency announced that it was deferring its final decisions on several petitions proposed for denial on November 20, 1985 because comments or additional information received in response to the proposed denials were still under review. See 51 FR 12148–12152, April 9, 1986. Today's notice presents the Agency's response to these comments and discusses the review of the additional information received.

In the case of the petitions discussed in today's notice, the Agency provided a number of opportunities for these petitioners to submit the requested information, including written requests for specific information necessary for the Agency to consider the petition complete. In addition, the Agency published a notice in the **Federal Register** of its intent to collect this information. See 49 FR 4802–4803, February 8, 1984. The proposed denial notices, published on November 20, 1985 and January 30, 1987, provided yet another notification that the information was required and another 30-day opportunity to submit the additional information.

In most cases, prior to the proposed denials the Agency had not heard from these petitioners in over a year; in some cases, it had been almost two years. The Agency believes that these petitioners have had adequate time to provide the requested information. The Agency therefore, is making final its decision to deny exclusion to these seven petitioners because the additional information has not been provided within a reasonable period of time. A detailed description of the requests for additional information is included in the RCRA regulatory docket for this final rule.

### *2. Agency's Response to Public Comments*

Six of the petitioners included in today's denial submitted comments or additional information as a result of the proposed denial on November 20, 1985. One petitioner did not submit comments or additional information after their petition was proposed for denial on January 30, 1987.

#### Chevron U.S.A.

On February 7, 1986, Chevron U.S.A. submitted additional information in support of its delisting petition. The Agency has completed its review of the information submitted by this petitioner. Based on this review, the Agency has determined that the petition is still incomplete. Information which was requested, but has not been received, includes: total constituent analyses for certain hazardous constituents on a minimum of four representative samples; information concerning the potential corrosivity, reactivity, and ignitability of the waste; the amount of sludge produced per year; and descriptions of the waste treatment process and the sampling methodology employed. This information is required under 40 CFR 260.22 and is outlined in *Petitions to Delist Hazardous Wastes—A Guidance Manual*, U.S. Environmental Protection Agency, Office of Solid Waste, (EPA/530–SW–85–003), April 1985. The information is necessary to evaluate Chevron's waste. The Agency, therefore, is making final its decision to deny Chevron U.S.A.'s petition as incomplete.

It should be noted that Chevron U.S.A. included volatile organic analysis data from one sample of the waste as part of the additional information submitted. The Agency evaluated these data using the Organic Leachate Model (OLM) and the VHS (vertical and horizontal spread) model. See 51 FR 41082, November 13, 1986, and 50 FR 48896, November 27, 1985 for a detailed description of the models and their parameters. The concentrations of two hazardous constituents, benzene and methylene chloride, failed the OLM/VHS model analysis. Although not used as a basis for today's denial decision for lack of information, these data would support a denial decision on technical grounds.

#### Union Oil Company of California

One commenter, representing Union Oil, argued that the Agency continually changed its data requirements for delisting petitioners. The commenter stated that petitioners were waiting for promulgation of the delisting procedure to determine that data gaps existed in their petitions. The Agency acknowledges that, as a result of HSWA and as the Agency gained experience in evaluating petitions, there were some changes over time in the information requested from petroleum refinery petitioners. However, the modified (and current) list of constituents for which EPA recommends analysis for petroleum refining wastes was published in *Petitions to Delist Hazardous Wastes—A Guidance Manual* in April 1985, prior to the proposed denial on November 20, 1985. The April 9, 1986 **Federal Register** notice, in which a decision relating to Union Oil's petition was deferred, also contained reference to the Guidance Manual's list of constituents for refineries. This guidance has not changed in three years and the petitioner has still not supplied all of the information necessary to complete its petition.

The commenter also questioned EPA's ability to evaluate any additional data in the absence of a delisting model. The fact that the Agency has yet to promulgate fate and transport models as rulemaking criteria, however, does not relieve the petitioner of the legal requirement to provide the requested data. Delisting regulations and guidance at the time of the petition and through

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[1] In that same **Federal Register** notice, the Agency also proposed to deny exclusion of specific wastes generated by 61 other petitioning facilities. See 50 FR 47763–47765, November 20, 1985. Of these 61 other petitioners, 45 were denied final exclusion in previous **Federal Register** notices; 14 petitions have either been withdrawn or considered moot; and two petitions, for which additional information was submitted, are still under review and will be addressed in a future **Federal Register**. Today's notice announces the Agency's final delisting decisions for six of the 67 petitions proposed for denial on November 20, 1985.

[2] In that same **Federal Register** notice, the Agency also proposed to deny exclusion of specific wastes generated by six other petitioning facilities. See 52 FR 3029–3031, January 30, 1987. Of these six other petitioners, two were denied final exclusions in a previous **Federal Register** notice; three petitions have been withdrawn; and one petition is still under review and will be addressed in a future **Federal Register** notice.

the present have outlined information needed to make decisions on petitions. The Agency has repeatedly used such information to evaluate the hazards posed by specific wastestreams. Moreover, since the petition was proposed to be denied, the Agency has developed more sophisticated methods of evaluating such information, including the use, in particular delisting rules, of two fate and transport models (*i.e.*, the VHS model and the Land Treatment Model) and the Organic Leachate Model which predicts the potential mobility of organic constituents. See 50 FR 48896, Appendix, November 27, 1985; 50 FR 41094, November 27, 1986; and 51 FR 41084, November 13, 1986.

Union Oil did submit additional information during the comment period in response to the proposal denial. However, not all of the information required to complete its petition was provided. Specifically, Union Oil and not provide information necessary to evaluate the petitioned slop oil emulsion solids and residues generated from the treatment of these solids. Information which was requested, but has not been received includes: oil and grease analysis results; total constituents and leachate analyses for metals; organic constituent analyses; and ignitability analysis results. This information is required under 40 CFR 260.22 and is outlined in *Petitions to Delist Hazardous Wastes—A Guidance Manual*. The information is necessary to evaluate Union Oil's wastes. The Agency, therefore, still does not have sufficient information to characterize fully these two petitioned wastes nor to make a decision about whether these wastes should be delisted. The Agency, therefore, is making final its decision to deny Union Oil's petition for their slop oil emulsion solids and residues generated from the treatment of these solids.

The Agency plans to address in a future **Federal Register** notice Union Oil's petition for API separator sludges and sludges contained in an on-site impoundment about which Union Oil submitted additional information. Today's decision covers only the petitioned slop oil emulsion solids and residues generated from the treatment of these solids.

Standard Oil Company

One commenter, representing the Standard Oil facilities, felt that EPA had requested data for an unreasonably broad spectrum of compounds. Standard Oil also stated that EPA had given no indication of how the data would be evaluated. The commenter also requested the right to submit in the future additional data supporting delisting of the wastes described in the pending petitions or for any other wastestreams.

In regard to the first comment, the Agency reduced the list of hazardous constituents for which data were originally requested. As previously discussed, the current list of recommended constituents for analysis of petroleum refinery wastes was published in the Guidance Manual in April 1985. The April 9, 1986 **Federal Register** notice, in which a decision relating to Standard Oil's petitions was deferred, also contained reference to the Guidance Manual's list of constituents for refineries. The Agency currently requests all petitioning petroleum refineries to submit analytical data for the constituents on this list and for any other factors or constituents that may cause the waste to be hazardous. Each of the constituents for which the Agency requests analytical data from petitioning petroleum refineries was selected based on: (1) Available data describing the use of the compounds in the industry; (2) the actual presence of these constituents in wastes or feedstock based on analytical data; and (3) reference documents which have identified the constituents as typically present or suspected in refinery wastes. The Agency, furthermore, made available to the public the rationale behind the compilation of this list of hazardous inorganic and organic constituents suspected to be present in refinery wastes.[3] The Agency believes that these constituents are likely to be present in Standard Oil's waste, and thus believes it necessary to obtain information about the concentration of these constituents to evaluate Standard Oil's waste. The petitioners have neither submitted any specific comments on this list or the rationale, nor provided the necessary information to complete their petitions.

The second comment, regarding the absence of a promulgated methodology used to evaluate petitions, was addressed above in response to Union Oil's comments. In response to the third comment, the Agency notes that petitioners have always had the right to submit any supporting data for their petitions. In the April 9, 1986 **Federal Register** notice, the Agency deferred its decision on Standard Oil's petitions to allow additional time for submittal of information to complete the petitions. Standard Oil has had more than a sufficient amount of time to submit supporting data and has chosen not to do so. Information which was requested from both facilities, but has not been received, includes: oil and grease analysis results; total constituent analyses for inorganics; organic constituent analyses; and results from the Oily Waste EP toxicity test if the oil and grease content of the petitioned wastes exceeded one percent. This information is required under 40 CFR 260.22 and is outlined in *Petitions to Delist Hazardous Wastes—A Guidance Manual*. The information is necessary to evaluate Standard Oil's waste. The Agency, therefore, is denying Standard Oil's two petitions as incomplete. As a result, any additional data sent in by the petitioners should be submitted as part of new delisting petitions for their wastes.

Texaco U.S.A. and Texaco Incorporated

Another commenter, representing the Texaco facilities, claimed that the Agency did not provide notice and the opportunity for comment on additional factors which would have caused their wastes to be hazardous pursuant to section 222 of the Hazardous and Solid Waste Amendments of 1984. The Agency agrees that the commenter did not originally have the opportunity to comment on additional factors, analysis of which were required by the statute. The Agency, however, deferred final decisions on a number of petroleum refinery petitions and published subsequent notices on October 24, 1986 and December 19, 1986. Even if EPA were required to provide the petitioners an opportunity to comment on EPA's justification for considering additional constituents, as required by statute, in petroleum refinery wastes, these subsequent notices provided such opportunity.[4] The Texaco facilities did not provide comments on EPA's justification for requesting analytical data on additional constituents, nor did they provide the required information to make their petitions complete. Information which was requested from both facilities, but has not been received, includes: Oil and grease analysis results; total constituent analyses for inorganics; organic constituent analyses; and results from the Oily Waste EP toxicity test if the oil and grease content of the petitioned wastes exceeded one percent. This information is required under 40 CFR 260.22 and is outlined in *Petitions to Delist Hazardous Wastes—A Guidance*

[3] See Notice of Availability and Request for Comment, 51 FR 37767 October 24, 1986. See also Extension of Public Comment Period for Notice of Availability and Request for Comment, 51 FR 45485, December 19, 1986.

[4] See footnote 3.

*Manual.* This information is necessary to evaluate Texaco's waste. The Agency, therefore, is denying Texaco's two petitions as incomplete.

Bloomfield Refining Company

No comments were received regarding the January 30, 1987 proposed denial for Bloomfield Refining, nor did the petitioner provide the information necessary to complete its petition. Information which was requested, but has not been received, includes: oil and grease analysis results; total constituent analyses for inorganics; organic constituent analyses; results from the Oily Waste EP toxicity test if the oil and grease content of the waste exceeds one percent; a demonstration that the waste does not exhibit the characteristics of ignitability, reactivity, or corrosivity; and estimates of the annual quantity of waste generated and the quantity of waste in an on-site pond. The information is necessary to evaluate Bloomfield's waste. The Agency, therefore, is denying Bloomfield Refining's petition as incomplete.

*3. Final Agency Decision*

The Agency is announcing today the final denial of the seven petitions discussed in today's notice: Texaco U.S.A., in Port Neches, Texas; Texaco Incorporated, in El Paso, Texas; Standard Oil Company, in Lima, Ohio; Standard Oil Company, in Oregon, Ohio; Chevron U.S.A., Incorporated, in Kenai, Alaska; Union Oil Company of California, in Nederland, Texas; and Bloomfield Refining Company, in Bloomfield, New Mexico. In all these cases, the petitioners have not submitted the information necessary to complete their petitions and to permit the Agency to evaluate their wastes. The effect of this rule is that all of the petitioned wastes must continue to be handled as hazardous waste in accordance with 40 CFR Parts 260 through 268, and Parts 270, 271, and 124.

## III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule does not change the existing requirements for these petitioners. The petitioners have been obligated to manage their wastes as hazardous before and during the Agency's review of these petitions. This rule, therefore, should be effective immediately for these petitioners. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

## IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The denial of these petitions does not impose an economic burden on these facilities because prior to submitting and during the review of these petitions these facilities should have continued to handle their wastes as hazardous. The denial of their petitions means that they are to continue managing their wastes as hazardous in the manner in which they have been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This final rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

## V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities because its effect will not change the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

## VI. List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

**Authority:** Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: August 2, 1988.

**J.W. McGraw,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 88–18034 Filed 8–9–88; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 32

**[CC Docket 87–135; FCC 88–220]**

### Common Carrier Services; Revision of the Uniform System of Accounts for Telecommunications Companies

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has decided to raise the expense limit to $500 for certain central office equipment (limited to company-used tools and equipment), furniture and office equipment, other communications equipment, and vehicles and other work equipment which are currently subject to a $200 expense limit. The Commission also decided not to establish a uniform amortization period for embedded individual items capitalized before this change in expense limitation. The Commission believes that the $200 expense limitation established six years ago is far too low.

**EFFECTIVE DATE:** This rule change will become effective for all carriers no later than January 1, 1989. However, carriers will be permitted to adopt the new limit as early as January 1, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Virginia Brockington or John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* adopted June 28, 1988, and released July 22, 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.

### Summary of Report and Order

The Commission initiated a rulemaking proceeding based on comments it received as a result of a petition filed by the American Telephone and Telegraph Company for a partial waiver of the commission's accounting rules. They request permission to expense the cost of

individual items if equipment costing $500 less and to amortize the previously capitalized, undepreciated investment in such items over a three-year period commencing January 1, 1986.

In the Notice of Proposed Rulemaking (NPRM) released on May 14, 1987, the Commission proposed an amendment of its accounting rules that would permit telecommunications common carriers to expense certain individual items of equipment costing $500 or less. The NPRM applied to individual items of equipment currently subject to a $200 expense limit. This includes items that, absent the expense limit, would be recorded in accounts provided for central office equipment (limited to company-used tools and equipment), furniture and office equipment, other communications equipment, and vehicles and other work equipment. Also, the Commission proposed amortization of the embedded balance of this equipment and requested estimates of the revenue requirement impacts for three-year, four-year, and five-year amortization periods. The Commission noted that if revenue requirement impacts of the proposed changes were undesirable, the Commission would consider either limiting the increase to furniture items or amending continuing property record requirements.

The Commission has decided to raise the expense limit to $500 for all the items under consideration which are currently subject to a $200 expense limit. In addition, the Commission has decided not to establish a uniform amortization period for embedded individual items capitalized before this change in expense limit. Instead it will handle any changes in depreciation related to those items through established mechanisms for capital recovery. Further, the Commission has decided that the continuing property record requirements will remain unchanged and in effect for all embedded items capitalized prior to the adoption of the new expense limit and for all items which are required to be capitalized subsequent to the change in expense limit the Commission adopted in this rulemaking.

### Ordering Clause

Accordingly, it is ordered, that under the authority contained in Sections 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 220, Part 32, Uniform System of Accounts for Telecommunications Companies of the Commission's Rules is amended as shown in Appendix B effective January 1, 1989. Implementation in 1988 will be permitted.

### List of Subjects in 47 CFR Part 32

Uniform System of Accounts for Telecommunications Companies.

**H. Walker Feaster III,**

*Acting Secretary.*

## PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 reads as follows:

**AUTHORITY:** 47 U.S.C. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j) and 220 unless otherwise noted.

2. Section 32.2000 is amended by revising paragraph (a)(4) to read as follows:

**§ 32.2000 Instructions for telecommunications plant accounts.**

* * * * *

(a) * * *

(4) The cost of individual items if equipment, classifiable to Accounts 2112, Motor Vehicles; 2113, Aircraft; 2114, Special Purpose Vehicles, 2115, Garage Work Equipment; 2116, Other Work Equipment; 2122, Furniture; 2123 Office Equipment; and 2124, General Purpose Computers, costing $500 or less or having a life less than one year shall be charged to the applicable Plant Specific Operations Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

* * * * *

[FR Doc. 88-18011 Filed 8-9-88; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 69

**[CC Dockets 78-72, 80-286]**

## Access Charges

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects errors contained in the Final Rule with request for comments, published at 53 FR 28394 on July 28, 1988, in this proceeding concerning Access Charges.

**DATES:** See "Supplementary Information" section of this document.

**FOR FURTHER INFORMATION CONTACT:** Diane Cornell, (202) 632-9342.

**SUPPLEMENTARY INFORMATION:** Errors contained in the Memorandum Opinion and Order on Reconsideration, as published in the **Federal Register**, are corrected as follows:

(1) In the third column on page 28394, the caption of the action should read: "Memorandum Opinion and Order on Reconsideration and Order Inviting Comments".

(2) On page 28395, in the last two lines of paragraph 4 in the first column, the comment/reply comment dates should read: August 29, 1988 and September 28, 1988, respectively.

(3) In paragraph 9 on the same page, the effective date should read: August 29, 1988.

(4) In paragraph 11 on the same page, the references to August 26, 1988 and September 23, 1988 should be corrected to read: August 29, 1988 and September 28, 1988, respectively.

(5) Finally, on the same page, in § 69.2, Definitions, the paragraph designators (hh) through (kk) are corrected to read: (t) through (w), respectively.

Federal Communcations Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-18093 Filed 8-9-88; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 94

**[PR Docket No. 87-5; RM-5206, 5362, 5178, 5383]**

## Amendment of Part 94 to Permit Intrasystem Communications Among Multiple Address System Master Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for reconsideration order granting extension of time for replies to oppositions.

**SUMMARY:** The Commission has adopted an Order granting the motion for Extension of Time to file a reply to the oppositions to the petitions for reconsideration filed by Digital Radio Networks, Inc.

**DATE:** Reply comments to the oppositions are due by July 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rudolfo Baca, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2444.

**SUPPLEMENTARY INFORMATION:** The petition for reconsideration was published on June 2, 1988 at 53 FR 20170.

In the Matter of Amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel the 900 MHz Multiple Address Frequencies, RM-5206; Amendment of § 94.65(a)(1) of the Rules to Revise Footnote 3 in the Frequency Table to Make the Frequencies Available for use

by any Part 94 Eligible, RM–5362; Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) Footnote 3 of the Rules to Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625–952.8375 MHz Band; RM–5178; Amendment of Part 94 of the Rules to Permit Intrasystem Communications Among Multiple Address System Master Stations, RM–5383.

**Order**

Adopted: July 06, 1988.

Released: July 07, 1988.

By the Chief, Private Radio Bureau.

1. The Commission has before it a Motion for Extension of Time filed by Digital Radio Networks, Inc. (Digital). Digital requests additional time to file a reply to various oppositions to its petition seeking reconsideration of our Report and Order in the above-captioned proceeding. Digital represents that none of the entities that filed oppositions to its petition for reconsideration object to the instant request for a brief extension of time.

2. Upon review of the submissions of counsel and the record in this proceeding, we conclude that the complex technical nature of the issues on reconsideration warrants a brief extension of time to reply to the oppositions. No party will be prejudiced by this action.

3. Therefore, pursuant to §§ 0.331 and 1.46 of our Rules, 47 CFR 0.331 & 1.46, it is hereby ordered that Digital's Motion for Extension is granted.

4. It is further ordered that all replies to the oppositions to the petition for reconsideration shall be filed by the close of business, Thursday, July 7, 1988.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

[FR Doc. 88–18094 Filed 8–9–88; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### 47 CFR Part 300

### Incorporation by Reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management

**AGENCY:** National Telecommunications and Information Administration (NTIA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule gives notice of current revisions to the May 1986 Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) that have been published and forwarded to all holders of the manual. The revisions cover the changes in various government policies relating to the United States Government use of the radio frequency spectrum. These changes have been adopted by the Interdepartment Radio Advisory Committee (IRAC) and approved by the National Telecommunications and Information Administration.

**EFFECTIVE DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Edwin E. Dinkle, National Telecommunications and Information Administration, Department of Commerce, Room H1605, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 377–0599.

**SUPPLEMENTARY INFORMATION:** The President by Reorganization Plan No. 1 of 1977 and Executive Order 12046 of March 27, 1978, delegated to the Secretary of Commerce authority to act for the President or under the President's authority in the discharge of certain Presidential telecommunication functions under the Communications Act of 1934, as amended, and the Communications Satellite Act of 1962.

The Secretary of Commerce has delegated this Presidential authority to the Assistant Secretary of Commerce for Communications and Information (the Assistant Secretary). The Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) is issued by the Assistant Secretary, and is specifically designed to detail the Assistant Secretary's frequency management responsibilities.

**List of Subjects in 47 CFR Part 300**

Incorporation by reference, Radio Telecommunications.

For the reasons set out in the preamble, Title 47, Chapter III, Part 300 of the Code of Federal Regulations is amended as set forth below.

## PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

**Authority:** E.O. 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., P. 158.

2. Section 300.1(b) is revised to read as follows:

**§ 300.1 Incorporation by Reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.**

* * * * *

(b) The Federal agencies shall meet the requirements set forth in the May 1986 edition of the NTIA Manual, as amended by revisions dated May 1988 which is incorporated by reference with the approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

* * * * *

**Richard D. Parlow,**

*Associate Administrator, Office of Spectrum Management.*

[FR Doc. 88–17896 Filed 8–9–88; 8:45 am]

BILLING CODE 325109–60–M

# Proposed Rules

Federal Register
Vol. 53, No. 154
Wednesday, August 10, 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 213, 359, and 536

### Removal From the Senior Executive Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations, covering certain removals from the Senior Executive Service (SES). OPM issued interim regulations on July 31, 1979, to implement the provisions of the Civil Service Reform Act. These proposed regulations would implement laws enacted since 1979 and take into account comments on the interim regulations. The regulations would provide for the removal of a career appointee from the SES (1) during the probationary period; (2) for less than fully successful executive performance; or (3) as a result of reduction in force. In addition, these regulations would provide for the placement in other personnel systems of certain career appointees who are removed from the SES. The regulations also would cover the removal of noncareer and limited SES appointees, and reemployed annuitants holding any type of SES appointment. Note that disciplinary removals of career SES appointees who have completed the SES probationary period are covered in 5 CFR Part 752, Subpart F.

**DATE:** Written comments will be considered if received no later than October 11, 1988.

**ADDRESS:** Send or deliver written comments to the Director, Office of Executive Personnel, OEA, Room 6R48, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Neal Harwood, (202) 632–4625.

**SUPPLEMENTARY INFORMATION:** On July 31, 1979, OPM published an interim rule (44 FR 44815) that implemented subchapter V of chapter 35 of title 5, United States Code, by adding a new Part 359 to the civil service regulations.

The comment period, which was 60 days from the date of publication, ended on October 1, 1979. The only written comment that OPM received discussed the need for additional guidance to agencies on taking actions under Part 359. OPM also received a number of phone inquiries regarding specific provisions.

Before final regulations could be issued, Pub. L. 95–454 was amended by Pub. L. 97–35 of August 13, 1981; Pub. L. 97–346 of October 15, 1982; and Pub. L. 98–615 of November 8, 1984. These regulations would implement the provisions of the new laws and take into account questions and comments on the current regulations.

### Removal of Career Appointees During Probation (Part 359, Subpart D)

In response to a frequently asked question, OPM has amended the regulations at § 359.402(b) to show that it is not mandatory for an agency to give an employee a formal unsatisfactory rating under the agency's performance appraisal system before it can remove a probationer for unacceptable performance.

One agency suggested that, in light of the definition of "employee" in 5 U.S.C. 7541(1)(B), the regulations state that a career SES appointee who was covered under 5 U.S.C. 7511 immediately before appointment to the SES continues to retain adverse action coverage under 5 U.S.C. 7543 after appointment. This suggestion was adopted at § 359.403(a)(2).

Several agencies called attention to the need for a provision that would enable an agency to proceed with a removal action during the 120 days following the appointment of a new agency head or a new noncareer supervisor when there is reasonable cause to believe that the probationer has committed a crime for which a sentence of imprisonment can be imposed or when the circumstances are such that retention of the probationer may cause injury, result in property damage, or reflect unfavorably on the Federal service. Part 752, Subpart F, which covers adverse actions against SES career appointees who have completed probation, provides for emergency action under the above mentioned circumstances. Since there is no practical or legal reason why probationers should be afforded more protections than those granted to appointees who have completed probation, OPM adopted the suggestion and added the emergency action provision to § 359.406(b).

Public Law 97–35 included a number of provisions on the SES affecting probationers. It was the first legislation to establish an authority on reduction-in-force (RIF) actions in the SES, and the removal of a probationer under RIF has been added in § 359.405.

Public Law 97–35 also revised the standard, in 5 U.S.C. 7543, that governs the removal of a post-probationer from the SES for disciplinary reasons. The revised standard read "misconduct, neglect of duty or malfeasance." Subsequently, Pub. L. 98–615 clarified the cause of action standard to expressly include "failure to accept a directed reassignment or to accompany a position in a tranfer of function." As indicated above, certain probationers are subject to the requirements of 5 U.S.C. 7543. Since a uniform cause of action standard should be applicable for all disciplinary actions in the SES, OPM has amended the standard for taking disciplinary action against probationers under § 359.403 to be consistent with the change in 5 U.S.C. 7543. Further, since post-probationers who are removed under 5 U.S.C. 7543 are not entitled to fallback to GS–15, there are no fallback rights given to probationers removed for disciplinary reasons.

### Removal of Career Appointees for Less Than Fully Successful Executive Performance (Part 359, Subpart E)

Several agencies have expressed a need for some modification or clarification of the provisions governing the removal of a post-probationer for less than fully successful executive performance. In response, OPM has made the following changes in Subpart E.

(1) The conditions requiring mandatory removal are clarified in § 359.501(d).

(2) The authority of an agency to remove an employee based on a formal summary rating when the appraisal period has been shortened is clarified in § 359.501(d) by dropping the term "annual" in conjunction with mandatory

removals based on two less than fully successful ratings. In accordance with 5 U.S.C. 4315(b)(1)(D), an appraisal period "may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance." Because the term "annual" rating was used in the interim regulations, however, it was not clear whether a rating based on a shortened appraisal period was to be considered a final rating for removal purposes. It is apparent, nevertheless, that the intent of the law was to allow removal; otherwise, there would be no reason to provide for the shortened period. The period, of course, must meet any minimum requirements established by OPM and the agency performance appraisal plan. Further, the rating must meet all other requirements of law and regulations, including opportunity for higher-level review and a recommendation by the Perfoormance Review Board.

(3) A provision for the optional use of a supplementary notice to advise a post-probationer of the position to which he or she will be assigned is added at § 359.502(a)(2). The supplementary notice must be issued at least 10 days before the effective date of the removal action. The change will permit an agency to initiate a removal action for performance reasons while the placement decision is being made final.

**Removal of Career Appointees as a Result of Reduction in Force (Part 359, Subpart F)**

As noted above, Pub. L. 97–35 of August 13, 1981, provided for the first time specific statutory authority (5 U.S.C. 3595) for RIFs in the SES. It included provisions on placement assistance by OPM and on appeal rights to the Merit System Protection Board. It was amended by Pub. L. 97–346 of October 15, 1982, and then again by Pub. L. 98–615 of November 8, 1984. The major changes in the latest amendments were (1) to reduce the OPM placement period from 120 to 45 days for appointees who had completed the probationery period; (2) to delete the 30-day notification to the Congress for certain appointees; (3) to provide "fallback" to no lower than GS–15 with saved pay for appointees who could not be placed elsewhere in the SES; (4) to restrict appeal rights to the Merit Systems Protection Board to agency competitive procedures. The "fallback" provisions are covered in Subpart G. The other provisions are covered under Subpart F, as discussed below.

The regulations require that an agency issue written procedures before initiating a RIF action. After the procedures are issued, agencies are required to provide OPM a copy so that OPM can maintain a clearinghouse of RIF plans.

The regulations make it clear that all career appointees, including those serving a probationary period, are subject to RIF competitive procedures. (A reemployed annuitant, however, serving under a career appointment is excluded from coverage.) The competitive procedures must be based primarily on performance.

Career appointees who have completed the SES probationary period, or who were not required to serve one, are entitled to be placed in another SES position in their agency for which they qualify. If there is no such position, the agency head certifies the appointee to OPM for placement assistance. OPM has 45 days in which to try to place the appointee in an SES position. The OPM placement program will take into account the congressional section analysis for Pub. L. 98–615, which states, "It is hoped the new placement program would be more of a cooperative effort than the current placement program. OPM is to design this placement program to minimize the disruption of recruitment of vacancies in other agencies."

The regulations provide that agencies shall respond to any referral within the time period prescribed by OPM. To assist individuals in the shortened placement period and to minimize for agencies the time vacancies may be "frozen," the response time will normally be 5 workdays. As provided in law, the head of the agency has the authority to determine whether an individual is qualified for a vacancy. Nevertheless, the regulations provide authority for OPM to take corrective action if an agency fails to provide bona fide consideration.

The regulations provide a minimum 45-day RIF notice before removal from the SES for career appointees who have completed their probationary period. This means the notice normally should be issued no later than the date when an appointee is referred to OPM for placement assistance. A second notice may be needed to provide a specific removal date if the individual cannot be placed in the SES.

If the appointee cannot be placed in the SES, or declines a placement offer, the appointee is entitled to fallback rights at no lower than GS–15, as discussed under Subpart G. (An individual is entitled to discontinued service retirement in lieu of fallback if the age and service requirements for such retirement are met.)

Pub. L. 98–615 also amended 5 U.S.C. 3595 to provide that career appointees affected by a transfer of function between agencies should have rights similar to those of employees in the competitive service. In the competitive service, employees are entitled to transfer with their function to the gaining agency if they would otherwise be subject to a RIF in the losing agency. (Part 351, Subpart D.) A similar provision was adopted for the SES in § 359.608.

**Guaranteed Placement (Part 213, Section 3202; Part 359, Subpart G; Part 536, Subpart A)**

Under the CSRA, guaranteed placement outside the SES as provided only for certain employees removed during their probationary period and for post-probationers removed for performance reasons. Public Law 98–615 amended 5 U.S.C. 3594 to provide fallback rights also for career appointees in a RIF action who have completed the probationary period, or did not have to serve one. Formerly, removal was from the civil service entirely. Now, an appointee affected by a RIF will be entitled to fallback if during the 45-day OPM placement period the appointee declines a placement offer in another SES position or cannot be placed in another SES position. (An appointee may accept fallback to GS–15 before the end of 45-day placement period if he voluntarily accepts the action in writing.)

The provisions in law governing fallback in a RIF are the same as those governing fallback when removal is for less than fully successful performance. The regulations, therefore, are also the same. Thus, the appointee is entitled to be placed in a continuing position at no lower than GS–15; the placement action may not cause the separation or reduction in grade of any other individual; and the appointee is entitled to saved pay.

As far as saved pay is concerned, since 5 U.S.C. 3594 now specifically provides pay retention (but not grade retention) in SES RIF, the regulatory provisions to be followed are those in Part 359, not the grade and pay retention provisions in Part 536, which were previously applicable. OPM is amending 5 CFR 536.105 to exclude SES members from grade retention under Part 536 in all instances and from pay retention under Part 536 when an individual is receiving pay retention under 5 U.S.C. 3594. The regulations continue to permit agencies to exercise their discretionary

authority, however, under 5 CFR 536.104(b) to grant pay retention in RIF situations when the individual is not entitled to pay retention under 5 U.S.C. 3594, e.g., when the individual voluntarily accepts a GS–15 position following receipt of a general RIF notice or a notice of position abolishment.

It should be noted that in RIF situations, if the affected executive cannot be placed in the SES, it is the agency conducting the RIF that is responsible for placing the appointee in a GS–15 or higher position within the agency or arranging a transfer to such a position in another agency. However, any transfer must be mutually acceptable to the appointee and the gaining agency.

If the agency conducting the RIF is being terminated and there is no transfer of function, employment of SES members ceases upon the termination date unless Congress have provided in legislation for mandatory placement in another agency following termination or the members have obtained positions elsewhere under SES RIF placement procedures.

If the agency conducting the RIF will remain in existence, but has no vacant position currently available at GS–15 or above for which the individual qualifies and cannot make a placement in another agency, the agency still must create a position to permit the fallback. The agency should then continue its efforts to find an appropriate position for the individual either internally or in another agency. If that does not prove possible, only then can the agency conduct a further RIF action. Such an action may not be taken within three months of the removal from the SES. That is the same period provided in Part 351 (5 CFR 351.701(a)) as the minimum length of time a position must last when an employee is assigned to another position under RIF procedures outside the SES.

It should be noted that the congressional section analysis for Pub. L. 98–615 states that although appointees are entitled to placement following a RIF within the SES, this entitlement does not apply for subsequent RIFs outside the SES. Such subsequent actions would be subject to the regulations in Part 351 of this chapter.

There is the question of the tenure of the appointment outside the SES to be given a post-probationer who does not have reinstatement rights in the competitive service. In the situation, the individual must be placed in a position in the excepted service. Two cases are involved here. The first case involves an individual who came to the SES from an excepted service appointment, e.g., Schedule A, B, or C, or an agency excepted appointment authority. In that case the individual could return to his or her former appointment (e.g., as SES attorney who had come from a GS–15 Schedule A appointment could return to that appointment). The second case involves an individual who has not been in the civil service prior to the SES appointment. In that case, unless there was an existing excepted appointment authority that could be used, OPM has been approving special, single agency Schedule B authorities. By amendment of Part 213, OPM would provide a government-wide Schedule B authority to cover this situation.

**Furloughs in the Senior Executive Service (Part 359, Subpart H)**

Public Law 98–615 established for the first time in statute specific provisions on furlough in the SES under 5 U.S.C. 3595a. These provisions define furloughs, state that career SES appointees may be furloughed only under regulations issued by OPM, and provide an appeal right for career appointees to the Merit Systems Protection Board.

OPM earlier issued furlough regulations in Part 359, Subpart H, for career SES appointees based on its general authority to regulate for the SES (48 FR 11925, March 2, 1983). Those regulations include the provisions that were incorporated in 5 U.S.C. 3595a. Therefore, no new regulations are necessary; and agencies should continue to apply the current regulations in Subpart H.

**Removal of Noncareer and Limited Appointees and Reemployed Annuitants (Part 359, Subpart I)**

This subpart, issued in the interim regulations as Subpart F, would be renumbered as Subpart I and retitled. It continues earlier coverage of noncareer, limited term, and limited emergency appointees (except for certain limited appointees who would be covered by 5 CFR Part 752, Subpart F, under proposed regulations issued May 30, 1986). It also adds coverage of reemployed annuitants with career appointments.

A reemployed annuitant serves at the will of the appointing authority. Thus, a reemployed annuitant who is serving under an SES career appointment is not entitled to the protections afforded by Subparts D, E, F, and G; and removal procedures are to be governed by Subpart I.

In summary, a new section is added to Part 213 to provide a Schedule B appointment authority for SES performance and RIF fallback when an individual does not have reinstatement eligibility in the competitive service; Part 536 is revised to exclude SES members from grade retention coverage in all instances and from pay retention coverage when they are entitled to pay retention under 5 U.S.C. 3594; and Part 359 is amended as follows:

(a) Subpart A, which repeated the pertinent sections of title 5, United States Code, is revoked and reserved for future use.

(b) In Subpart B, an addition to § 359.202 defines "reemployed annuitant."

(c) In Subpart D, (1) an addition to § 359.402 clarifies the basis for an action to remove a probationer for unsatisfactory performance; (2) the cause of action standard in § 359.403 for removal of probationers is revised to agree with the standard in Part 752, Subpart F; (3) pertinent references to 5 U.S.C. 7511 are added to §§ 359.403 and 359.404; (4) a new § 359.405 is added to regulate the removal of probationers from the SES under a RIF; (5) provisions for emergency action under specific circumstances are added to § 359.406 as an exception to the 120-day moratorium on removals following the appointment of a new agency head or noncareer supervisor; and (6) another addition to § 359.406 makes it clear that the imposition of a 120-day moratorium on removals does not extend the probationary period.

(d) In Subpart E, (1) the conditions requiring mandatory removal for performance from the SES as set forth in § 359.501 are clarified; (2) the notice requirements under § 359.502(a) are amended to permit an agency to use a supplementary notice to advise a post-probationer of his or her placement outside the SES; and (3) the former § 359.505 on appeals is renumbered § 359.504.

(e) The former Subpart F is renumbered as Subpart I. The new Subpart F covers removal of career appointees in a RIF.

(f) In Subpart G, placement rights are added for RIF actions.

(g) The new Subpart I covers removal of noncareer and limited appointees, as well as reemployed annuitants.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

**List of Subjects**

*5 CFR Part 213*

Government employees.

*5 CFR Part 359*

Government employees.

*5 CFR Part 536*

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is proposing to amend 5 CFR Parts 213, 359 and 536 as follows:

## PART 213—EXCEPTED SERVICE

1. The authority for Part 213 continues to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp. p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 94–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, and 8337(h).

2. Section 213.3202(m) is added to read as follows:

### § 213.3202 Entire executive civil service.

* * * * *

(m) Positions filled by (1) appointment at grades GS–15 and above, or equivalent, of individuals who:

(i) Were former career appointees in the Senior Executive Service (SES);

(ii) Have completed the SES probationary period;

(iii) Have been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iv) Are entitled to be placed in another civil service position under 5 U.S.C. 3594(b); or

(2) Reassignment, promotion, or demotion within the same agency of individuals originallly appointed under this authority.

## PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

3. The authority citation for Part 359 is revised to read as follows:

**Authority:** 5 U.S.C. 1302 and 3596, unless otherwise noted.

4. Subpart A is removed and reserved, Subparts B and D through G are revised, and Subpart I is added to read as follows:

**Subpart A—[Reserved]**

**Subpart B—General Provisions**

Sec.



* * * * *

**Subpart D—Removal of Career Appointees During Probation**



**Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance**



**Subpart F—Removal of Career Appointees as a Result of Reduction in Force**



**Subpart G—Guaranteed Placement**



* * * * *

**Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants**



**Subpart A—[Reserved]**

**Subpart B—General Provisions**

### § 359.201 Regulatory requirements.

This part contains the regulations of the Office of Personnel Management (OPM) that implement subchapter 35 of title 5, United States Code, on the Senior Executive Service (SES).

### § 359.202 Definitions.

"Agency," "Senior Executive Service position," "senior executive," "career appointee," "limited emergency appointee," "limited term appointee," "noncareer appointee," "career reserved position," and "general position" are defined in 5 U.S.C. 3132(a).

"Probation" and "probationary period" mean the 1-year probation required by 5 U.S.C. 3393(d) upon initial career appointment to the SES.

"Reemployed annuitant" means an individual who is receiving an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System on the basis of his or her former Federal service. A reemployed annuitant serves at the pleasure of the appointing authority.

* * * * *

**Subpart D—Removal of Career Appointees During Probation**

### § 359.401 General exclusions.

This subpart does not apply to the removal of a career appointee during probation when—

(a) The action is initiated under 5 U.S.C. 1206(g) or 5 U.S.C. 7542; or

(b) The appointee is a reemployed annuitant.

### § 359.402 Removal: Unacceptable performance.

(a) *Coverage.* This section covers the removal of a career appointee from the SES during the probationary period for unacceptable executive performance.

(b) *Basis for action.* A removal under this section may, but need not, be based upon a final unsatisfactory rating under the agency's performance appraisal system established under subchapter II of chapter 43 of title 5, United States Code.

(c) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the agency's conclusions as to the inadequacies of the appointee's executive performance;

(2) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and

(3) Show the effective date of the action.

### § 359.403 Removal: Conduct.

(a) *Coverage.* (1) Except as provided in paragraph (a)(2), this section covers the removal of a career appointee from the SES during the probationary period for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(2) This section does not apply when the appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case, the removal is subject to the provisions of Part 752, Subpart F, of this chapter

(b) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the basis for the removal action (inlcuding the act(s) of misconduct, neglect of duty, or malfeasance if those factors are involved); and

(2) Show the effective date of the action.

**§ 359.404 Removal: Conditions arising before appointment.**

(a) *Coverage.* (1) Except as provided in paragraph (a)(2), this section covers the removal of a career appointee from the SES during the probationary period when the action is based in whole or in part on conditions arising before the appointment.

(2) This section does not aply when the career appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case, the removal is subject to the provisions of Part 752, Subpart F, of this chapter.

(b) *Procedures.* (1) The agency shall give the appointee an advance written notice stating the specific reasons for the removal.

(2) The appointee shall be given a reasonable time to reply.

(3) The agency shall give the appointee a written decision showing the reasons for the action and the effective date. The decision shall be given to the appointee at or before the time the action will be made effective.

**§ 359.405 Removal: Reduction in force.**

(a) *Coverage.* This section covers the removal of a career appointee from the SES during the probationary period under a reduction in force.

(b) *Basis for action.* The appointee must have been identified for removal from the SES under competitive procedures established by the agency in accordance with the requirements of 5 U.S.C. 3595(a). Removal action shall be taken under 5 U.S.C. 3592(a).

(c) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and

(2) Show the effective date of the action.

**§ 359.406 Restrictions.**

(a) Removal from the SES under §§ 359.402 through 359.404 may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(b) The restrictions in paragraph (a) of this section do not apply—

(1) When the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(2) To a disciplinary action initiated before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(3) To a disciplinary action when there is a reasonable cause to believe that the career appointee has committed a crime for which a sentence of imprisonment can be imposed; or

(4) To a disciplinary action when the circumstances are such that retention of the career appointee—

(i) May be injurious to the appointee, his or her fellow workers, or the general public;

(ii) May result in damage to Government property; or

(iii) May, because of the nature of the appointee's offense, reflect unfavorably on the public perception of the Federal service.

(c) The following procedures must be observed when an agency invokes an exception to the 120-day restriction under paragraph (b)(3) or (b)(4) of this section:

(1) The agency shall inlcude in the notice the reasons for invoking the exception.

(2) The appointee shall be given a reasonable time, but no less than 7 days, to respond regarding the propriety of the use of the exception.

(3) The agency shall give the appointee a notice of decision on the propriety of the use of the exception at or before the time the action will be effective.

(4) When circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time as necessary to effect the action.

(d) The imposition of the 120-day moratorium does not extend the probationary period.

**§ 359.407 Appeals.**

(a) Removal under §§ 359.402, 359.403, oir 359.404 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

(b) Removal under § 359.405 is appealable to the Merit Systems Protection Board under 5 U.S.C. 7701 as to whether the reduction in force complies with the competitive procedures required under 5 U.S.C. 3595(a).

## Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

**§ 359.501 Causes.**

(a) *Employees covered.* (1) Except as provided for in paragraph (a)(2) of this section, this subpart covers—

(i) A career appointee who has completed the probationary period in the SES; and

(ii) A career appointee who is not required to serve a probationary period in the SES.

(2) This subpart does not cover a career appointee who is serving as a reemployed annuitant.

(b) *Evaluation of executive performance.* (1) The agency shall appraise the performance of each career appointee in accordance with a performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code.

(2) As used in this subpart, "final rating" refers to the rating of record made by the appointing authority in accordance with the requirements of 5 U.S.C. 4314(c)(3) and subpart C of 5 CFR Part 430.

(c) *Optional removal from the SES.* The agency may remove a career appointee from the SES after the appointee has been given one final rating of unsatisfactory under the agency's performance appraisal system.

(d) *Mandatory removal from the SES.* The agency must remove a career appointee from the SES after—

(1) The appointee has been given two final ratings of unsatisfactory under the SES performance appraisal system within 5 consecutive years; or

(2) The appointee has been given two final ratings of less than fully successful

(unsatisfactory or minimally satisfactory) under the SES performance appraisal system within 3 consecutive years.

**§ 359.502 Procedures.**

(a) *Notice.* The agency shall notify the career appointee in writing at least 30 calendar days before the effective date of the action. The notice shall advise the appointee of—

(1) The basis for the action;

(2) The appointee's placement rights under subpart G of this part—the position to which the appointee will be assigned shall be identified either in this advance notice or in a supplementary notice issued no later than 10 calendar days before the effective date of the action;

(3) The appointee's right to request an informal hearing from the Merit Systems Protection Board;

(4) The effective date of the action; and

(5) When applicable, the appointee's eligibility for immediate retirement under 5 U.S.C. 8336(h).

(b) *Informal hearing.* (1) A career appointee being removed from the SES under this section shall, at least 15 days before the effective date of the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board. The appointee shall submit the request for an informal hearing to the Merit Systems Protection Board. This request may be made at any time after the appointee has received the notice described in paragraph (a) of this section, but no later than 15 days before the effective date of action. The informal hearing shall be conducted in accordance with the regulations and procedures established by the Merit Systems Protection Board. See 5 CFR 1201.141, Right to hearing, and 1201.142, Hearing procedures; referral of the record.

(2) Neither the granting nor the conduct of this informal hearing shall provide a basis for appeal to the Merit Systems Protection Board under 5 U.S.C. 7701. The removal action need not be delayed because of the granting of such informal hearing.

**§ 359.503 Restrictions.**

(a) Removal from the SES under § 359.501(d)(2) may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(c) This restriction does not apply when the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee.

**§ 359.504 Appeals.**

An action taken under § 359.501 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

## Subpart F—Removal of Career Appointees as a Result of Reduction in Force

**§ 359.601 General.**

(a) *Coverage.* (1) This subpart sets forth the conditions under which an agency may remove a career appointee from the SES as a result of a reduction in force. It also sets forth OPM placement authority in a reduction in force.

(2) This subpart does not apply if the appointee is a reemployed annuitant.

(b) *Definitions.* (1) "Probationary period" is defined in § 359.202 of this part.

(2) "Reduction in force" is defined in 5 U.S.C. 3595(d) as including "the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor."

(c) *Agency procedures.* Agencies must have issued written procedures before conducting a reduction in force. A copy of the procedures shall be provided OPM upon issuance.

**§ 359.602 Agency reductions in force.**

(a) *Competitive procedures.* (1) This paragraph applies to all SES career appointees in the agency, including appointees serving a probationary period.

(2) An agency shall establish competitive procedures in writing to determine who will be removed from the SES in any reduction in force of career appointees within that agency. Such competitive procedures shall be based primarily on performance.

(b) *Placement within the agency.* (1) This paragraph applies to SES career appointees who have completed their probationary period, or were not required to serve a probationary period, and who have been identified for reduction in force under paragraph (a) of this section.

(2) A career appointee is entitled to be offered any vacant SES position in the agency for which the appointee meets the qualifications requirements. If there is more than one vacancy, the agency has the option of which position to offer the appointee.

**§ 359.603 OPM priority placement.**

(a) *Agency certification.* (1) If there is no vacant SES position within the agency for which an appointee under § 359.602(b) is qualified, the agency head, or the acting agency head in the absence of the agency head, shall certify to OPM in writing that no such position is available. This certification may not be delegated below the agency head level.

(2) The 45-day period during which OPM will attempt to place the appointee begins on the day the certification is acknowledged by OPM.

(3) It is the continuing responsibility of an agency that has a surplus career appointee to place the appointee in any vacant SES position in the agency for which the appointee is qualified, even after the appointee is certified to OPM.

(b) *OPM authority.* As provided by 5 U.S.C. 3595(b)(3), OPM may require an agency to take any action that OPM considers necessary to carry out a placement.

(c) *OPM referrals.* (1) OPM may formally refer a career appointee to an agency for a specific SES vacancy or general priority consideration. Such referrals may not become a part of the regular competitive staffing process. Career appointees referred must be considered by the agency for a noncompetitive SES appointment.

(2) Any objection by the agency to the qualifications of the appointee must be based on the technical qualifications in the standard for the position. An agency may not rely solely on lack of agency-specific experience for an objection based on lack of technical qualifications if the appointee is otherwise qualified.

(d) *Agency response.* (1) In order to expedite placement of surplus career appointees, an agency shall respond to an OPM referral within the time period prescribed by OPM.

(2) If an agency fails to place a referred career appointee in an SES

position because of objection to the appointee's qualifications or because of any other reason, the agency response must be in writing and must be signed by the agency head, or the acting agency head in the absence of the agency head. The response may not be delegated below the agency head level.

(e) *Corrective action.* If an agency fails to provide bona fide priority consideration, OPM may order appropriate corrective action.

(f) *Declination by employee.* A career appointee who declines a reasonable offer of placement may be removed from the SES.

**§ 359.604 Removal from the SES and placement rights outside the SES.**

(a) If a probationary appointee is identified for reduction in force under § 359.602(a), removal action is taken under § 359.405. Placement rights outside the SES are covered under subpart G of this part.

(b) If a career appointee who has completed the probationary period, or who did not have to serve one, is identified for reduction in force under § 359.602(a) and is not placed elsewhere in the SES under § 359.602(b) or § 359.603, or declines a placement offer under § 359.603, removal action is taken under § 359.604(b). Placement rights outside the SES ARE covered under subpart G of this part.

**§ 359.605 Notice requirements.**

(a) Each career appointee subject to removal under § 359.604(b) is entitled to a specific, written notice at least 45 calendar days before the effective date of the removal.

(b) The notice shall state, as a minimum—

(1) The action to be taken and its prospective effective date;

(2) The place where the career appointee may inspect the regulations and records pertinent to the action;

(3) Placement rights within the agency and through OPM; and

(4) The career appointee's appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board office to which an appeal should be sent.

**§ 359.606 Appeal rights.**

A career appointee may appeal to the Merit Systems Protection Board as to whether the reduction in force complies with the competitive procedures in § 359.603.

**§ 359.607 Records.**

Each agency shall maintain current records needed to determine the retention standing of its competing appointees. The agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee's situation. The agency shall preserve intact all registers and records relating to a reduction-in-force action for at least 2 years from the effective date of the action.

**§ 359.608 Transfer of function.**

(a) "Transfer of function" means the transfer of the performance of a continuing function from one agency to one or more other agencies.

(b) A career appointee is entitled to accompany his or her function to the new agency without any change in tenure if the alternative is removal from the SES in the current agency under reduction in force.

## Subpart G—Guaranteed Placement

**§ 359.701 Coverage.**

This subpart covers career appointees, other than reemployed annuitants, who are removed from the SES—

(a) During the probationary period for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons under § 359.403, § 359.404, or Part 752, Subpart F, of this chapter, if at the time of appointment to the SES the individual held a career or career-conditional appointment or an appointment of equivalent tenure, as determined by OPM. An appointment of equivalent tenure is considered to be an appointment in the excepted service other than an appointment—

(1) To a Schedule C position established under Part 213 of this chapter;

(2) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(3) To a position that meets the same criteria as a Schedule C position or a position authorized to be filled by noncareer executive assignment; or

(4) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) For less than fully successful executive performance if the appointee has completed the required probationary period under the SES or was not required to serve a probationary period.

(c) As the result of a reduction in force if the appointee has completed the required probationary period under the SES or was not required to serve a probationary period.

**§ 359.702 Placement rights.**

(a) An appointee coverd by this subpart is entitled to be placed in a vacant civil service position (other than an SES position) in any agency that is—

(1) A continuing position at GS–15 or above, or equivalent, that will last at least three months; and

(2) A position for which the appointee meets the qualifications requirements.

(b) A probationary appointee, or a nonprobationary appointee who at the time of appointment to the SES held a career or career-conditional appointment (or an appointment of equivalent tenure, as defined in § 359.701(a)), is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the SES. This tenure requirement does not apply—

(1) If the agency taking the removal action does not have a position of equivalent tenure for which the appointee meets the qualifications requirements; or

(2) If the appointee is willing to accept a position having a different tenure.

**§ 359.703 Responsibility for placement.**

The agency taking a removal action under this subpart is responsible for placing the appointee in an appropriate position within this agency, or for arranging a transfer to an appropriate position in another agency. Any transfer must be mutually acceptable to the appointee and the gaining agency.

**§ 359.704 Restrictions.**

Placement of an appointee under this subpart shall not cause the separation or reduction in grade of any other employee.

**§ 359.705 Pay.**

(a) An appointee placed under this subpart shall be entitled to receive basic pay at the highest of—

(1) The rate of basic pay in effect for the position in which the appointee is being placed;

(2) The rate of basic pay currently in effect for the position that the appointee held in the civil service immediately before being appointed to the SES; or

(3) The rate of basic pay in effect for the appointee immediately before removal from the SES.

(b) An employee receiving basic pay under paragraph (a)(2) or (a)(3) of this section shall have future pay adjusted in accordance with 5 U.S.C. 3594(c)(2).

## Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

**§ 359.901 Coverage.**

(a) This subpart covers the removal from the SES of —

(1) A noncareer appointee;

(2) A limited emergency or a limited term appointee; and

(3) A reemployed annuitant holding any type of appointment under the SES.

(b) Coverage does not include, however, a limited emergency or a limited term appointee who is being removed for disciplinary reasons and who is covered by 5 CFR 752.601(c)(2).

**§ 359.902 Conditions of removal.**

(a) *Authority.* The agency may remove an appointee subject to this subpart at any time.

(b) *Notice.* The agency shall notify the appointee in writing before the effective date of the removal.

(c) *Placement rights.* An appointee covered by this subpart is not entitled to the placement rights provided for career appointees under Subpart G of this part.

(d) *Appeals.* Actions taken under this subpart are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

## PART 536—GRADE AND PAY RETENTION

5. The authority citation for Part 536 is revised to read as follows, and the authority citation following § 536.307 is removed:

**Authority:** 5 U.S.C. 5361–5366; Section 536.307 is also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

6. Section 536.105 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 536.105 Exclusions.**

(a) Grade and pay retention shall not apply to an employee who—

(1) Moves from a position that is not in an agency as defined in 5 U.S.C. 5102;

(2) Is identified under 5 U.S.C. 2105(c), except prevailing rate employees included under 5 U.S.C. 5361;

(3) Is reduced in grade or pay for personal cause or at the employee's request;

(4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is removed from a supervisory or managerial position; or

(5) Is entitled to receive basic pay under 5 U.S.C. 3594(c) because of removal from the Senior Executive Service and placement in a civil service position (other than a Senior Executive Service position) under 5 U.S.C. 3594(b)(2).

* * * * *

(c) Grade retention under § 536.103(a)(1) or (b) shall not apply to a member of the Senior Executive Service who is placed in a position in a covered pay schedule.

[FR Doc. 88–18019 Filed 8–9–88; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Parts 1405 and 1421

### Loans, Purchases and Other Operations; Grains and Similarly Handled Commodities

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend 7 CFR Part 1421 to set forth the determinations by the Commodity Credit Corporation with respect to whether certain price support loans could be extended by producers. These amendments would provide commodity market stability and provide affected producers with notice of the Corporation's determinations. This proposed rule would also amend 7 CFR Part 1405 to provide that the Commodity Credit Corporation would not be subject to the provisions of the July 20, 1971 Statement of Policy issued by the Secretary of Agriculture with respect to the manner in which agencies of the Department of Agriculture conduct decision-making activities. This amendment would enhance the administration of Commodity Credit Corporation programs and activities.

**DATE:** With respect to the proposed amendments set forth in 7 CFR Part 1421, comments must be received by August 25, 1988. With respect to the proposed amendments set forth at 7 CFR Part 1405, comments must be received by September 9, 1988.

**ADDRESS:** Send comments to Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA–ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule is available on request from Thomas VonGarlem at this address.

**FOR FURTHER INFORMATION CONTACT:** Thomas VonGarlem (202) 447–6761.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "major".

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons. The Commodity Credit Corporation (CCC) is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule. Therefore, the Regulatory Flexibility Act is not applicable.

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

### Background

CCC makes available price support to eligible producers through a variety of means, including purchase agreements and nonrecourse loans. Producers who comply with applicable program requirements are afforded the opportunity to obtain CCC price support loans for a term determined by CCC. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act). The terms and conditions of the loans are set forth in the loan agreement. *See* 7 CFR 1421.1–32 for feed grain, rice, soybean and wheat price support loans and purchase agreements. (53 FR 20280, June 3, 1988). In accordance with the provisions of the loan agreement and 7 CFR 1421.6, these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC. In the event CCC determines to extend such loans, the producer receives actual notice of the terms and conditions of the offered extension. The producer is not, however, required to accept the offered extension.

In accordance with section 110 of the 1949 Act, CCC may make available extended price support loans to producers who have specified maturing regular wheat and feed grain price support loans. These loans are referred

to as Farmer-Owned Reserve (FOR) Loans. The minimum and maximum levels of the wheat and feed grain reserves are determined annually. The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.740–54 (53 FR 11239, April 26, 1988).

Section 110 of the 1949 Act provides that, whenever the total quantity of wheat pledged as collateral for FOR loans is less than 300 million bushels and the market price for wheat is less than 140 percent of the current price support level, entry into the reserve must be allowed. Currently, 401 million bushels are in the FOR wheat reserve and wheat prices are in excess of 140 percent of the current price support rate. With respect to feed grains, the minimum FOR level is 450 million bushels and the minimum market price is 140 percent of the current price support rate. Currently, 1,259 million bushels are in the FOR feed grain reserve and corn prices exceed 140 percent of the current price support rate.

Prior to the enactment of the Food Security Act of 1985 (the 1985 Act), which amended section 110 of the 1949 Act, the term of a FOR loan could not exceed 5 years. The 1985 Act amended section 110 to provide for FOR loans of not less than 3 years with extensions as warranted. However, prior to this amendment, producers possessed a substantial number of FOR loans which were maturing and, due to market conditions, would forfeit the loan collateral to CCC. In order to provide greater flexibility to producers, CCC established the Special Producer Storage Loan Program in accordance with the CCC Charter Act, as amended. The terms and conditions of the loan are set forth in the loan agreement. See 7 CFR 1421.900–917.

In January and March 1988, after evaluating existing and projected supply and demand conditions for wheat and feed grains, CCC determined and announced that certain price support loans would be extended and that certain other loans would not be extended. Accordingly, with respect to loans that were not extended, producers are required to comply with the terms and conditions of their loan agreements which require repayment of the loan or forfeiture of the loan collateral by a specified date.

Following the announcement of these decisions, the State of Minnesota and several Minnesota producers brought an action in the United States District Court for the District of Minnesota which alleged that the actions taken concerning these loans were not made in accordance with statutory requirements. Among the allegations, plaintiffs contend that these decisions were not made in accordance with the Administrative Procedure Act, as amended, 5 U.S.C. 551 *et seq.* Subsequently, on July 22, 1988, based upon the United States Magistrate's Report and Recommendation, the United States District Court entered an order enjoining the use of two intra-agency notice which were used by the Agricultural Stabilization and Conservation Service (ASCS) to notify State and County ASCS Offices of these decisions.

It is the position of CCC that the provisions of the Administrative Procedure Act, as amended, are not applicable to these decisions since 5 U.S.C. 553(a)(2) specifically exempts agencies from conducting proposed rulemaking actions with respect to "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." It is also the position of CCC that the Statement of Policy signed by the Secretary of Agriculture on July 20, 1971 (*See* 36 FR 13804) which provided that, in certain specified instances, proposed rulemaking would be undertaken by all agencies of the Department notwithstanding the exemption set forth in 5 U.S.C. 553(a)(2) is not applicable to the types of actions involved in these decisions since propsioed rule making actions would be impracticable.

However, in order to alleviate the concerns of interested parties regarding the procedure which CCC utilized in making these decisions and to provide market stability, comments are requested with respect to proposed amendments to the regulations of CCC which are set forth in Title 7 of the Code of Federal Regulations. These proposed amendments would amend 7 CFR 1421.6 to provide that 1987 and subsequent crop price support loans for feed grains, rice, soybeans and wheat would not be subject to any additional extension of the original loan term of nine months.

Section 1421.6 would also be amended to provide that 1985 and 1986 crop loans of wheat, barley, oats, and soybeans would not be extended at maturity and that producers with 1985 and 1986 crop corn and grain sorghum loans which mature on March 31, 1988 through and including December 31, 1988 would be provided the opportunity to extend such loans for one year.

This proposed rule would also amend the FOR program regulations which are set forth at 7 CFR 1421.741 to provide that 1984 crop FOR loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year and that 1983 and prior crop year FOR loans would not be extended.

As set forth in CCC's Notice of Proposed Determination published on July 7, 1988 (53 FR 25,518), which requested comments concerning entry of 1988 crops into the FOR, FOR quantities of both wheat and feed grains are currently in excess of the statutory minimum levels.

The January and March 1988 determinations were initially based upon expected 1988 normal crop production and existing and projected market conditions. Based upon these factors, CCC determined to allow extensions of only certain crop year loans. However, the production of 1988 crops of many commodities, including wheat, feed grains and soybeans, has been affected by the severe drought conditions which exist throughout major agricultural producing regions of the United States. For example, the 1988 corn production was estimated on May 10, 1988 to be 7,300 billion bushels. As of July 12, 1988 this estimate was revised downward by 28.8 percent to 5,200 billion bushels due to the effects of the drought. This feed grain production reduction, when considered with the reduction in other feed supplies such as hay, has caused significant increases in feed prices for livestock producers and has also resulted in the unavailability of sufficient quantities of feed in some regions of the country. These factors have resulted in the liquidation of livestock herds and poultry flocks and will, therefore, adversely affect the income of these producers. In addition, the loss of production of wheat due to the drought coupled with an expansion of export markets has resulted in a continued strong demand for U.S. wheat.

This proposed rule would also amend the regulations at 7 CFR 1421.900–917 which set forth the regulations governing the special producer storage loan program. The basis for the program was explained in the preamble of the rule which set forth the initial regulations which established the program:

> The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agricultural Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing

a matured grain reserve loan as collateral for a loan obtained under the new program.

50 FR 16221 (April 25, 1985).

The program was determined to be necessary since, at that time, section 110 of the 1949 Act specified that FOR loan agreements could not be for a term in excess of 5 years. Section 110 of the 1949 Act was subsequently amended by the Food Security Act of 1985 by deleting the 5-year maximum limitation and by providing that FOR loans could be extended as warranted by market conditions. Accordingly, it has been determined that this program is no longer necessary. Therefore, this proposed rule would delete the regulations which set forth the provisions which were used to make Special Producer Storage Loans and would also specify that maturing Special Producer Storage Loans will not be extended.

Accordingly, in order to ensure that sufficient quantities of grain are available at reasonable prices to livestock and poultry producers as well as other users of grain CCC proposes that producers be permitted the extension of only certain crop year loans. The affected quantities of outstanding CCC loan collateral as of July 27, 1988 are as follows:

| Program crop year | Wheat | Corn | Sorghum | Barley | Oats | Soybeans |
|---|---|---|---|---|---|---|
| | | | | | | Millions of bushels |
| Regular Loans: | | | | | | |
| 1987 | 39 | 790 | 38 | 19 | 0 | 72 |
| 1985 | 6 | 81* | 4* | 2 | 0 | 3 |
| 1986 | 29 | 481* | 30* | 14 | 0 | 9 |
| Farmer-Owned Reserve (for loans): | | | | | | |
| 1983 & Prior | 170 | 0 | 0 | 3 | 0 | |
| 1984 | 73* | 306* | 11* | 15* | 0* | |
| 1985 | 159 | 833 | 44 | 34 | 0 | |
| Special Producer Storage (SPSL) Loans | 0 | 120 | 18 | 26 | 1 | |

(Asterisks denote loans which would be available for extension)

The proposed rule would also amend 7 CFR Part 1405 to provide that the Commodity Credit Corporation would not be subject to the provisions of the July 20, 1971 Statement of Policy issued by the Secretary of Agriculture. This Statement of Policy with respect to the manner in which agencies of the Department of Agriculture conduct decision-making activities has been the subject of litigation involving CCC. The majority of CCC's actions are market sensitive and must be taken expeditiously taking into consideration existing and projected market conditions and variable factors such as weather. This is most evident from the actions which CCC has had to take during 1988 due to effects of severe drought conditions. Accordingly, it is proposed that CCC be exempt from the application of the July 20, 1971 Statement of Policy. This action would be consistent with recent Congressional actions which have specifically required that certain CCC functions be undertaken without regard to such directive. *See, for example* section 1017 of the Food Security Act of 1985, as amended, and section 1108(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985. Accordingly, this proposed rule would amend 7 CFR Part 1405 to provide that CCC and CCC related activities would not be subject to the provisions of the July 24, 1971 Statement of Policy.

On July 29, 1988, the Secretary of Agriculture announced that producers with CCC price support loans which matured on July 31, 1988 could extend such loans until August 31, 1988. Therefore, many producers with these loans, as well as persons who currently desire to purchase grain, will be making marketing decisions on the basis that such loans are extended until only August 31, 1988. Accordingly, in order to provide for commodity market stability, it has been determined that a final decision on the proposed amendments to 7 CFR Part 1421 must be made prior to August 31, 1988. Accordingly, the comments for this portion of the proposed rule must be received by August 25, 1988. Comments with respect to the proposed amendment to 7 CFR Part 1405 must be received by September 9, 1988. CCC intends that the final rule will be effective on the date of publication.

**List of Subjects**

*7 CFR Part 1421*

Grains, Loan programs/agriculture, Price support programs, Warehouses.

*7 CFR Part 1405*

Feed grain, Rice, Upland and extra long staple cotton, Wheat and related programs, Grains, Loan programs/agriculture, Price support programs, Warehouses, Commodity certificates, In-Kind Payments, Other forms of payment.

Accordingly, Title 7 of the Code of Federal Regulations is proposed to be amended to read as follows:

**PART 1421—[AMENDED]**

1. The authority citation for Part 1421 continues to read as follows:

**Authority:** Sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1972 (15 U.S.C. 714b and 714c); sections 101, 101A, 105C, 107D, 108, 110, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 1439, as amended, 92 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441–1, 1444b, 1445b–2, 1445c–2, 1445e, 1446, 1447, 1421, 1423, and 1425).

2. 7 CFR 1421.6 is amended by revising paragraph (a)(1)(i) and adding paragraph (c) to read as follows:

**§ 1421.6 Maturity and expiration dates.**

(a) * * *

(1) * * *

(i) All commodities except peanuts, no later than the last day of the ninth calendar month following the month in which the loan application is made; and

* * * * *

(c) *Extension of loans.* (1) Notwithstanding any other provision of this Part, all 1987 and prior crop year loans which have been made available to eligible producers in accordance with the provisions of this Part shall not be extended upon maturity except that 1985 and 1986 crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year.

(2) With respect to all commodities, 1988 and subsequent crop year loans may not be extended upon maturity.

3. 7 CFR 1421.741 is revised to read as follows:

**§ 1421.741 Length of reserve agreements.**

The length of reserve agreements shall be determined and announced by the Executive Vice President, CCC, based upon market conditions which exist at the time such agreements are executed by CCC. Such agreements may be extended by CCC, at the producer's option, upon maturity if CCC determines that an extension is warranted based upon existing market conditions. 1983 and prior crop year loans may not be extended. 1984 crop year loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year. Producers having 1984 and 1985 crop year loans will be notified by mail of any extension or additional extension option which may be made available by CCC. Determinations with respect to the entry of eligible grain from other crop years into the Grain Reserve Program will be announced by CCC by the publication of a final notice of determination in the **Federal Register.**

4. 7 CFR 1421.900 is revised to read as follows:

**§ 1421.900 General statement.**

Special Producer Storage Loan Program loans shall not be extended upon maturity.

**§§ 1421.901 through 1421.917 [Removed]**

5. 7 CFR 1421.901 through 1421.917 are removed.

**PART 1405—[AMENDED]**

6. The authority citation for Part 1405 is revised to read as follows:

**Authority:** Sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended; 1072, (15 U.S.C. 714b and 714c).

7. A new § 1405.3 is added to read as follows:

**§ 1405.3 Rulemaking activity of the Commodity Credit Corporation.**

The Statement of Policy issued by the Secretary of Agriculture on July 20, 1971 (36 FR 13,804) shall not be applicable in any manner with respect to any Commodity Credit Corporation activity, any action related to a Commodity Credit Corporation activity and any activity which involves the expenditure or use of CCC funds or assets.

Signed at Washington, DC, on August 8, 1988.

**Richard E. Lyng,**

*Secretary of Agriculture, Chairman, Commodity Credit Corporation.*

[FR Doc. 88-16160 Filed 8-8-88; 1:55 pm]

**BILLING CODE 3410-05-M**

## FARM CREDIT ADMINISTRATION

## 12 CFR Part 615

## Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

**AGENCY:** Farm Credit Administration.

**ACTION:** Resolicitation of Comments.

**SUMMARY:** On May 12, 1988, the Farm Credit Administration (FCA) published for comment a proposed amendment to Subpart H of 12 CFR Part 615 that would establish minimum permanent capital standards for Farm Credit System (System) institutions that would be phased in over a 5-year period (53 FR 16948). A public hearing on the proposed rule was held on June 9, 1988 and the comment period closed on June 10, 1988. After reviewing the proposal in light of the written comments and the testimony received at the public hearing, the FCA has determined that additional comment is needed on several issues. The FCA solicits additional comments on alternative methods of eliminating double-counted capital and on a regulatory forbearance plan under consideration for incorporation into the final rule.

**DATE:** Written comments must be submitted on or before August 31, 1988.

**ADDRESSES:** Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4402,

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On May 12, 1988, the Farm Credit Administration published for comment proposed regulations (53 FR 16948) that would establish minimum permanent capital standards for System institutions. The proposed regulations would implement section 301(a) of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233, which directs the FCA to issue regulations under section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2001 et seq., establishing minimum permanent capital standards expressed as a ratio of capital to assets that take into account relative risk factors. The proposed regulation would provide for a relative weighting of assets on the basis of risk and would establish a minimum ratio of permanent capital to risk-weighted assets of 7 percent that would be phased in over a period of 5 years. A public hearing was held on June 9, 1988 and the comment period closed June 10, 1988.

In the proposed regulation, the FCA proposed to require that double-duty dollars or double-counted capital be eliminated before computing the permanent capital ratios. Double-counted capital results from the ownership interest of one Farm Credit institution in another and the distribution of earnings of the owned institution in the form of its equities, for which there is no secondary market, rather than in cash. Between associations that are direct lenders and their funding banks, the proposed regulation would eliminate the double-counted capital at the bank level and count it at the direct lender level. Two alternative methods for eliminating double-counted capital between direct lenders and their funding banks were described in the preamble and the FCA solicited comments on whether the proposed approach or one of the two alternative approaches would be more appropriate. Comments were received from 143 organizations and individuals, most of them Farm Credit institutions, but only four comments specifically addressed the alternative methods of eliminating double-counted capital. However, these four comments stimulated additional discussion of the alternative options within the FCA. In view of the importance of this issue and the small number of comments received, the FCA solicits additional comments on the alternative options in light of the considerations described below under "Double-counted capital."

The majority of System institutions that commented though that a 7 percent risk-adjusted permanent capital ratio would be difficult for many institutions to reach in 5 years, especially since borrower stock protected by section 4.9A of the 1971 Act, as amended, which

cannot be counted as permanent capital, currently constitutes most of their capital. While the protected borrower stock will decrease as loans are paid off and will be gradually replaced with borrower stock that is at risk and can be counted as permanent capital, protected stock will comprise a relatively large percentage of the institutions' total capital in the early years of the phase-in. Many of these commenters requested some type of regulatory forbearance plan that would protect institutions that do not meet the minimum permanent capital standards (including interim standards) from regulatory enforcement action if they are making a good faith effort to reach the standards and are making reasonable progress toward their goal. Several forbearance plans were suggested. The FCA was persuaded that some type of regulatory forbearance plan similar to one suggested by one of the commenters would be appropriate and solicits comments on a forbearance plan that the FCA is considering incorporating in the final regulation. (See discussion below.)

**Double-Counted Capital**

The proposed regulation eliminated the double-counted capital between a direct lender institution and its funding bank by requiring the bank to deduct from permanent capital an amount equal to the investment of the direct lender in the funding bank, after the elimination of any reciprocal holdings. A number of commenters pointed out that when the investment amount is offset by protected stock (which cannot be counted as permanent capital), a double deduction results if the investment amount is not first reduced by the amount of protected stock before a deduction is made from permanent capital. The double deduction that results from the failure to offset the institution's protected stock against the amount of investment in another System institution before deducing such amount from permanent capital was an unintended result. The FCA intends to revise § 615.5210(d) (2) and (3) of the proposed regulation to allow an offset of the investment against protected stock before a deduction from permanent capital is made.

In the preamble to the proposed regulation, the FCA invited comments on two alternative options for eliminating double-counted capital between direct lenders and their funding banks. One was to eliminate 75 percent of the capital at the bank level and 25 percent at the direct lender level. This approach would have the effect of counting 25 percent of the capital at the bank level and 75 percent at the direct lender level (25/75 option). The second option was to eliminate double-counted capital at the direct lender level by deducting from the direct lender's capital the amount of its investment in the funding bank (owned funds approach).

Only four comments were received, but the comments were thoughtful and stimulated additional discussion of the alternative options. Two supported the approach taken in the proposed regulation and two supported the owned funds approach.

The commenters supporting the proposed approach cited several reasons for their support: (1) All asset risk to the association's equity lies in the farmer's debt; (2) the borrower's stock relies directly on the association's investment in the Farm Credit Bank (FCB) to maintain its value; (3) if production credit associations (PCAs) were not permitted to have value for their investment in the FCB, all capital would have to be built from the farmer's pocket in the form of higher interest rates, which would drive away the best customers; (4) the farmers paid for the association's investment in the FCB and should be permitted to directly utilize the benefit through counting such investment as permanent capital; and (5) the direct lender is the level of primary risk and should utilize the investment as permanent capital.

The commenters supporting the owned funds approach, which would eliminate the double-counted capital at the association level, thought that the banks should approach a true discount and contract service position, which requires little capital, and asserted that the rigth place to capitalize the System is at the association level. One commenter urged that all stock presently held in the bank be dispersed to the associations and held as unallocated reserves, as an account made up of "good hard cash" is the best method of capitalizing any business, but noted that such a transfer would create tax responsibilities and would necessitate allowing any liability to be amortized over a period of years. Another commenter stated that the recent one-time required stock purchase in the Farm Credit System Financial Assistance Corporation (FAC) demonstrated that such an assessment can be very damaging when an institution carries capital on its books to which it has no access. (The FCA assumed the commenter had reference to the fact that much of the institution's capital is invested in bank equities, which can be retired only at the discretion of the bank's board. The commenter argued that such an assessment would significantly reduce or wipe out the institution's owned funds or "good hard cash" and leave only capital that is invested in these non-earning, illiquid assets.) The commenter also stated that the bank and the association should each have capital which each is free to use as necessary to protect its respective interests.

As the FCA considered these comments, it became apparent that the premise of the proposed regulation needed to be reexamined. The approach embodied in the regulation as proposed was based on the assumption that the double-counted capital should be counted where the primary risk resides. The FCA continues to believe that there should be sufficient capital at the level of the primary risk, but believes that it is also important that such capital be accessible at the discretion of the institution's board of directors to permit it to act as a stand-alone institution without undue dependence on the bank. If all of the double-counted capital were to be counted at the direct lender level, the direct lender's capital may appear to be adequate on its balance sheet. However, the reality is that the direct lender cannot access the double-counted portion of the capital without the permission of the bank, because the direct lender's capital is offset by investment in bank equities, which are retirable only at the discretion of the bank's board. The approach of the proposed regulation may not provide the maximum incentive for the downstreaming cash to the direct lender so that thee would be accessible capital at the level of primary risk. Thus, the proposed regulation may encourage the continued dependence of the direct lender associations on the funding banks, because it would allow the direct lenders to use the double-counted capital to meet their capital requirements even though the "good hard cash" is held at the bank level. Furthermore, as written, the proposed regulation would not allow a bank to be capitalized by its owners, as the entire investment of the direct lender would be deducted from the capital of the bank. This would require the bank to capitalize itself solely from earnings or from the sale of nonvoting equities to persons other than borrowers.

**Owned Funds Approach**

In light of these considerations, the owned funds approach to eliminating double-counted capital may be a preferable approach to provide the best

measure of the adequacy of the institution's accessible capital. Further, this approach may best promote the autonomy of System institutions in protecting their operational interests by encouraging the accumulation of appropriate levels of accessible capital in each institution. The owned funds approach would require the direct lender to exclude from its total capital and assets an amount equal to its investment in the bank. This would initially leave some direct lenders with negative permanent capital. However, since the proposed interim minimum capital standards would be determined by reference to a beginning permanent capital ratio computed as of December 31, 1987, and calculated after the elimination of double-counted capital, the institutions should have no more difficulty in meeting such standards in the early years when most borrower stock cannot be counted, than under the May 12, 1988 proposed regulation. It is true that if the bank were to continue distributing its earnings in allocated equities rather than cash, the owned funds approach would likely mean that it would take longer for most direct lenders to reach the 7 percent standard. However, if such a proposal is adopted, the proposed forbearance plan, which is based on specified increases in the permanent capital ratio, should allay concens about increased potential for enforcement actions under the owned funds approach. Furthermore, because the permanent capital ratios of the direct lender would likely be lower and the bank levels higher than needed to meet their respective minimum permanent capital standards, there would appear to be a strong incentive for banks to distribute their earnings in cash and/or to retire some of the allocated equities owned by the direct lenders. This would make possible larger year-to-year increases in the direct lender's permanent capital ratio than would otherwise be the case and would ultimately have the effect of assuring that accessible capital is available at the direct lender level where the primary risk resides.

**May 12, 1988 Proposal**

On the other hand, there are substantial arguments for the approach of the regulation proposed on May 12, 1988. While the owned funds approach may provide the maximim incentive for the accumulation of "good hard cash" at the association level, there are other considerations which argue for accumulating the "good hard cash" at the bank level. For instance, the banks are jointly and severally liable on consolidated Systemwide obligations and have significant capital requirements of their own. Although the Farm Credit Banks, under proposed regulations approved by the FCA on July 29, 1988, would be able, subject to FCA approval, to make capital calls on their owners as necessary to honor their joint and several obligations or to meet their capital requirements, it may be preferable for each institution to have sufficient capital readily available to give investors confidence in the ability of the banks to honor such obligations. Furthermore, the bank is empowered to assist financially troubled associations and has historically be their first line of defense in troubled times. Accumulating earnings at the bank level would assure that the FCB continues to be adequately capitalized to respond to such emergencies. And finally, although the approach of the proposed regulation does not provide maximum incentive for downstreaming of "good hard cash" to the association, so that associations have ready access to their capital, it does provide some incentive, since even under the proposed regulations many banks will have excess capital. The approach of the proposed regulation offers less of an incentive than would be provided by the owned funds approach. However, the proposed approach may be less disruptive than the owned funds approach, which would have an immediate adverse impact on the permanent capital position of the direct lenders and make it difficult for many of them to meet the 7 percent minimum permanent capital standard within 5 years unless significant amounts of cash is downstreamed from the bank.

**Purchased v. Distributed Equities**

Yet another option for eliminating double-counted capital, and possible a middle ground between the owned funds approach and the approach of the proposed regulation, would be to make a distinction between the bank equities that have been purchased by associations and those that have been distributed to the association as earnings. For the purpose of computing each institution's permanent capital ratio, this option would require those investments by direct lenders in an FCB that result from distributions of earnings from the FCB to the direct lender to be deducted from the total capital of the FCB. All other investments by direct lenders in an FCB would be counted by the FCB as permanent capital and deducted from the total capital of the direct lender. The effect of this approach would be to consider, for the purpose of computing the permanent capital ratios, that all earnings distributions from the FCB to its direct-lender owners have been in cash (whether or not that is the case) and to consider all other equities as equities that have been purchased by the direct lender with cash. Therefore, the FCB would count the investment made by its direct-lender owners as permanent capital and the direct lender would count distributions of earnings from the bank in its permanent capital. Thus, the amount of double-counted capital that would be counted at each institution would not be a prescribed percentage, but would vary with the particular circumstances of the institution.

The FCA is reconsidering the approach to eliminating double-counted capital set forth the proposed regulation and invites further comment on the two alternative options described in the proposed regulation, in particular, the owned funds approach. In addition, the FCA invites comment on whether the distinction between purchased equities and equities obtained through the payment of patronage would provide an appropriate basis for allocating double-counted capital.

In order to obtain meaningful comment, certain clarifications requested by the commenters should be made.

**Investment Exclusion**

A number of commenters noted that the proposed regulation makes no provision for the deletion of the investment from the asset base when a corresponding amount is deducted from the institution's capital. Where the deduction from capital is made from the investing institution, the result is to require the institution to capitalize the investment even though the offsetting amount of capital has been deducted, resulting in an effective capitalization rate of more than 100 percent. This situation occurs for the owners of the Leasing Corporation and for the investing institution in a participation relationship. These comments argued that the investment should be excluded form the asset base as well. Some commenters argued that a similar exclusion should be made in the elimination of double-counted capital between the FCB and its direct-lender owners, even though the capital deduction is not made in the investing institution.

The FCA agrees that where a deduction of an investment amount from capital is required in the owner institution to eliminate double-counted capital, it is appropriate to exclude the investment from the assets of the owner institution, to avoid the result described above. Such an exclusion would be

allowed in the elimination of double-counted capital between the Leasing Corporation and its owners and between participating institutions. If the owned funds approach were to be adopted, such an exclusion would also be appropriate. However, where a deduction of an investment amount is required to be deducted from the owned institution (FCB), there is no offsetting investment to deduct. Rather the investment is reflected in the assets of the owner institution (direct lender), which should be capitalized. Accordingly, under the approach of the proposed regulation to eliminating double-counted capital between the direct lender and the FCB, no such exclusion would be made. Under the options that would split the double-counted capital between the bank and the direct lender, the asset would be excluded only to the extent that an offsetting amount of capital is excluded in the same institution.

**Generally Accepted Accounting Principles**

The 1987 Act and the proposed regulation require the permanent capital standards to be applied to financial statements prepared in accordance with generally accepted accounting principles (GAAP). As a result, several clarifications requested by commenters require no change to the proposed regulation. For example, the GAAP requirement would mean that assets should be net of the allowance for losses and depreciation before computing the permanent capital ratio and that the financial statements would reflect a GAAP-based reserve for PCAs rather than a statutory reserve of 3½ percent. No furher clarification in the regulation is necessary. Commenters also asked the FCA to clarify whether the statutory modification of GAAP in section 6.9(e)(3)(d) of the 1971 Act, as amended, would be deemed to modify the requirement to use GAAP-based statements in computing the permanent capital ratios. This section states that institutions would not be required to record a pro rata share of the obligations of the FAC until their maturity, even though under GAAP they would be required to do so. The FCA believes it appropriate to read the statutory modification in section 6.9(e)(3)(d) into section 301 of the 1987 Act and intends to clarify the final regulation accordingly.

**Regulatory Forbearance**

Many of the System institutions that commented on the proposed regulation asserted that they would be unable to reach the 7 percent standard by 1993, citing interest rate increases and returns on assets that would be required and that were deemed to be uncompetitive and unrealistic. Many commenters suggested that the phase-in should be longer and/or non-linear and/or more flexible, since the starting point is a historic low and the minimum permanent capital standard higher than that for their competitors, commercial lenders. Many commenters pointed out factors that would make reaching even the interim standards difficult in the early years: (1) One-time events occurring in 1988, such as the required stock purchase in the Farm Credit System Financial Assistance Corporation reallocation of loss-sharing accruals for some institutions, and PCA allowance for loss adjustments required by tax law changes; (2) continued high average System debt costs and the lingering effects of nonaccrual loans; and (3) the high percentage of statutorily protected borrower stock in the early years. A non-linear phase-in was often suggested to take into account these factors and to allow for the compounding effect of earnings. Several legislators who commented asserted that Congress did not intend standards to be so high that most institutions would be in violation the first year.

A number of alternative phase-in plans were suggested. A back-loaded, non-linear phase-in, which requires little or no increase in permanent capital ratios during the first and second year and increasing in the third through the fifth year was the alternative most often suggested. However, a number of commenters suggested extending the phase-in over a longer period, from 10 to 15 years. Several commenters suggested requiring 3 to 5 percent by 1992, with some higher figure, 6 to 7 percent, to be achieved in 10 to 15 years. One commenter suggested that institutions be allowed to set their own phase-in standards. Another suggested that the FCA establish regulatory oversight on the basis of an institution-by-institution evaluation. Establishing subcategories of institutions by financial condition, with appropriate interim standards for each, was also suggested.

FCA enforcement of its capital standards during the phase-in period appeared to be a primary concern of those who commented on the phase-in. While some commenters supported enforcement during the phase-in period, which the 1987 Act appears to contemplate, two senators wrote in opposition to enforcement during the phase-in period. Other commenters proposed that FCA develop a formal regulatory forbearance plan that would provide a "safe harbor" for institutions that are making reasonable progress toward meeting their minimum permanent capital standards. Some suggested that the granting of forbearance be based on a specified minimum return on assets and others suggested a specified increase in the permanent capital ratio as a basis. Several commenters expressed concern that failure to attain the interim standard would automatically result in enforcement action, including draconian measures such as forced merger and liquidation, despite the FCA's assurance in the preamble of the proposed regulation that it would take into account the good faith efforts and reasonable progress of System institutions in determining whether an enforcement action is appropriate. Other commenters, while not expressing such a concern, appeared to assume such a result.

In response to the concerns expressed by the commenters, the FCA is considering incorporating into the final capital adequacy regulation forbearance criteria based on an annual increase in an institution's permanent capital ratio, which, if met, would ensure that no enforcement action based solely on failure to meet the minimum permanent capital standards would be taken. However, all institutions would continue to be required to meet their minimum permanent capital standards (including the interim standards) before any earnings could be distributed or stock retired. Under the plan contemplated, an institution would be exempt from regulatory enforcement action imposed solely for failure to meet its minimum permanent capital standards if during each year from 1989 through 1993 it maintained its permanent capital ratio at or above the average permanent capital ratio for the previous year plus a specified increase.

Under the plan contemplated, the forbearance criterion for 1989 would be the institution's permanent capital ratio as of December 31, 1987. For succeeding years, the forbearance criteria would be determined by adding a specified forbearance increment to the prior year's average permanent capital ratio. These increments would be as follows:

| Computation year | Forbearance increment |
|---|---|
| 1990 | 50 basis points. |
| 1991 | 75 basis points. |
| 1992 | 75 basis points. |
| 1993 | 100 basis points. |

The FCA is considering whether the forbearance plan should be extended beyond 1993 and solicits comments on this issue.

The average permanent capital ratio for an institution would be computed by summing the adjusted permanent capital balances computed from each closing statement for that year (numerator) and dividing by the total of the risk-adjusted assets (denominator) computed from each closing statement for that year. For the purpose of commenting, respondents should assume that until 1991, the average would be computed using averages of monthend balances, and that beginning in 1991, the average would be computed using averages of daily balances.

If an institution maintains its permanent capital ratio throughout a given year at or above its prior year's average plus the forbearance increment, it would be exempt from enforcement action solely for failure to meet its interim minimum permanent capital standard for that year. For example, if the average permanent capital ratio for an institution for 1990 were 3.80 percent, the institution would meet its forbearance criterion if it were to maintain its permanent capital ratio at or above 4.55 (3.8 plus .75) during 1991. The contemplated plan would require the institution to meet this criterion at all times during the year. The forbearance plan would benefit primarily institutions that have starting permanent capital ratios of less than 5 percent, since at that point, the forbearance criteria would be higher than the interim minimum standard.

The forbearance standard in no way precludes the FCA from taking enforcement action for other unsafe or unsound practices, for non-compliance with statute or regulations, or any other action authorized by law.

The FCA invites comment on the forbearance plan. The FCA is considering whether the phase-in for the interim minimum permanent capital standards should be nonlinear, but the purposes of commenting on the forbearance proposal, commenters should assume that the phase-in is linear. Since there is no requirement for an increase in the permanent capital ratio in 1989, the increment which must be added to the December 31, 1987 permanent capital ratio to determine the interim permanent capital standard would be, for a linear phase-in, 25 percent per year. For the purpose of commenting on the forbearance plan, commenters should assume that: (1) The minimum permanent capital standard is 7 percent; (2) the interim standards will begin in 1989 (when they will require institutions to match the December 31, 1987 starting ratio); (3) the interim permanent capital standard for 1990 through 1993 will be 25, 50, 75 and 100 percent, respectively of the difference between 7 percent and the starting ratio.

Authority: 12 U.S.C. 2154, 2243, 2252, section 310(a) of Pub.L. 100-233.

Date: August 4, 1988.

David A. Hill,

*Secretary, Farm Credit Administration Board*

[FR Doc. 88-17993 Filed 8-9-88; 8:45 am]

BILLING CODE 6705-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 22, 90

[General Docket 88-96]

### Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of time for reply comments.

**SUMMARY:** This action grants in part a Motion for Extension of Time filed by the Puerto Rico Telephone Company (PRTC). PRTC requested a 30 day extension of time for parties to file replies to comments filed in response to the *Notice of Proposed Rule Making* in this proceeding (53 FR 17082, 05/13/88). PRTC stated that an extension was necessary due to the large volume of material filed in the comments. The Commission concurs that an extension is desirable, but believes that an additional 30 days is excessive. The *Order*, therefore, grants a 15 day extension.

**DATE:** Reply comments are now due August 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Julius Knapp, telephone (202) 653-8108 or Rodney Small, telephone (202) 653-8116.

Federal Communications Commission.

Thomas P. Stanley,

*Chief Engineer*

[FR Doc. 88-18010 Filed 8-9-88; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Parts 2 and 80

[GEN Docket No. 88-372; FCC 88-246]

### Automated Maritime Telecommunications Systems (AMTS)

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** This document proposes to change rules applicable to Automated Maritime Telecommunications Systems (AMTS), an automated, integrated communications system for vessels to use as they move along an entire river system. The changes proposed are to treat all AMTS channels on an equal basis for purposes of ensuring against interference to television broadcasting, to expand the geographic area of the service to make it available nationwide, to delete a requirement that a system cover at least 60% of a waterway in favor of a more flexible approach and to license AMTS operators as systems including the users and to eliminate individual licenses for ship users. These proposals are intended to make AMTS available in more areas.

**DATES:** Comments are due on or before September 26, 1988. Reply comments are due on or before October 11, 1988.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Carol Fox Foelak, Private Radio Bureau, (202) 632-7197.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, GEN Docket No. 88-372 adopted July 20, 1988, and released August 4, 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., 140, Washington, DC., 20037.

#### Summary of Notice of Proposed Rule making

An AMTS provides automated voice and data communications for tugs and barges along an entire river system. The FCC established the AMTS in 1981 to serve the Mississippi River System. The FCC expanded it to the Gulf Intracoastal Waterway in 1982 and the Gulf of Mexico in 1984, but said then it was prudent to evaluate an operating system before extending AMTS nationwide.

The AMTS band (216–220 MHz) is adjacent to TV channel 13 (210–216 MHz) and the FCC has rules to forestall the possibility of interference to TV reception. Of the four AMTS channel Groups, A, B, C and D, the rules presently prohibit the use of Groups C and D, which are closer to channel 13 than Groups A and B, within 105 miles of a channel 13 station.

The FCC noted that an AMTS system had been operating for over a year on the Mississippi River and stated that it was time to explore the benefits of AMTS nationwide. It also proposed to treat the Group C and D channels on the same basis as the Group A and B channels, that is, to require that applicants design systems to avoid interference to TV and, should interference occur in spite of this precaution, to eliminate it or cease operating the offending station within 90 days. It also proposed to delete or change a requirement that an AMTS system cover 60% of a navigable waterway to permit greater flexibility in the design of systems to offer coverage over marine shipping routes.

Currently the FCC licenses the AMTS operator and the ship users individually. It proposed to license only the operator, as a system, and eliminate licensing the ship users individually. Thus a ship could begin service as soon as it had a service agreement with the AMTS licensee, without having to obtain an FCC license itself.

### Ordering Clauses

This is a non-restricted note and comment rule making proceeding. *See* § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for rules governing permisssible *ex parte* contacts.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rules make additional frequencies available to maritime users in the U.S. A negative impact is not expected for any entity. An increase in the communications services available to the maritime industry would result.

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

Authority for issuance of this notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 26, 1988 and reply comments on or before October 11, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

A copy of this Notice of Proposed Rule Making will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

### Proposed Rules

Parts 2 and 80 of Chapter I of Title 47 the the Code of Federal Regulations would be amended as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

**§ 2.106 [Amended]**

2. Section 2.106, the Table of Frequency Allocations, is amended by removing footnote NG 121 from column 5 of the 216–220 MHz band and by removing the text of the footnote at the end of the table, *§ 2.106 Table of Frequency Allocations*.

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

**§ 80.215 [Amended]**

2. Section 80.215(h) is amended by removing paragraph (h)(5) and renumbering the remaining paragraphs.

**§ 80.385 [Amended]**

3. Section 80.385(a) is amended by removing the second sentence in paragraph (a)(2).

**§ 80.475 [Amended]**

4. Section 80.475 is amended by removing paragraph (a) and the first two sentences of paragraph (b), and redesignating the current paragraphs (b) and (c) as new paragraphs (a) and (b), respectively.

**§ 80.29 [Amended]**

5. Section 80.29(a) is amended by adding one additional entry at the end of the table, as follows:

| Type of change | Required action |
|---|---|
| . . . . . | |
| Increased number of mobiles (AMTS). | Written notice to the Commission. |

**§ 80.1169 [Removed and Reserved]**

6. Section 80.1169 is removed and reserved.

7. A new § 80.54 is added as follows:

**§ 80.54 Automated Maritime Telecommunications System (AMTS)—System licensing.**

AMTS licensees will be issued blanket authority for a system of coast stations and mobile units (subscribers). AMTS applicants will specify the maximum number of mobile units to be placed in operation during the license period.

[FR Doc. 88–18008 Filed 8–9–88; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 88–367, RM–6221]**

## Radio Broadcasting Services; Selma, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Holder Communications Corp., licensee of Station WTUN(FM), Channel 261A, Selma, Alabama, seeking the substitution of Channel 261C2 for Channel 261A and modification of its license accordingly. Reference coordinates utilized for this proposal are those of the petitioner's presently licensed site at 32–26–02 and 87–00–40.

**DATES:** Comments must be filed on or before September 22, 1988, and reply comments on or before October 7, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John B. Kenkel, Esq., Kenkel, Barnard & Edmundson, 1220–19th St., NW., # 202, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–367, adopted June 29, 1988, and released August 1, 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 1.1204(b) 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. 88–18095 Filed 8–9–88; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 14

### Humane and Healthful Transport of Wild Mammals and Birds to the United States

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Fish and Wildlife Service announces its intention to propose amendments to the regulations governing the humane and healthful transport of wild mammals and birds to the United States (50 CFR 14.101–204). Details are provided of those provisions of the existing regulations believed to be in need of clarification or revision. All interested persons are invited to contribute recommendations to be incorporated into a proposed rule.

**DATE:** Comments on this notice will be accepted until September 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329, telephone (202) 343–4963.

**SUPPLEMENTARY INFORMATION:** In response to the Lacey Act Amendments of 1981, the Service proposed on December 4, 1985 (50 FR 49749) to adopt a rule governing the humane and healthful transportation of wild mammals and birds to the U.S. The proposal was based in large part on regulations (9 CFR Part 3) published by the Animal and Plant Health Inspection Service (APHIS) to implement the Animal Welfare Act (AWA) and the Live Animal Regulations of the International Air Transport Association (IATA).

The Service published a final rule on November 10, 1987 (52 FR 43278). After publication of the rule, the Service received additional comments from affected members of the public maintaining that some of its provisions were not clear, were unreasonable, or could actually result in inhumane shipment conditions. The rule was to have taken effect on February 8, 1988, but because of the substantial controversy surrounding it, the Service delayed the effective date until August 1, 1988.

In response to a lawsuit, however, a preliminary injunction order issued on April 18, 1988, by the United States District Court for the District of Columbia ruled that delay of the effective date was without good cause. Consequently, the rule published in November remains in force and is effective as of February 8, 1988, as required by the Court Order. A notice announcing implementation of the rule was published on April 27, 1988 (53 FR 15041), and a notice of the Service's enforcement policy for the regulations was published on May 23, 1988 (53 FR 18287).

The Service continues to believe that certain provisions of the rule as it now stands require clarification or revision and intends to propose such revisions as are found to be necessary as soon as possible. The Service is now gathering information from all available sources to identify any needed clarifications or amendments. As an aid in this process, an analysis is presented below of issues that have been raised concerning the rule in light of the comments received. The analysis is presented in the order of the numbered paragraphs of the final rule. For each issue identified, the analysis indicates provisions of the proposed and final rules touching on it, summarizes remaining concerns, and provides a potential approach to resolutions.

Authority: Pub. L. 97–79 (95 Stat. 1073).

**Preliminary Analysis of Issues**

*Section 14.102 Definitions.*

Carrier

*Proposed rule*: " * * * any person . . . transporting wild animals or birds for hire."

*Final rule*: " * * * for hire, commercial purposes, or for exhibition."

*Remaining concern*: In response to the proposal, a circus representative requested exemption for circuses that already comply with rules applying to interstate transport adopted under the Animal Welfare Act (AWA); without explanation, the final rule appears to have definitely included circuses. The circus argues that it is already subject to AWA rules and that some requirements of the new rule, e.g. that elephants be maintained in individual enclosures, are inappropriate for circus animals.

*Potential approach*: Examine rules implementing AWA an ensure consistency of provisions so that shippers are not subject to contradictory standards under the two sets of requirements.

Injured

*Proposed rule*: Undefined.

*Final Rule*: Undefined.

*Remaining concern*: Because the rule specifies special certification for transport of injured animals, one respondent requested that the term be defined.

*Potential approach*: Explain in preamble or develop a definition.

Normal Rigors of Transportation

*Proposed rule:* Undefined, but animals must be certified able to withstand such rigors.

*Final rule:* "Established level or pattern of well-being as affected by the stress of transportation."

*Remaining concern:* Definition is unclear.

*Potential approach:* Clarify definition.

Noxious Machinery

*Proposed rule:* Not defined or addressed.

*Final rule:* Not defined, but animals are required to be protected from harassment by noxious machinery.

*Remaining concern:* Respondents are concerned that they will be cited for violation of a vague standard.

*Potential approach:* Either decide what constitutes noxious machinery and define it, or delete the word "noxious" and simply prohibit harassment by machinery. In the latter case, consider defining or otherwise explaining the meaning of "harassment."

Obvious Distress

*Proposed rule:* Not defined, but the carrier is required to observe whether animals are in "obvious distress."

*Final rule:* Similar requirements; information describing obvious signs of distress required to be attached to enclosure.

*Remaining concern:* Respondents maintain that signs of distress may not be obvious, particularly to untrained airline personnel.

*Potential approach:* Make clear by explaining in the preamble that description of signs of distress is required only to the extent that they are obvious and well known.

Physical Trauma

*Proposed rule:* Carrier is required to exercise care to avoid handling animals in such a manner as to cause physical trauma.

*Final rule:* Unchanged.

*Remaining concern:* Respondent requests a definition.

*Potential approach.* Retain the provision as is; "physical trauma" has a clear enough meaning not to need a definition, and the requirement is only that care be exercised, not that all trauma be avoided.

Primary Conveyance

*Proposed rule:* Sets requirements for conditions in a primary conveyance, defined as "* * * instrumentality for the main method of transportation * * *"

*Final rule:* Unchanged.

*Remaining concern.* Respondents question which is the primary conveyance when, e.g. cargo travels 200 miles in 8 hours by truck, and then 2000 miles in 5 hours by airplane.

*Potential approach:* Explain in preamble that intention is to include any conveyance along the journey that moves cargo for a significant distance, so that there may be several "primary conveyances" employed in the course of a given shipment. Also consider modifying the definition to make it clearer.

Psychological Trauma

*Proposed rule:* Required carrier to exercise care to avoid causing emotional trauma.

*Final rule:* Substituted "psychological" for "emotional" and defined psychological trauma as "* * * an episode that creates substantial and lasting damage to the behavioral development of an individual." Required in § 14.109(d) that care be exercised to avoid handling a primary enclosure in such a manner as to cause psychological trauma to animals. Required in § 14.112 that carriers not permit animals to be subjected to psychological trauma during transit.

*Remaining concern:* Respondents indicate that the definition is too vague and subjective to be enforced.

*Potential approach:* Retain provision in § 14.109 (d), where the meaning of the provision is clear in context. Delete the requirement from § 14.112, where it is vague. Also consider rewording the definition to make it clearer.

Sufficient Air

*Proposed rule:* Does not define, but requires that animals be provided sufficient air for normal breathing.

*Final rule:* Essentially unchanged.

*Remaining concern:* Respondent requests a definition of the term.

*Potential approach:* Explain in the preamble that sufficiency will be determined empirically, i.e. if animals show evidence of respiratory stress or suffocation, air was not sufficient. Continue to require shippers and carriers to ensure ventilation sufficient to prevent respiratory distress or suffocation, since lack of ventilation is probably the greatest cause of mortality in wildlife shipments.

Wildlife/Wild Animal

*Proposed rule:* Contains no definition, but provides a partial explanation in its preamble.

*Final rule:* Preamble notes a comment requesting a definition and refers readers to 50 CFR 10.12, which defines "wildlife" but not "wild animal."

*Remaining concern:* Respondents continue to request a definition.

*Potential approach:* Provide a clear definition.

*Section 14.104*

Requirement for English Translations

*Proposed rule:* Provided that any required certificate in a foreign language be accompanied by an English translation.

*Final rule:* Essentially unchanged.

*Remaining concern:* A representative of the pet industry requests that a requirement similar to that in 9 CFR 92.2(c)(3)(i) be substituted; i e that translation be provided at the importer's expense, but that it not necessarily accompany the shipment.

*Potential approach:* Continue to require that English translation of documents needed to perform inspection accompany shipment. Consider specifying what would constitute minimum adequate documentation.

*Section 14.105*

Veterinarian's Certificate

*Proposed rule:* Required inspection by a "salaried veterinary officer" from the government of the country of origin.

*Final rule:* Required examination by a "qualified veterinarian" authorized by the government of the country of origin.

*Remaining concern:* Carriers believe themselves unable to guarantee the qualifications of an examining veterinarian.

*Potential approach:* Require that a veterinarian be officially certified by the country of origin; explain in the preamble that verification of such certification by the carrier is all that is required and that carriers will not be expected to judge competence.

*Section 14.105(b)*

Attendants for Sick or Injured Animals

*Proposed rule:* No provisions.

*Final rule:* Required that a sick or injured animal be accompanied by an attendant.

*Remaining concern:* A representative of the pet industry maintains that injured animals can be safely shipped without attendants.

*Potential approach.* Maintain present requirement, inasmuch as the rule is only intended to allow import for medical treatment, or allow transport without an attendant when one is certified not to be necessary by the inspecting veterinarian.

*Section 14.105(c)*

Time of Tender

*Proposed rule:* Required that animals be delivered to carrier no more than 6 hours before scheduled departure in order to reduce overall length of time in transit and consequently reduce stress.

*Final rule.* Required that animals be delivered not less than 6, but not more than 10, hours before scheduled departure; presented the new arrangement as an attempt to increase the flexibility of the requirement.

*Remaining concern:* While the proposed rule set an upper limit on the time an animal could spend in a holding facility, the final version sets both upper and lower limits. The lower limit is widely perceived as far too long to be humane or even practical. Comments maintain that 2 hours before departure is a customary and reasonable standard

for consignment to a carrier. The 6-hour minimum time limit also severely limits the ability to ship at optimum times of day (especially early in the morning, an ideal time in tropical areas), since holding facilities may not be open overnight. If more than one carrier is involved, problems of connections arise, and overall transport time may become unreasonably long.

*Potential approach:* Consider making the upper limit longer than the originally proposed 6 hours (e.g. 8 hours) if necessary to increase flexibility. Eliminate the lower limit entirely or reduce it to sufficient time (e.g. 1–2 hours) to ensure that shipments are not rushed through terminals without an opportunity for the shipper to pass along instructions, etc. Also consider allowing exceptions to upper limit where appropriate holding facilities are available.

*Section 14.106(a)(6)*

Size of Spacer Bars on Enclosures

*Proposed rule:* Required spacer bars 1.9 or 2.5 cm (¾ or 1 inch) wide on outside of primary enclosures.

*Final rule:* Required that a spacer bar be "* * * 10% of the longest dimension of the wall * * * to which it is attached." and that bars "* * * increase proportionally with the increase in number of animals * * *" when more than one animal is placed within an enclosure.

*Remaining concern:* The requirement for proportionality to the number of animals results in impracticably large and destabilizing spacer bars on enclosures containing more than a few animals.

*Potential approach:* Retain a version of the percentage formula with upper and lower dimension limits. Delete the proportionality requirement, but continue to require increased spacer size within an upper limit where several animals are contained within an enclosure.

*Section 14.106(c)*

Cage Paper for Birds

*Proposed rule:* Required that enclosures for birds contain absorbent litter.

*Final rule:* Responding to comments that litter would pose a danger to birds, required instead a lining of "unsoiled paper."

*Remaining concern:* No need has been stated for paper lining. Birds such as macaws would probably shred paper if it were provided.

*Potential approach:* Consider deleting the requirement, or modifying it to specify that a lining of non-dispersible absorbent material be provided.

*Section 14.106(e)*

Marking of Primary Enclosures

*Proposed rule:* Required markings in lettering 2.5 cm (1 inch) high to indicate that the enclosure contains animals and which side is the top.

*Final rule:* Essentially unchanged.

*Remaining concern:* Shippers complain that lettering size is too large and may not fit on some enclosures. More serious is the indication that the required marking is inconsistent with existing international standards, and that writing "this side up" on the side of an enclosure, as required by the rule, could result in its being stowed on its side.

*Potential approach:* Retain the lettering size, which appears reasonable to assure legibility; adopt international marking standards to indicate orientation of enclosure.

*Section 14.106(f)*

Attachment of Documents to Crates

*Proposed rule:* Required shipping documents to be attached to the outside of a primary enclosure.

*Final rule:* Specified that *copies* of shipping documents be attached to the enclosure.

*Remaining concern:* Shippers and carriers indicate that documents are increasingly being transferred electronically, rendering this requirement impractical. A question has been raised concerning how the requirement contributes to the goal of the regulations.

*Potential approach:* Examine the need for attaching copies of shipping documents; consider requiring only copies of documents of importance to assure humane and healthful shipment, such as those indicating names and addresses of consignor and consignee, species of animals, and date shipment originated.

*Section 14.106(g)*

Requirement That Birds Be Provided a Food Container

*Proposed rule:* Required that a flange-sided food trough be provided in a primary enclosure for birds.

*Final rule:* Essentially unchanged.

*Remaining concern:* Comments indicate that, for some species, seed scattered on the bottom of the enclosure may be more appropriate.

*Potential approach:* Consider allowing seed to be scattered on the bottom of the enclosure when shown to be appropriate for a given species.

Wood Float in Water Trough

*Proposed rule:* Required a flange-sided water trough in enclosure with birds.

*Final rule:* Responding to comments that open water troughs would pose a danger of wetting or drowning for birds adopted an IATA recommendation that a perforated wooden plate be floated in the trough.

*Remaining concern:* Respondents maintain that birds' beaks can become lodged in the perforations or between the float and the side of the trough, causing suffocation or drowning.

*Potential approach:* Several alternatives are available, such as allowing a foam or sponge insert in the trough.

*Section 14.107(d)*

Stowage for Easy Removal

*Proposed rule:* Required that enclosures be stowed so that animals are easily removable in case of emergency.

*Final rule:* Required that *enclosures be easily removable.*

*Remaining concern:* Shippers and carriers maintain that this requirement unreasonably constrains the need to stow cargo so that an airplane is balanced, etc. The requirement also appears to be contrary to the "first-on, last-off" requirement in § 14.109(g).

*Potential approach.* Review the need for such a requirement in light of the considerations advanced by carriers.

*Section 14.108(b)*

Potable Water

*Proposed rule:* Requires that animals be provided potable water.

*Final rule:* Essentially unchanged.

*Remaining concern:* Respondents advise that "potable" has an accepted meaning pertaining to suitability for human consumption that may be inconsistent with the needs of some animals.

*Potential approach:* Consider replacing "potable" with another appropriate term, such as "suitable for drinking." Explain in the preamble that water is to be clean and free of toxic substances or disease-causing organisims.

*Section 14.108(e)*

USDA Restrictions on Import of Fresh Food

*Proposed rule:* Required the carrier to follow instructions provided by the shipper as to feeding during shipment.

*Final rule:* Required the shipper to provide food to accompany the shipment.

*Remaining concern:* U.S. Department of Agriculture (USDA) regulations require that food accompanying a shipment entering the U.S. be removed from the enclosure and destroyed.

*Potential approach:* Consider the need to ensure that food is replaced for any subsequent shipment within the U.S.

*Section 14.109(a)*

Observation Every 4 Hours

*Proposed rule:* Required that carrier inspect animals at least every 4 hours while in transit if they are in an accessible cargo area.

*Final rule:* Essentially unchanged.

*Remaining concern:* The benefit of having inexperienced cargo handlers inspect shipments of live animals has been strongly challenged. Comments maintain that any inspection by untrained personnel would be more likely to cause stress to animals than to do any good. The requirement could also lead to otherwise unnecessary unloading for inspection and lengthen transit time.

*Potential approach:* Continue to require inspection every 4 hours when cargo is accessible, but specify that inspection is to extend only to verification of acceptable temperature, integrity of enclosures, and adequacy of ventilation (i.e. Has the load shifted in such a way as to block vents?). Explain in the preamble that carrier personnel are not expected or encouraged to peer into enclosures, and that enclosures are not to be off-loaded at intermediate stops for purposes of inspection.

*Section 14.109(c)*

Pressurization Requirement

*Proposed rule:* Contained no requirement for cargo area pressurization.

*Final rule:* Requires, without explanation in preamble, that carrier maintain pressure equivalent to a maximum altitude of 8000 feet in cargo space.

*Remaining concern:* Respondents advise that aircraft cargo holds may not be pressurized and that some animals may be comfortable at pressures equivalent to higher altitudes. At any rate, a substantive new requirement was added without explanation or an opportunity for comment.

*Potential approach:* Consider changing prescribed altitude equivalence limit, considering pressurization implicit in the requirement for adequate ventilation, or allowing exceptions to the limit for animals that would not be harmed by lower pressure.

*Section 14.109(f)*

Prohibition Against Olfactory Contact

*Proposed rule:* No provision.

*Final rule:* Required that incompatible animals be maintained so that they are not in olfacory contact.

*Remaining concern:* Olfactory abilities for many animals may be difficult to determine and thus the requirement may be unenforceable.

*Potential approach:* Delete the requirement, or retain it only for instances where it is enforceable.

*Section 14.109(g)*

First-on, Last-off Loading

*Proposed rule:* No provision in proposal.

*Final rule:* "Unless prevented by normal aircraft loading procedures * * *" animals must be first loaded and last unloaded cargo, to reduce stress from unloading at intermediate stops.

*Remaining concern:* Shippers generally recommend exactly the reverse in order to reduce amount of time animals spend in cargo holds and to avoid the possibility of animal crates being crushed or stifled by later-loaded cargo. In any event, the requirement is easily circumvented by development of "aircraft loading procedures."

*Potential approach:* Delete the requirement; encourage minimizing intermediate off-loading by other means.

*Section 14.112*

Burden of Proof for "Harm"

*Proposed rule:* No provision.

*Final rule:* Required that a carrier not permit animals to be harmed physically or psychologically by exposure to inappropriate conditions. This provision was designed to encourage use of automatic monitoring devices.

*Remaining concern:* Shippers and carriers express uncertainty regarding the extent of their liability. The rule allows evidence of adherence to temperature, pressure, and ventilation standards to satisfy the requirement. However, monitoring equipment attached to the hull of an airplane requires Federal Aviation Administration certification, and personal monitoring of a cargo hold may not be possible. In addition, it is unclear how one might demonstrate compliance with the standard for adequate ventilation by reference to a monitoring device.

*Potential approach:* Determine the feasibility of monitoring conditions in transit.

*Section 14.121(b)*

Tuberculosis Test

*Proposed rule:* No requirement.

*Final rule:* Without explanation in preamble, requires a negative tuberculosis test for import of any old-world primate.

*Remaining concern:* It is not clear that such a test has any relation to the primary purposes of the rule; it is also a substantive provision added to the final rule without an opportunity for public comment. Respondents maintain that the rate of "false positives" and "false negatives" for this test is high and that testing before shipment may interfere with post-shipment testing that is now routine.

*Potential approach:* Delete the requirement unless its usefulness and necessity can be supported.

*Sections 14.122(a), 14.142(b), 14.152(c), 14.172(b)*

Number of Primates, Ungulates, Small Mammals, or Bats Allowed Per Primary Enclosure

*Proposed rule:* Provided density guidelines for small mammals, but these only applied to rodents; other groups were generally limited to one per enclosure, with exceptions for mated or habituated pairs and mothers with young.

*Final rule:* Revised the density guidelines, but still applied them only to rodents; essentially maintained the other limits, but allowed a mother with young to be transported only for medical reasons.

*Remaining concern:* Comments maintain that certain small mammals, including smaller ungulates, primates, and bats, may be safely transported in groups of more than two, and that transport in groups may even have a calming effect for some species.

*Potential approach:* Consider the reasonableness of allowing greater numbers of certain kinds of animals per enclosure when this would contribute to more humane conditions.

*Section 14.124 (b)*

Separation of Primates in Conveyance

*Proposed rule:* Required that care be taken to keep primate species separate in primary conveyance in order to minimize the risk of spreading disease from one species to another.

*Final rule:* Unchanged.

*Remaining concern:* A comment maintains that the requirement is

unnecessarily restrictive, and that there is no evidence of spread of disease between species in cargo hold.

*Potential approach:* Consider necessity for retaining this provision in light of behavioral characteristics of primates and susceptibility to cross-species infection.

*Section 14.133(a)*

Frequency of Feeding for Marine Mammals

*Proposed rule:* Required that marine mammals not be transported for more than 36 hours without being fed.

*Final rule:* Unchanged.

*Remaining concern:* A comment indicates that pinnipeds are adapted to fasting for much longer periods, and that the presence of spoiled food may pose a greater danger than does the lack of feeding.

*Potential approach:* Retain provisions inasmuch as an attendant is required to accompany such shipments and would be able to remove spoiled food.

*Section 14.142(e)*

Required Water Tray for Ungulates

*Proposed rule:* No provision.

*Final rule:* Required that the primary enclosure of an ungulate have a water trough that may be "* * * slipped into the crate through a shallow trap door." and "* * * securely hung on the outside of the * * * enclosure * * *"

*Remaining concern:* This is a potentially significant change that is unexplained in the preamble and difficult to interpret. One comment indicates that such a trough arrangement would be hazardous to the animal in the enclosure.

*Potential approach:* Re-evaluate the need for this provision; consider clarifying or amending, so that trough would not be on floor of enclosure and hazardous to the animal.

*Section 14.143*

Common Temperature Requirements for Elephants and Ungulates

*Proposed rule:* Grouped elephants with ungulates for purposes of setting temperature standards.

*Final rule:* Unchanged.

*Remaining concern:* One comment indicates that it is inappropriate to apply common temperature requirements to elephants and ungulates, because the former have efficient thermoregulation by means of their ears, and the latter are notoriously prone to overheating.

*Potential approach:* Consider separating standards for elephants from those of ungulates.

*Section 14.182(b)*

Requirement for Perches

*Proposed rule:* Required that perches be provided for birds that rest by perching.

*Final rule:* No change.

*Remaining concern:* Comments indicate that birds are often shipped in enclosures without perches, that this is safe, and that perches may pose a danger of injury. Nevertheless, IATA regulations also require perches.

*Potential approach:* Determine whether requirement for perches should be modified.

*Sections 14.182(c), 14.192(c)*

Sufficient Space for Birds to Stretch Wings

*Proposed rule:* Required that enclosures for parrots, pigeons, and passerines be large enough so that birds can perch and spread wings without touching neighbors and turn around on perches. Enclosures for raptors were required to be large enough for them to turn around on perches, but not fully extend wings.

*Final rule:* Required that perching birds be allowed sufficient room to "* * * stretch each wing [unclear what this means] without contact with another bird," but not to fly. Raptors are required to have sufficient room to stretch wings without injury.

*Remaining concern:* The final rule is ambiguous and possibly contradictory, in that some birds will fly if given sufficient room to stretch their wings. In addition, comments point out that birds may travel more safely if restricted to more confining enclosures.

*Potential approach:* Clarify the ambiguous or contradictory language; consider adopting IATA standards, which require sufficient room for all birds to perch simultaneously and for raptors to turn around, but not stretch wings fully; or develop another approach to ensuring adequate space within enclosures.

*Section 14.182(e)*

Prohibition Against Mixing Species of Birds

*Proposed rule:* Prohibited more than one species of bird being transported in the same primary enclosure.

*Final rule:* Essentially unchanged.

*Remaining concern:* Respondents maintain that certain bird species may be safely shipped in mixed groups.

*Potential approach:* Retain provision unless a list of species compatible with one another can be developed.

**Additional Issues**

In addition to those discussed above, the following issues that are not conveniently referable to specific paragraphs of the rule have been raised in comments received or in the course of the Service's analysis:

Allocable Temperature Ranges

*Proposed rule:* Temperature standards for mammals were adapted from regulations implementing the Animal Welfare Act (9 CFR Subchapter A) standards for birds were developed in consultation with APHIS and aviculturists.

*Final rule:* Allowable temperatures were generally lowered by 5°-15° F (2.8° -8.4° c).

*Remaining concern:* Adherence to the temperature requirements of the final rule could effectively prohibit exportation from certain tropical areas for much of the year without a clearly demonstrated need to do so. In addition, the allowable temperature ranges for some animals (e.g. elephants) may be well below those to which the animals are normally accustomed, and may actually pose a threat of hypothermia in some cases.

*Potential approach:* Solicit expert advice and consult sources to develop appropriate temperature ranges.

Need for Restraints for Some Birds

*Proposed rule:* Not addressed.

*Final rule:* Not addressed.

*Remaining concern:* Comments indicate that it is common practice to ship some birds, e.g. flamingos, with their wings wrapped in cloth to prevent injury.

*Potential approach:* Explicitly incorporate IATA standards, which already provide for this practice.

Codification

*Proposed rule:* Established separate sets of regulations for each group of animals.

*Final rule:* Gathered common requirements for all groups in one place, then provided more specific specifications for each group. Within each set of specifications, it required compliance as well with the general provisions, but located this requirement within a numbered paragraph titled "Consignment to carrier for transport."

*Remaining concern:* The location of the requirement to comply with the general provisions renders it ambiguous and possibly unenforceable.

*Potential approach:* Relocate the requirement in its own paragraph with a title such as "Other applicable provisions."

In formulating a proposal to amend its regulations, the Service welcomes comments and recommendations concerning the issues identified above. The Service will also directly contact persons with technical qualifications in animal care, veterinary science, and transportation to contribute to proposed amendments. Information is particularly sought concerning provisions in need of amendment that may have been overlooked in the preliminary analysis or potential approaches to resolving issues that appear to be inappropriate.

### Author

The principal author of this notice is Dr. John J. Fay, Division of Endangered Species and Habitat Conservation, 500 Broyhill, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone 703/235–1975.

Date: July 20, 1988.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88–17781 Filed 8–9–88; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600, 601, 604, and 605

**[Docket No. 80225–8025]**

### Style Guide, Regional Fishery Management Councils, Other Applicable Law, Guidelines for Council Operations and Administration

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Secretary of Commerce extends from August 9, 1988, to September 1, 1988, the comment period for the proposed rule, published at 53 FR 21863, June 10, 1988, revising regulations and guidelines concerning the operation of Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

This extension of the comment period is to allow time for the Councils to complete the review and summary of individual and consensus positions discussed at the Council Chairmen's meeting held at Homer, Alaska on July 29–30, 1988. All public comments received by Sepetmber 1, 1988 will be considered.

**DATE:** Public comment period extended from August 9, 1988, to September 1, 1988.

**ADDRESS:** Send comments to Richard H. Schaefer, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Schaefer, telephone (202) 673–5263.

**SUPPLEMENTARY INFORMATION:** Section 302(f)(6) of the Magnuson Act requires each Council to determine its organization, and prescribe its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary of Commerce. The proposed rule includes the uniform standards governing the operations of the Councils, implements parts of Title I of Pub. L. 99–659 which amends the Magnuson Act, clarifies instructions of the Secretary of Commerce on other statutory and regulatory requirements affecting the Councils, and adjusts the fishery management planning and development procedures in line with recommendations of two fishery management studies commissioned by NOAA in 1985 and 1986.

Section 302(k) of the Magnuson Act requires the disclosure by Council nominees, appointees, voting members, and Executive Directors of certain financial interests, and that these disclosures be made in accordance with such procedures, and at such times, as the Secretary prescribes by regulation. Section 601.37 of this proposed rule addresses these financial disclosure requirements and will therefore be published as an interim final rule without regard to this extension of the comment period to permit the filing of such required disclosures as soon as possible. However, comments will continue to be accepted on § 601.37 until September 1.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 5, 1988.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 88–18076 Filed 8–5–88; 4:36 pm]

BILLING CODE 3510–22–M

# Notices

Federal Register
Vol. 53, No. 154
Wednesday, August 10, 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

August 5, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contract person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Extension**

• Agriculture Marketing Service
Tobacco Reports
TB–26 & TB–39
Quarterly
Business or other for-profit; Small businesses or organizations; 700 responses; 650 hours
Larry L. Crabtree (202) 447–3489

• National Agricultural Statistics Service
Sugar Market Statistics
Quarterly
Businesses or other for-profit; 312 responses; 314 hours
Larry Gambrell (202) 447–7737

• Agricultural Marketing Service
Almonds Grown in California: Marketing Order 981
Almond Board of California forms
Recordkeeping; On occasion; Monthly; Other: Semi-monthly
Businesses or other for-profit; 5662 responses; 4951 hours
Virginia M. Olson (202) 447–5057

• Agricultural Marketing Service
Walnuts Grown in California Marketing Order No. 984
Recordkeeping; On occasion; Monthly; Annually
Businesses or other for-profit; 29,821 responses; 62,418 hours
Virginia Olson (202) 447–5057

**Revision**

• Food and Nutrition Service
Affidavit of Returned or Exchange of Food Coupons
Form FNS–135
Recordkeeping; On occasion
State or local governments; 63,626 responses; 17,408 hours
Paul Jones (703) 756–3385

• Agricultural Marketing Service
Navel Oranges Grown in Arizona and Designated Part of California—Marketing Order No. 907
Recordkeeping; On occasion; Weekly; Annually; Biennially
Farms: Businesses or other for-profit; Small businesses or organizations; 174,376 responses; 22,533 hours
Virginia M. Olson (202) 447–5057

**Reinstatement**

Economic Research Service
Cost of Producing Sugarcane and Processing Sugarcane and Sugarbeets
Other: Every 4 to 6 years
Farms; Small businesses or organizations; 92 responses; 92 hours
Luigi Angelo (202) 786–1889

**Donald E. Hulcher,**
*Acting Departmental Clearance Officer.*

[FR Doc. 88–18091 Filed 8–9–88; 8:45 am]
BILLING CODE 3410–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments; Carnegie-Mellon University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

*Docket Number:* 88–048R. *Applicant:* Carnegie-Mellon University, Mellon Institute, 4400 Fifth Avenue, Pittsburgh, PA 15213. *Instrument:* Crystal Growth Furnace. *Manufacturer:* Crystalox, Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of January 22, 1988.

*Docket Number:* 88–121R. *Applicant:* Marine Science Program, University of North Carolina, CB 3300 12–5 Venable Hall, Chapel Hill, NC 27599. *Instrument:* Five Radon Gas Detectors, Model PMT–TEL. *Manufacturer:* Pylon Electronics, Canada. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

*Docket Number:* 88–223. *Applicant:* University of Delaware, Newark, DE 19716. *Instrument:* Electron Microscope with Accessories, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used to investigate structural parameters of permeability in the wall of blood capillaries. Of particular

importance is the vesicular system in the endothelial cells comprising the capillary wall. In addition, the instrument will be used in a graduate level laboratory course entitled "Techniques in Electron Microscopy" (B617) and an undergraduate level course (B 471) in a B.S. program in Biotechnology. The objectives of these courses are training students in the preparation of biological specimens for transmission and scanning electron microscopy, recording of electron images and interpretation of ultrastructural features. *Application Received by Commissioner of Customs:* July 18, 1988.

*Docket Number:* 88–224. *Applicant:* Beth Israel Hospital, 330 Brookline Ave., Boston, MA 02215. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* Study of the ultrastructural features of human and experimental animal tissues in a variety of research projects including but not limited to the following:

1. Basophil/mast cell function,
2. Role of mast cells in inflammation and immunity,
3. Biology of solid tumor growth,
4. Human eosinophils—mechanisms of function in allergy,
5. Structure-function relationships in the alimentary tract,
6. Cytoplasmic lipid bodies of inflammatory cells,
7. Pathogenesis of tumor stroma generation,
8. Biochemical relationships of basophils and eosinophils,
9. Pathogenesis of ileal pouch inflammation and,
10. Regulation and significance of mast cell heterogeneity.

*Application Received by Commissioner of Customs:* July 18, 1988.

*Docket Number:* 88–225. *Applicant:* National Bureau of Standards, B/306 Metrology Bldg., Gaithersburg, MD 20899. *Instrument:* FTI Spectrophotometer System, Model DA3.16. *Manufacturer:* BOMEM, Inc., Canada. *Intended Use:* Study of the scattering in reflection properties of materials for NBS and the United States Air Force. *Application Received by Commissioner of Customs:* July 19, 1988.

*Docket Number:* 88–227. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Gas Isotope Ratio Mass Spectrometer. *Manufacturer:* CJS Sciences, Ltd., U.K. *Intended Use:* This instrument will be used to make high precision (0.0025) measurements of $^{2}H/^{1}H$, $^{13}C/^{12}C$, $^{15}N/^{14}N$, $^{18}O/^{16}O$, and $^{34}S/^{32}S$ ratios in natural organic and inorganic materials in order to study the movement of energy, water, and nutrients through rangeland ecosystems. The materials to be analyzed in these studies include plant tissues (e.g. leaves, stems, roots), animal tissues and excreta, soil organic carbon and carbonates, inorganic and organic soil nitrogen compounds, environmental water (from plant and animal tissues, soils, rainfall, rivers and lakes), and organic and inorganic sulfur compounds present in soils and plants. *Application Received by Commissioner of Customs:* July 19, 1988.

*Docket Number:* 88–228. *Applicant:* University of Kentucky, Sanders-Brown Center on Aging, 101 Sanders-Brown Bldg., 800 S. Limestone, Lexington, KY 40536–0230. *Instrument:* Electron Microscope with Accessories, Model EM 902PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used to study the brains from patients with Alzheimer's disease and other central nervous system degenerative diseases. In addition, it will be used to study aging in other human tissues and tissues from experimental animals. The materials to be investigated will be autopsied neocortex, hippocampus, amygdala or peripheral nerves and biopsied nercortex or peripheral nerves. The overall major objective of the investigations is to define the alterations in the nervous system with aging. *Application Received by Commissioner of Customs:* July 19, 1988.

*Docket Number:* 88–229. *Applicant:* University of Virginia, Department of Pathology, Box 214, Medical Center, Charlottesville, VA 22908. *Instrument:* Electron Microscope with Accessories, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for studies of plasma membranes of mammalian cells and artificially constructed cell membranes. These studies will include investigation of the organization of glycosphinogolipid in liposomal systems and plasma membranes. In addition, the instrument will be used in graduate training in Pathology and Cell Biology. *Application Received by Commissioner of Customs:* July 19, 1988.

*Docket Number:* 88–230. *Applicant:* University of Kentucky, Department of Anatomy and Neurobiology, MS209 Medical Center, 800 Rose Street, Lexington, KY 40536–0084. *Instrument:* Electron Microscope, Model H–700–3T. *Manufacturer:* Hitachi Scientific, Japan. *Intended Use:* The instrument will be used to investigate the mechanisms that the central nervous system utilizes to control the cardiovascular and respiratory systems, the aging process of the brain, the effects of cigarette smoking on the lungs, the localization of hormones in the brain, and the permeability of the blood vessels in the brain that have no blood brain barrier. The experiments are centered around the morphological basis for functional phenomena. In addition, the instrument will be used in the course Anatomy 662 Ultrastructural Anatomy which is intended to acquaint the student with the theory and techniques of electron microscopy using both the transmission electron microscope and the scanning electron microscope. *Application Received by Commissioner of Customs:* July 20, 1988.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88–18017 Filed 8–9–88; 8:45 am]

BILLING CODE 3510–DS–M

## Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Department of Energy et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Decision:* Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

*Reasons:* Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

*Docket Number:* 88–309. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, Argonne, IL 60439–4812. *Instrument:* Stopped-Flow Spectrophotometer, Model SU–40A. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Denial Without Prejudice to Resubmission:* February 19, 1988.

*Docket Number:* 87–227. *Applicant:* American Red Cross, Detroit, MI 48232. *Instrument:* Rapid Kinetic Accessory, SFA–11. *Manufacturer:* Hi-Tech, United Kingdom. *Denial Without Prejudice to Resubmission:* May 12, 1988.

*Docket Number:* 87–253. *Applicant:* Boston University, Boston, MA 02215. *Instrument:* Rapid Kinetics Accessory, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Denial*

*Without Prejudice to Resubmission:* May 12, 1988.

*Docket Number:* 87–278. *Applicant:* George Mason University, Fairfax, VA 22030. *Instrument:* Rapid Kinetics Accessory for UV/Vis Spectrophotometer, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Denial Without Prejudice to Resubmission:* May 12, 1988.

*Docket Number:* 88–047. *Applicant:* Florida State University, Talahassee, FL 32308. *Instrument:* Arc Melter. *Manufacturer:* Edmund Buhler, West Germany. *Denial Without Prejudice to Resubmission:* May 3, 1988.

*Docket Number:* 88–079. *Applicant:* Northwestern University, Evanston, IL 60208. *Instrument:* Stopped-Flow Apparatus, Model SF 1A. *Manufacturer:* Tri-Tech Dynamic Instruments, Canada. *Denial Without Prejudice to Resubmission:* May 3, 1988.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 88–18018 Filed 8–9–88; 8:45 am]

BILLING CODE 3510–DS–M

## National Technical Information Service

### Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pan-Data Systems, Inc, having a place of business in Rockville, MD, an exclusive right in the United States and certain foreign countries under the rights of the United States of America to manufacture, use, and sell products embodied in the invention entitled "Virus Isolation and Viral Production of HBLV", U.S. Patent Application 6–901,602. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 88–18114 Filed 8–9–88; 8:45 am]

BILLING CODE 3510–04–M

### Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Toyo Cloth Company, Ltd., having a place of business at Osaka, Japan, an exclusive right in Japan to practice the invention embodied in International Application Number PCT/US87/01472, "Temperature Adaptable Textile Fibers and Method of Preparing Same"; provided, however, such right shall not exclude companies domiciled in the United States. The patent rights in this intervention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 88–18115 Filed 8–9–88; 8:45 am]

BILLING CODE 3510–04–M

### Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Sterling International Inc., having a place of business in Veradale, Washington, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,600,581, "Synthetic Pheromones for the Spined Soldier Bug." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS, receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 88–18036 Filed 8–9–88; 8:45 am]

BILLING CODE 3510–04–M

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Mercantile Exchange Proposed Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contract.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Morgan Stanley Capital International EAFE (Europe, Australia and Far East) stock index. The Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

**DATE:** Comments must be received on or before August 25, 1988.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME EAFE Stock Index futures contract.

**FOR FURTHER INFORMATION CONTACT:** Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

**SUPPLEMENTARY INFORMATION:** On September 11, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the EAFE Stock Index futures contract (51 FR 34404). On January 4, March 25, and May 27, 1988, the Commission republished in the **Federal Register**, for 30-day, 15-day and 15-day comment periods, respectively, notices of availability of this contract's proposed terms and conditions (53 FR 64, 53 FR 9798 and 53 FR 19322). In an August 2, 1988 letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 5, 1988.

**Paula A. Tosini,**

*Director, Division of Economic Analysis.*

[FR Doc. 88–18071 Filed 8–9–88; 8:45 am]

**BILLING CODE 6351–01–M**

## Citrus Associates of the New York Cotton Exchange; Proposed Amendments Relating to the Frozen Concentrated Orange Juice Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed contract market rule changes.

**SUMMARY:** The Citrus Associates of the New York Cotton Exchange ("CANYCE" or "Exchange") has submitted a proposal to amend its frozen concentrated orange juice ("FCOJ") futures contract. The proposed amendments will provide that Exchange-licensed tank storage facility operators must load-out FCOJ against all shipping certificates tendered by their holders no later than 40 business days after the date of demand. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

**DATE:** Comments must be received on or before September 9, 1988.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to the CANYCE FCOJ futures contract.

**FOR FURTHER INFORMATION CONTACT:** Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission 2033 K Street, NW., Washington, DC 20581 (202) 254–7303.

**SUPPLEMENTARY INFORMATION:**

The FCOJ contract's current rules mandate that operators of Exchange-licensed tank facilities must load-out FCOJ promptly upon demand by a holder of a single shipping certificate within a reasonable period following such demand in accordance with industry practice, but not later than 10 calendar days from the date of demand. The current terms of the contract also provide that if the holder of a certificate holds other such certificates issued by the same facility and demands the load-out of FCOJ against more than one certificate on the same date, the tank storage facility operator is required to execute delivery within a reasonable period in accordance with industry practice. Currently, the contract's rules do not specify a precise period of time within which FCOJ must be loaded-out in cases where a shipping certificate holder demands load-out against more than one certificate on the same date.

Under the proposed amendments, a tank storage facility operator making delivery of FCOJ to a holder of one or more certificates would be required to load-out the FCOJ for shipment commencing no later than 10 calendar days and ending no later than 40 business days after the date of demand by the holder. The proposed amendments also would specify that a tank facility operator must use its best efforts to make prompt deliveries in a fair and equitable manner, including the making of reasonable, interim, prorata deliveries to satisfy outstanding demands by certificate holders who demand the load-out of FCOJ against two or more certificates. The Exchange indicates that, following Commission approval, the amended rules would be made effective with respect to all shipping certificates outstanding on the effective date and all new shipping certificates issued for delivery on the contract thereafter.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures, Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such material should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on August 4, 1988.

**Paula A. Tosini,**

*Director, Division of Economic Analysis.*

[FR Doc. 88-18003 Filed 8-9-88; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations will meet in closed session on August 25–26, 1988 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the potential for achieveing US security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 88-18047 Filed 8-9-88; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Air Force

### Performance Review Board; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

**Office of the Secretary of the Air Force**

Mr. Gary W. Amlin
Mr. Frank J. Colson

*Air Staff*

BG Robert M. Alexander
MG Charles G. Boyd
BG Shirley M. Carpenter

*Air Force Systems Command*

MG David J. Teal

*Air Force Logistics Command*

MG Lewis G. Curtis
Mr. Olin A. Howard
Mr. Edward J. Riojas, Jr.
MG Joseph K. Spiers

*Others*

Mr. John M. Ledden

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88-18046 Filed 8-9-88; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF ENERGY

### Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

*Name:* Advisory Committee on Nuclear Facility Safety.

*Date & Time:* Tuesday, August 30, 1988, 8:00 a.m. to 6:00 p.m., Wednesday, August 31, 1988, 8:00 a.m. to 1:00 p.m.

*Place:* U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585.

*Contact:* Wallace R. Kornack, Executive Director, ACNFS, S–3, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586–1770.

*Purpose of the Committee:* The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

**Tentative Agenda**

*August 30, 1988*

- Subcommittee Reports and Discussion.
- Presentation on Safety Objectives.
- Noon to 1:00 p.m.—Lunch.
- National Academy of Science Report.
- Presentations on Selected Issues.
- Agenda for the Next Committee Meeting.
- 5:30–6:00 p.m. Public Comment.

*August 31, 1988*

- Presentations on Defense Program Facilities.
- 12:00–1:00 p.m. Public Comment.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 5, 1988.

**J. Robert Franklin,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 88-18077 Filed 8-9-88; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

**[Docket No. RP88-184-002]**

### El Paso Natural Gas Co.; Compliance Filing

August 8, 1988.

Take notice that on August 1, 1988, pursuant to the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("El Paso") submitted a filing compliance with the Commission's order issued June 30, 1988 at Docket No. RP88–184–000.

El Paso states that the June 30 order, among other things, conditionally accepted, and suspended until El Paso accepts a blanket certificate under Subpart G of Part 284, or December 1, 1988, whichever is earlier, subject to refund, certain tariff sheets filed June 1, 1988 pursuant to Section 4 of the Natural Gas Act, Part 154 of the Regulations and Order No. 500. Such tendered tariff sheets served to establish the procedures by which El Paso will recover from its customers, as prescribed by Order No. 500, a portion of the payments to its natural gas suppliers made in settlement of claims arising under its gas purchase agreement or to terminate or suspend such agreements (referred to herein as "buyout" or "buydown" payments or costs). Ordering paragraphs (B), (C) and (D) directed El Paso to file revised tariff sheets and certain supporting data and information within thirty (30) days of the issuance of the order. Accordingly, El Paso tendered for filing and acceptance the revised tariff sheets to its FERC Gas Tariff along with the supporting data and information.

El Paso states that concurrently El Paso filed a request for rehearing of the Commission's June 30, 1988 order at Docket No. RP88–184–000. Although El Paso is complying with such order in this filing, El Paso believes its filing of June 1, 1988 was correct with regard to the issues and for the reasons set forth in the referenced request for rehearing and reserves the right to refile its rates and/or tariff provisions based upon the outcome of such request for rehearing.

El Paso also states that in accordance with ordering paragraph (B), El Paso, by this filing, informs the Commission of its election to use the equitable sharing method to collect buyout or buydown costs as opposed to the commodity method or the direct billing method. El Paso further agreed to withdraw its pending litigation regarding its proposal to direct bill buyout or buydown costs at Docket No. RP87–16–000 on or before the date the tariff sheets filed become effective.

El Paso further states that ordering paragraph (C)(2) of the Commission's order directed El Paso to include in its filing only costs which it estimates it will actually pay by March 1, 1989, or for which it estimates it will by that time incur a written obligation to pay, subject to adjustment to reflect actual payments and written obligations. El Paso has not reflected any estimates in its compliance filing but has included only actual buyout and buydown costs paid or for which there is a written obligation to pay as of July 25, 1988. On or about December 31, 1988, El Paso intends to file to adjust the rates and charges reflected on the attached tariff sheets as necessary to reflect such buyout and buydown costs which it will actually have paid or as to which it will have made a commitment to pay as of the date of such filing, together with such additional costs as it estimates it will pay during the following nine-month period.

El Paso states that it has complied with all of the directives contained in ordering paragraphs (C) and (D)(b) by submitting revised tariff sheets and certain supporting data and information regarding (i) allocation of costs, (ii) costs eligible for recovery and amortization, (iii) base period sales and (iv) an explanation of the basis for El Paso's choice of base and deficiency period years.

El Paso states that ordering paragraph (D) directs it to file with the Commission certain supporting data and information to support the proposal. Ordering paragraph (D)(a), requires El Paso to submit the complete background information concering El Paso's settlements, including schedules which show amounts paid, dates paid, amounts committed to be paid, copies of the settlements together with explanations of the relief, both past and future, which El Paso has received under each settlement, and copies or summaries of the contracts affected. El Paso states that it is submitting concurrently, under separate cover letter, such information and data for which El Paso has requested confidential treatment. In compliance with of ordering paragraph (D)(c), El Paso included a verification statement that the amounts claimed are solely for settlement of El Paso's take-or-pay disputes with producers, and not for settlement of disputes not related to take-or-pay.

El Paso states that a copy of the compliance filing has been served upon all parties of record in Docket No. RP88–184–000 and, otherwise, upon all parties served with a copy of El Paso's June 1, 1988 filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 15, 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 in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18098 Filed 8–9–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–136–001]**

## El Paso Natural Gas Co.; Tariff Filing

August 5, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on July 29, 1988, tendered for filing pursuant to Part 154 of the Federal Energy Rgaulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with the directives set forth in the Commission's letter order dated June 30, 1988 at Docket Nos. TA88–4–33–000 and RP88–136–000, Third Revised Sheet No. 354 to El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that on April 29, 1968 at Docket No. RP88–136–000, it filed in compliance with § 154.303(c)(2) of the Commission's Regulations its election to continue to recover purchased gas costs via the Commission's PGA clause option and revised its Purchase Gas Cost Adjustment Provision of the General Terms and Conditions contained in its First Revised Volume No. 1 Tariff in accordance with the requirements set forth in the Commission's Order No. 483, *et seq.*, issued at Docket No. RM86–14–000, *et al.*, (El Paso's Docket No. RP88–136–000) the Commission accepted and suspended EL Paso's revised PGA tariff sheets, permitting the filing to become effective June 1, 1988, subject to refund and subject to further review. By letter order dated June 30, 1988 at Docket Nos. TA88–4–33–000 and RP88–136–000 the Commission directed El Paso to make certain minor corrections to such revised sheets.

Accordingly, El Paso submitted in compliance with the Commission's directive, Third Revised Sheet No. 354 with the changes specified by the Commission. El Paso requested that the tendered tariff sheet become effective June 1, 1988, the date the Commission initially approved El Paso's revised PGA clause.

Copies of the filing were served upon all interestate pipeline system sales customers of El Paso and all intersted state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.221 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 15, 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 in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18099 Filed 8–9–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. SA88–15–000]**

## Hawkeye Oil and Gas Corp.; Petition for Adjustment

Issued August 8, 1988.

Take notice that on July 25, 1988, Hawkeye Oil and Gas Corporation (Hawkeye) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) requesting relief from its Btu refund obligation under Order No. 399. Hawkeye requests the Commission to waive its refund obligation to Natural Gas Pipeline Company of America for $4693.10. Hawkeye states that it had a $53,657.00 loss for the tax year July 1, 1986 to June 30, 1987, and thus is unable to make the refund.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18100 Filed 8–9–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–225–000]**

## Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

August 8, 1988.

Take notice that on July 29, 1988, Inter-City Minnesota Pipelines Ltd., Inc., 245 Yorkland Boulevard, North York, Ontario, Canada MJ2 1R1, tendered for filing revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective August 1, 1988:

*Original Volume No. 1*

First Revised Sheet No. 55
Third Revised Sheet No. 56
Second Revised Sheet No. 56–A
Original Sheet No. 56–B
Third Revised Sheet No. 57
Third Revised Sheet No. 58
Original Sheet No. 58–A
Fourth Revised Sheet No. 59
Fifth Revised Sheet No. 60
Sixth Revised Sheet No. 61
Third Revised Sheet No. 61–C
Second Revised Sheet No. 61–D
Third Revised Sheet No. 62
Fourth Revised Sheet No. 63
Second Revised Sheet No. 64
Second Revised Sheet No. 65

Inter-City states that pursuant to Commission Order Nos. 483 and 483–A it is revising the Purchased Gas Adjustment clause of its tariff, Article 18 of the General Terms and Conditions to conform to §§ 154.301 through 154.310 of the Commission's Regulations. Inter-City indicates that the filing contains only a revised PGA clause and does not include a rate change.

Inter-City states that the revised PGA clause provides for it to file an annual PGA to be effective November 1st and quarterly PGA's to be effective February 1, May 1, and August 1, and interim PGA filings. The filing also provides for supplier refunds, and assessment of past performance.

Inter-City requests waiver of the Commission's Regulations to permit these sheets to become effective on August 1, 1988 on less than 30-days notice. Inter-City also requests waiver of the Commission's Regulations to permit it to file the support schedules on hard copy.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 15, 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; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois Cashell,**

*Acting Secretary.*

[FR Doc. 88–18101 Filed 8–9–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ88–2–53–000]**

## K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

August 5, 1988.

Take notice that K N Energy, Inc., on August 2, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 pursuant to Order No. 483 and 483–A to be effective September 1, 1988. The filing proposes changes in K N's FERC Gas Tariff to adjust the rates charged to its jurisdictional customers in accordance with K N's PGA clause. The proposed rate changes would increase the commodity rate under each of K N's jurisdictional rate schedules by 5.47¢ per Mcf.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 15,1988. 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 in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–18102 Filed 8–9–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. SA88–14–000]**

## Palmco Management Co.; Petition for Adjustment

Issued August 8, 1988.

Take notice that on July 19, 1988, Palmco Management Co. (Palmco) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) requesting relief from its Btu refund obligation under Order No. 399. Palmco requests the Commission to waive its obligation to Houston Pipeline Company for refunds attributable to payments previously made by Palmco to working and royalty interest owners. Palmco states that it was the operator of the properties from which sales were made that gave rise to the refund obligation, but that it did not own any interest in the properties. Palmco states that it has made diligent efforts to collect the refunds owed by the working and royalty interest owners, but that some of the amounts owed under Order No. 399 are uncollectible.

The procedure applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment

proceeding must file a motion to intervene in accordance with the provisions of Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-18103 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. GP88-13-000]**

## Oklahoma Corporation Commission; Preliminary Finding

Issued August 4, 1988.

On various dates in 1980 through 1986, the Oklahoma Corporation Commission (Oklahoma) notified the Commission that it had made affirmative determinations under section 503 of the Natural Gas Policy Act of 1978 (NGPA) concerning gas from 19 wells operated by 14 different producers. Under section 503(a) of the NGPA, when a jurisdictional state or federal agency makes a well category determination, that agency is required to provide the Commission with notice of the determination. Section 503(b) provides that the Commission shall reverse any jurisdictional agency determination if the Commission finds that the determination is not supported by substantial evidence in the record upon which the determination was made.

The Commission has established filing requirements for applications for well category determinations, which specify for each type of determination the minimum information that an applicant must file with the jurisdictional agency to support an affirmative determination. The Commission has also specified the information required to be included with the jurisdictional agency's notice to this Commission of its determinations. Under § 274.104 of the regulations the notice must include a copy of the application, all information required by § 274.201-208 of the regulations to be filed with the jurisdictional agency, and an explanatory statement which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

If the Commission had taken no action with respect to the notices, they would have become final after 45 days under § 275.202(a) of the regulations. However, the Commission advised Oklahoma and each applicant that the notices were incomplete, lacking either sufficient explanation of the basis for each determination or sufficient information to complete the application. Despite these and other requests for necessary additional information, Oklahoma has not provided it.[1] As a result, none of the determinations has become final because § 275.202(b) of the regulations provides that the 45 day period for Commission review does not begin if the Commission notifies the jurisidictional agency, the purchaser, and all parties that the notice is deficient. The Appendix of this notice summarizes each determination and its deficiency.

Under § 275.202(a), the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determinations submitted by Oklahoma are not supported by substantial evidence in the record upon which the determinations were made. Any state or federal agency or any person may, within 30 days after issuance of a preliminary finding, submit written comments and may request an informal conference with the Commission pursuant to § 275.202(f) of the regulations. A final Commission order will be issued within 120 days after issuance of the preliminary finding.

By direction of the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

[1] On July 22, 1987, the Commission sent a follow-up letter to Oklahoma and the applicants advising that the Commission might reverse the determinations if the required information was not received and that refunds might be required if that occurred.

APPENDIX.—OKLAHOMA INCOMPLETE NOTICES OF DETERMINATION

| Applicant | Well name | FERC No. JD | OK cause U.S. No. | Initial FERC letter | NGPA section | Deficiency in record | Purchaser |
|---|---|---|---|---|---|---|---|
| Doak Oil, Inc | Plumber No. 1. | 80-44585 | 03774 | Aug. 14, 1980 | 102 | Lacks sufficient geological evidence concerning reservoir boundaries. | Diamond 'S' Gas Systems, Inc. |
| Amarex, Inc | Nichols-Gregory No. 1. | 81-17268 | 06615 | Mar. 23, 1981 | 102 | Lacks evidence refuting Behind-the-Pipe Exclusion. | Oklahoma Natural Gas Co.; Panhandle Eastern Pipe Line Co. |
| Sun Exploration and Production Co. | Wright No. 2. | 82-28271 | 17790 | June 3, 1982 | 107 | Indicates that completion is above 15,000 feet. | Panhandle Eastern Pipe Line Co.; KN Energy, Inc. |
| Hazelwood Production and Exploration Co. | Rist "A" No. 1. | 83-32812 | 19336 | June 2, 1983 | 103 | Indicates that the well is an old well | Aminoil U.S.A. Inc. |
| Arrington Properties, Inc. | Hardy No. 1. | 84-10837 | 21681 | Jan. 19, 1984 | 102 | Oath statement conflicts with well history evidence. | Arco Oil & Gas Co. |
| Do | Hess No. 1 | 84-10838 | 21680 | do | 102 | do | Do. |
| Do | Berry No. 1 | 84-10839 | 21676 | do | 102 | do | Do. |
| Earth Energy Resources, Inc. | Headquarters No. 1. | 84-13419 | 22932 | Feb. 10, 1984 | 102 | Oath statement conflicts with geological evidence. | (Unknown). |
| HG&G, Inc | Trindle No. 1. | 84-34245 | 22320 | July 19, 1984 | 102 | Lacks sufficient geological evidence | Phillips Petroleum Co. |
| Do | Bredel No. 1-9. | 84-34246 | 22321 | do | 102 | do | Do. |
| Do | Leo Vogt No. 1-14. | 84-34247 | 22322 | do | 102 | do | Do. |
| Mustang Production Co. | Moon No. 1-32. | 85-27996 | 31049 | June 6, 1985 | 108 | Indicates too much production during qualifying period. | Oklahoma Gas and Electric Co. |
| K&A Oil Corp | Wilson No. 1. | 86-11267 | 32543 | Feb. 28, 1986 | 102 | Lacks Oklahoma determination order | Phillips Petroleum Co. |

APPENDIX.—OKLAHOMA INCOMPLETE NOTICES OF DETERMINATION—Continued

| Applicant | Well name | FERC No. JD | OK cause U.S. No. | Initial FERC letter | NGPA section | Deficiency in record | Purchaser |
|---|---|---|---|---|---|---|---|
| Harper Oil Co | Parmenter No. 1 | 86-11681 | 33894 | Mar. 13, 1986 | 102 | Indicates that a marker well is within 2.5 miles. | Do. |
| Leonoco, Inc | Hurst No. 25-1 | 86-15790 | 34156 | April 7, 1986 | 103 | Indicates that the well is an old well | Union Texas Petroleum Corp. |
| HG&G, Inc | Harry Trindle No. 1-31 | 86-16990 | 33317 | April 25, 1986 | 102 | Lacks sufficient geological evidence | Phillips Petroleum Co. |
| Robert P Lammerts | Rice No. 1 | 86-27841 | 25895 | Aug. 11, 1986 | 102 | Lacks evidence refuting the Behind-the-Pipe Exclusion. | Do. |
| Anson Corp | Sprowls No. 3-28. | 86-31433 | 35974 | Sept. 29, 1986 | 102 | Lacks correct oath statement | El Paso Natural Gas. Co. |
| Jolen Operating Co | Barby A-12 No. 6. | 86-33537 | 32346 | Nov. 3, 1986 | 102 | Oath staement conflicts with well history evidence. | ANR Gathering Co. |

[FR Doc. 88-18107 Filed 8-9-88; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. RP88-88-004]**

## Panhandle Eastern Pipe Line Co; Tariff Filing

August 5, 1988.

Take notice that on August 1, 1988 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 32-BU.1
Substitute First Revised Sheet No. 32-BW

The proposed effective date of these revised tariff sheets is April 1, 1988.

Panhandle states that these revised tariff sheets are being refiled in accordance with Ordering Paragraph (B) of the Commission's Order Granting Rehearing in Part and Denying Rehearing in Part issued June 24, 1988.

Copies of this letter and enclosures are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 12, 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. 88-18104 Filed 8-9-88; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. RP88-229-000]**

## Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 5, 1988.

Take notice that on August 1, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective September 1, 1988:

Second Revised Sheet No. 4B.1
Second Revised Sheet No. 4B.2
Second Revised Sheet No. 4B.3

Southern states that the proposed tariff sheets are being filed to flow through to Southern's firm jurisdictional sales customers the byt-out and buy-down charges allocated to Southern by United Gas Pipeline Company pursuant to its Order No. 500 filed in RP88-27.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before August 12, 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. 88-18105 Filed 8-9-88; 8:45 am]
BILLING CODE 6717-01-M

**[Docket Nos. RP88-156-002 and TQ88-1-49-002]**

## Williston Basin Interstate Pipeline Co.; Tariff Change

August 5, 1988.

Take notice that on August 1, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets effective June 1, 1988.

**First Revised Volume No. 1**

Substitute Third Revised Sheet No. 91
Substitute Second Revised Sheet No. 94
Original Sheet No. 94A
Substitute Original Sheet No. 95A
Substitute Second Revised Sheet No. 96
Substitute Third Revised Sheet No. 97
Substitute Original Sheet No. 97A
Original Sheet No. 97B
Substitute Second Revised Sheet No. 98
Substitute Second Revised Sheet No. 98A

Williston Basin states that these revised tariff sheets are filed pursuant to a Letter Order issued by the Director of the Office of Pipeline and Producer Regulation on July 1, 1988, with respect to Williston Basin's Purchased Gas Cost Adjustment filing (PGA) of May 2, 1988, to bring Williston Basin's PGA clause into compliance with Order Nos. 483 and 483-A.

Copies of this compliance filing were served upon Williston Basin's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection. All motions to intervene or protests are due on or before August 12, 1988.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 88-18106 Filed 8-9-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-180785; FRL-3427-4**

### Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the 21 States listed below and a crisis exemption initiated by the California Department of Food and Agriculture. These exemptions, issued during the month of May, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific and crisis exemption for its effective date.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of the contact person. The following information applies to all contact persons:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Enviromental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Room 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806)

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Arkansas Department of Agriculture for the use of sethoxydim on green beans to control Johnson grass; May 25, 1988, to June 30, 1988. (Robert Forrest)

2. Arkansas State Plant Board for the use of bromoxynil on rice to control broadleaf weeds; May 6, 1988, to August 1, 1988. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of avermectin $B_1$ on pears to control two-spotted spider mites and European red mites; May 18, 1988, to October 31, 1988. (Libby Pemberton)

4. California Department of Food and Agriculture for the use of fosetyl-al (Aliette) for leaf lettuce and head lettuce to control downy mildew; May 25, 1988, to December 31, 1988. California had initiated a crisis exemption for this use. (Gene Asbury)

5. California Department of Food and Agriculture for the use of hexakis on watermelons to control spider mites; May 25, 1988, to September 30, 1988. (Robert Forrest)

6. Colorado Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 15, 1988, to August 15, 1988. (Gene Asbury)

7. Idaho Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 16, 1988, to September 15, 1988. (Gene Asbury)

8. Louisiana Department of Agriculture for the use of bromoxynil on rice to control broadleaf weeds; May 6, 1988, to August 1, 1988. (Jim Tompkins)

9. Maryland Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to September 15, 1988. (Gene Asbury)

10. Michigan Department of Agriculture for the use of a carboxin mixture (Pro-Gro Dust Seed Fungicide) on onion seedlings to control onion smut disease; May 1, 1988, to April 30, 1989. (Gene Asbury)

11. Michigan Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to September 30, 1988. (Gene Asbury)

12. Minnesota Department of Agriculture for the use of sethoxydim on snap beans to control wild proso millet; May 25, 1988, to August 31, 1988. (Robert Forrest)

13. Mississippi Department of Agriculture and Commerce for the use of bromoxynil on rice to control broadleaf weeds; May 6, 1988, to August 1, 1988. (Jim Tompkins)

14. Missouri Department of Agriculture for the use of imazethapyr (Pursuit) on southern peas to control puncture vines; May 13, 1988, to July 15, 1988. (Robert Forrest)

15. Montana Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; May 24, 1988, to August 30, 1988. (Libby Pemberton)

16. New Jersey Department of Environmental Protection for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to October 31, 1988. (Gene Asbury)

17. New York Department of Environmental Conservation for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to October 15, 1988. (Gene Asbury)

18. Nevada Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 16, 1988, to August 15, 1988. (Gene Asbury)

19. North Dakota Department of Agriculture for the use of Tiller Herbicide on hard red spring wheat to control green and yellow foxtail; May 15, 1988, to July 15, 1988. (Gene Asbury)

20. North Dakota Department of Agriculture for the use terbufos on rape and mustard seed to control flea beetles; May 17, 1988, to October 15, 1988. (Robert Forrest)

21. Oregon Department of Agriculture for the use of avermectin $B_1$ on pears to control two-spotted spider mites, yellow spider mites, and McDaniel spider mites; May 6, 1988, to September 1, 1988. A notice of receipt was published in the **Federal Register** of March 9, 1988 (53 FR 7569); no comments were received. The exemption was granted on the basis that there are not registered alternative pesticides which will provide adequate control of these pests on pears. A significant economic loss may result if an effective pesticide is not made available. This loss may be as great as $4.5 million. Combined residues of avermectin $B1_a$ and its delta 8,9 isomer are not likely to exceed 0.025 ppm in or on pears as a result of the proposed use. This residue level can be toxicologically supported and will not pose a threat to the public health. This use will increase the percent of total U.S. population ADI by 2.6%, raising it to 34.7% (based on all current uses). The lowest MOS for all uses is 333. The proposed use should not pose an unreasonable hazard to the environment or endangered species. (Libby Pemberton)

22. Oregon Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; May 24, 1988, to August 30, 1988. (Libby Pemberton)

23. Oregon Department of Agriculture for the use of sethoxydim on green peas to control barnyard grass and annual

grasses; May 25, 1988, to July 1, 1988. (Gene Asbury)

24. Oregon Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 16, 1988, to August 30, 1988. (Gene Asbury)

25. Pennsylvania Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 1, 1988, to October 31, 1988. (Gene Asbury)

26. Rhode Island Department of Environmental Management for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 15, 1988, to September 15, 1988. (Gene Asbury)

27. Tennessee Department of Agriculture for the use of sethoxydim on snap beans to control Johnson grass; May 27, 1988, to July 31, 1988. (Robert Forrest)

28. Washington Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; May 24, 1988, to August 30, 1988. (Libby Pemberton)

29. Washington Department of Agriculture for the use of avermectin $B_1$ on pears to control two-spotted spider mites, McDaniel spider mites, and European red mites; May 6, 1988, to September 1, 1988. A notice of receipt was published in the **Federal Register** of April 16, 1988 (53 FR 11337); no comments were received. The exemption was granted on the basis that there are no registered alternative pesticides which will provide adequate control of these pests on pears. A significant economic loss may result if an effective pesticide is not made available. This loss may be as great as $12.6 million. Combined residues of avermectin $B1_a$ and its delta 8,9 isomer are not likely to exceed 0.025 ppm in or on pears as a result of the proposed use. This residue level can be toxicologically supported and will not pose a threat to the public health. This use will increase the percent of total U.S. population ADI by 2.6%, raising it to 34.7% (based on all current uses). The lowest MOS for all uses is 333. The proposed use should not pose an unreasonable hazard to the environment or endangered species. (Libby Pemberton)

30. Washington Department of Agriculture for the use of permethrin on raspberries to control weevils; May 18, 1988, to August 15, 1988. (Donald Stubbs)

31. Washington Department of Agriculture for the use sethoxydim on green peas to control barnyard grass and annual rye grass; May 25, 1988, to July 1, 1988. (Gene Asbury)

32. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on snap beans to control wild proso millet, volunteer corn, and quackgrass; May 25, 1988, to August 31, 1988. (Robert Forrest)

A crisis exemption was initiated by the California Department of Food and Agriculture on May 13, 1988, for the use fosetyl-al (Aliette) on leaf and head lettus to control downy mildew. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. (Gene Asbury)

Authority: 7 U.S.C. 136.)

Dated: August 1, 1988.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 88-18031 Filed 8-9-88; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3427-3]

## Water Pollution Control; Final Determination of the Assistant Administrator for Water Concerning Three Wetland Properties Owned by Henry Rem Estate, Marion Becker, et al. and Senior Corporation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of decision to restrict the designation of wetlands owned by Henry Rem Estate, Marion Becker, et al. and Senior Corporation as discharge sites for rockplowing, in East Everglades, Dade County, Florida.

**SUMMARY:** This is notice of EPA's final determination pursuant to section 404(c) of the Clean Water Act to restrict the designation of three separately-owned wetland properties totaling 432 acres as discharge sites for rockplowing based upon a finding that this activity would result in unacceptable adverse effects to wildlife.

**EFFECTIVE DATE:** The effective date of the final determination is June 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** Charles K. Stark, Jr., Office of Wetlands Protection, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8796

Copies of EPA's final determination are available for inspection in the Public Information Reference Unit, EPA Library, Room M 2904, 401 M Street SW., Washington, DC 20460 and the Marine and Estuarine Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

**SUPPLEMENTARY INFORMATION:** Under section 404(c) of the Clean Water Act, the Administrator of EPA has has the authority to prohibit or restrict the use of a site as a disposal site for dredged or fill material, after notice and opportunity for public hearing, whenever he or she determines that such disposal will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Responsibility for 404(c) determinations has been formally delegated to the Assistant Administrator for Water, who is EPA's national section 404 program manager.

This section 404(c) action addresses proposed and anticipated rockplowing activities in three separately-owned wetland properties totaling 432 acres in East Everglades, Date County, Florida. The first property is a 60 acre tract owned by Henry Rem Estate (the Rem site) which is located in the western quarter of Section 5, Township 56 South, Range 38 East, about one mile south of SW 168th Street (Richmond Drive) and about 1.8 miles west of the L-31N canal and levee. The second property is another 60 acre tract owned by Mrs. Marion Becker, Mrs. Bilba Burke, Mr. Paul Yanowitz, Mr. Euval S. Barrekette and Mr. Irving Sonneshein (the Becker site) which is located adjacent to and east of the Rem site, in section 5, Township 56 South, Range 38 East. The third property is actually three separate wetland tracts totaling 312 acres owned by Senior Corporation (the Senior Corp. site) which lie about 2.5 miles south of the Rem and Becker sites and extend along SW 232nd Avenue and south to SW 304th Street. The first tract is comprised of approximately 132 acres of wetlands within Section 7, Township 57 South, Range 38 East; the second tract is comprised of approximately 150 acres of wetlands within Section 30, Township 56 South, Range 38 East; and the third tract, comprised of approximately 30 acres of wetlands, is located within Section 6, Township 57 South, Range 38 East.

Rockplowing is a process in which a bulldozer is used to drag a multitoothed plow-like implement to break up and crush surface rock to prepare an area for agriculture. The wetlands at issue overlie a porous limestone strata which would have to be rockplowed to facilitate agriculture. Rockplowing these wetlands would eliminate their irregular surface and associated wetland vegetation.

At the time the Regional Administrator initiated the 404(c) action, property owners of the Senior Corp. site and the Rem site were actively pursuing permits from the Army Corps of Engineers (Corps) to rockplow. The Corps had announced its intention to

issue a section 404 CWA permit authorizing rockplowing on the Rem site and was in the process of preparing documentation for a permit decision concerning rockplowing on the Senior Corp. site. Property owners of the Becker site had not yet applied for a permit to rockplow. However, EPA Region IV felt that the Corps, in the supporting documentation for the permit to be issued to Henry Rem Estate, had predisposed itself to issuing a permit authorizing rockplowing on the Becker tract (the documentation implied that the Corps may issue a permit for rockplowing this site, if applied for, because its juxtaposition to adjacent agricultural areas was similar to that of the Rem site). EPA Region IV concluded that because the Rem, Becker and Senior Corp. sites are ecologically similar portions of the East Everglades wetlands complex, and rockplowing would be or had a high probability to be authorized on those sites and would result in similar unacceptable adverse environmental effects, this 404(c) action should include all three properties.

On February 16, 1988, EPA Headquarters received the administrative record and the Regional Administrator's recommended determination (dated February 9, 1988) to prohibit the specification of the Rem, Becker and Senior Corp. sites as discharge sites for rockplowing. The recommended determination was based upon a finding that rockplowing these sites would result in unacceptable adverse effects on fishery areas (including spawning and breeding areas for forage fish), wildlife and recreational areas.

EPA Headquarters considered the record in this case, including public comments, information received during Region IV's public hearing, and information provided by other agencies, organizations and knowledgeable individuals. I consulted with representatives of Senior Corp. (Representatives of the other property owners did not take advantage of EPA's offer for consultation at that point.) Based upon this review, I determined that rockplowing the Rem, Becker or Senior Corp. sites would result in unacceptable adverse effects to wildlife.

EPA's review revealed that the Rem, Becker and Senior Corp. sites provide diverse habitat that satisfies the habitat needs of a diverse wildlife population. The review also revealed that these sites also provide and essential wetland habitat component of, and provide habitat diversity for, the south Florida ecosystem. Wildlife habitat is regarded as continuous within East Everglades and Everglades National Park with mobile wildlife species moving freely between these areas to satisfy their habitat requirements. Many of these species for which the Rem, Becker and Senior Corp. sites provide essential habitat needs have suffered population declines due in whole or in part to the loss and/or alteration of habitat, which in a number of instances resulted in their listing as endangered, threatened or of special concern by the U.S. Department of Interior, State of Florida and/or the Florida Committee on Rare and Endangered Biota. EPA's review also revealed that there have been significant cumulative losses of the type of wetlands found on the Rem, Becker and Senior Corp. sites, that these losses have been linked to the decline of some species in this region and that rockplowing these sites would aggravate the effect of these losses.

I concluded that the Rem, Becker and Senior Corp. sites provide important wildlife habitat from a site specific and cumulative standpoint and, therefore, that rockplowing these sites would result in unacceptable adverse effects to wildlife for the purposes of Section 404(c) of the Clean Water Act. Therefore, under the authority delegated to me by the Administrator of EPA, I restricted the designation of the Rem, Becker and Senior Corp. sites as discharge sites for rockplowing. EPA's 404(c) action is based on the impacts of rockplowing and prohibits this activity on these sites. It does not address potential filling activities in support of less consumptive unless of these sites.

Dated: July 28, 1988.

**Rebecca W. Hanmer,**

*Acting Assistant Administrator for Water.*

[FR Doc. 88-18035 Filed 8-9-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### National Security and Emergency Preparedness Advisory Committee and Emergency Broadcast Advisory Committee; Renewal

In accordance with the GSA Final Rule on Federal advisory committee management, 41 CFR Part 101-6 § 101-6.1015, the Federal Communications Commission is giving official notice on the renewal of the following advisory committees:

The National Security and Emergency Preparedness Advisory Committee (NSEPAC)

and

The Emergency Broadcast System Advisory Committee (EBSAC)

The General Services Administration, Committee Management Secretariat, has approved the renewal of these Committees, effective July 15, 1988, for a period of two years.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-18092 Filed 8-9-88; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Naguabo Broadcasting Co.

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. Francisco Resto Torres d/b/a Naguabo Broadcasting Company; Naguabo, PR. | BPH-861023MA | 88-343 |
| B. Cesar D. Gonzalez; Naguabo, PR. | BPH-861027MA | |
| C. Victelio R. Martinez d/b/a Eastern Broadcasting; Naguabo, PR. | BPH-861027MB | |
| D. Jorge G. Blanco Galdo; Naguabo, PR. | BPH-861027ME | |
| E. Reyes Ruiz Rivera; Naguabo, PR. | BPH-861027MF | |
| F. Hector Negroni Cartagena; Naguabo, PR | BPH-861027MH | |
| G. Efrain Archilla-Diez; Naguabo, PR | BPH-861027MI | |
| H. Naguabo Broadcast Group, Inc., Naguabo, PR | BPH-861027MJ | |

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)*

1. (See Appendix), (See Appendix)
2. Air Hazard, B,C,F
3. Comparative, All Applicants
4. Ultimate, All Applicants

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant 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).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

Appendix

*Additional Issue Paragraph*

1. (a) To determine whether the proposals of A (NBC), D (Galdo), E (Rivera), G (Archilla-Diez) and H (Group) are consistent with the minimum separation requirements of section 73.207 of the Commission's Rules; (b) to determine whether the proposals of B (Gonzalez), C (Eastern), D (Galdo) and F (Cartagena) would provide coverage of the city sought to be served, as required by section 73.315(a) of the Commission's Rules; and (c) in light of (a) and (b) above, whether circumstances warrant waivers of the appropriate rule sections.

[FR Doc. 88–18096 Filed 8–9–88; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL HOME LOAN BANK BOARD

[No. 88–651]

### Annual Report of Trust Assets

Date: August 2, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Annual Report of Trust Assets" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This report provides details concerning the scope and amount of trust activities of the financial institutions. The Board estimates that each response will require 2.2 hours.

**DATE:** Comments on the information collection request are welcome and should be received on or before August 25, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board. Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–653–2751.

**FOR FURTHER INFORMATION CONTACT:** Larry A. Clark, Office of Regulatory Activities, 202–778–2666, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 88–18059 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–01–M

[No. 88–652]

### Application for Approval To Increase Total Liabilities

August 2, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Application for Approval to Increase Total Liabilities" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

These applications will show whether an institution's growth plan has been prudently formulated, and that the institution's capital, operations and financial strength will support the growth plan. Each response will require 8 hours to complete.

**DATE:** Comments on the information collection request are welcome and should be received on or before August 25, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–653–2751.

**FOR FURTHER INFORMATION CONTACT:** Francis Raue, Office of Regulatory Policy, Oversight and Supervision, 202–778–2517, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 88–18060 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–01–M

[No. 88–653]

### Annual Disclosure Report

Date: August 2, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Annual Disclosure Report" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

These reports will make available to the Bank Board and institution's members an annual disclosure on transactions in which affiliated persons (including the offices or members of the board of directors) have a material interest. Each response will require 40 hours to complete.

**DATE:** Comments on the information collection request are welcome and should be received on or before August 25, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and

supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–377–6933.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Albinson, Office of Regulatory Policy, Oversight and Suprvision 202–778–2576, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–18061 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–01–M

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**[No. 88–654)**

### Application for Membership and Subscription to Stock in the Federal Home Loan Bank Board

Date: August 2, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, (Application for Membership and Subscription to Stock in the Federal Home Loan Bank Board) to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Charter 35).

This report provides financial and/or statistical information to determine if membership in the Federal Home Loan Bank System may be authorized in accordance with existing statutory and regulatory criteria. The Board estimates that each response will require 2 hours to complete.

**DATES:** Comments on the information collection request are welcome and should be received on or before August 25, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–653–2751.

**FOR FURTHER INFORMATION CONTACT:** John Wilson, Office of District Banks, 377–7217, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 88–18062 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–01–M

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### The American Federal Savings & Loan Association, Anadarko, OK; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for The American Federal Savings and Loan Association, Anadarko, Oklahoma, on July 28, 1988.

Dated: August 3, 1988.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–18063 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–10–M

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### Universal Savings Association, a Federal Savings & Loan Association, Chickasha, OK; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Universal Savings Association, a Federal Savings and Loan Association, Chickasha, Oklahoma, on July 28, 1988.

Dated: August 3, 1988.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–18064 Filed 8–9–88; 8:45 am]

BILLING CODE 6720–01–M

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## FEDERAL MARITIME COMMISSION

### Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on August 1, 1988, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

*Agreement No.:* 201–002631–007.

*Title:* New Orleans Steamship Association Assessment Agreement.

*Parties:*

New Orleans Steamship Association
International Longshoremen's Association, AFL–CIO.

*Synopsis:* The agreement provides that effective June 1, 1988, the obligation of the Employers under the Guaranteed Annual Income Plan to make contributions to fund such plan is suspended. Contributions shall continue to be made by Employers for work performed prior to June 1, 1988.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: August 5, 1988.

[FR Doc. 88–18075 Filed 8–9–88; 8:45 am]

BILLING CODE 6730–01–M

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### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203–010459–003.

*Title:* Joint Feeder Vessel Cooperative Working Arrangement.

*Parties:*

American President Lines, Ltd.
Sea-Land Service, Inc.

*Synopsis:* The proposed amendment would extend the termination date of the agreement through December 31, 1988. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: August 5, 1988.

[FR Doc. 88-18069 Filed 8-9-88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

Auguat 4, 1988.

### Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

*Final approval under OMB delegated authority of the extension, with revision, of the following:*

1. Report title: Report of Transaction Accounts, Other Deposits and Vault Cash; Reports of Certain Eurocurrency Transactions; and Advance Reports of Deposits.

Agency form number: FR 2900; FR 2950/51; and FR 2000/2001.

OMB Docket number: 7100-0087.

Frequency: Weekly, Quarterly, Daily—dependent upon report.

Reporters: epository institutions.

Annual reporting hours: 2,557,114.

| Report | Estimated No. of responses | Estimated hours per response |
|---|---|---|
| FR 2900 | [1] 9,890 | 1 to 12 (4.52 avg.). |
| | [2] 6,985 | 1 to 12 (4.52 avg.). |
| FR 2950/2951 | [1] 744 | .2 to 5 (1.00 avg.). |
| | [2] 3 | .2 to 5 (1.00 avg.). |
| FR 2000 | 186 | .3 to 2.4 (.84 avg.). |
| FR 2001 | 540 | .3 to 3 (.96 avg.). |

[1] Weekly.
[2] Quarterly.

Small businesses are affected.

General description of requirements:

This information collection is mandatory (12 U.S.C. 248(a), 461, 3105) and is given confidential treatment (5 U.S.C. 552 b(4) and b(8)).

This package of reports collects information on: deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are not fully exempt from reserve requirements (FR 2900); Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches (FR 2950, 2951); and selected items on the 2900 in advance from samples of commercial banks on a daily basis (FR 2000) and on a weekly basis (FR 2001). An increase in the deposit cutoff used to determine weekly versus quarterly FR 2900 reporting has been approved. Under normal indexing procedures, the cutoff rises from $28.6 million to $30.0 million; with this action, the cutoff will be raised even further, to $40.0 million. In addition, the total number of items collected on the FR 2900, 2000, and 2001 reports will be reduced by two items. Information provided by these reports is used for administering Regulation D—Reserve Requirements of Depository Institutions; or for constructing, analyzing, and controlling the monetary and reserves aggregates, or both.

2. Report title: Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities and Annual Report of Total Deposits and Reservable Liabilities.

Agency form number: FR 2910q; FR 2910a.

OMB Docket number: OMB No. 7100-0175.

Frequency: Quarterly; Annually.

Reports: Depository institutions.

Annual reporting hours: 6,255.

| Report | Estimated No. of responses | Estimated hours per response |
|---|---|---|
| FR 2910q | 625 | 2.00 |
| FR 2910a | 6,274 | .20 |

Small businesses are affected.

General description of requirements:

This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552 b(4) and b(8)).

These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and Agreement Corporations) that are fully exempt from reserve requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirements of Depository Institutions. An increase has been approved in the deposit cutoff used to determine quarterly FR 2910q versus annual FR 2910a reporting. Under normal indexing procedures, the cutoff rises from $28.6 million to $30.0 million; with this action, the cutoff will be raised even further, to $40.0 million.

*Final approval under OMB delegated authority of the extension, without revision, of the following report:*

1. Report title: Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.

Agency form number: FR 2930; FR 2930a.

OMB Docket number: OMB No. 7100-0088.

Frequency: Annually.

Reporters: Depository institutions.

Annual reporting hours: 42.

Estimated No. of Responses: 168.

Estimated hours per response: .25.

Small businesses are affected.

General description of requirements:

This information collection is mandatory (12 U.S.C. 248(a), 461) and is given confidential treatment (5 U.S.C. 552 b(4) and b(8)).

This report provides information on the allocation of the low reserve tranche and reservable liabilities exemption among particular offices of those families of institutions that have offices located in more than one state or Federal Reserve district, which submit separate deposits reports instead of one single, nationally aggregated report. These data are needed for the calculation of required reserves.

Board of Governors of the Federal Reserve System, August 4, 1988.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 88-18005 Filed 8-9-88; 8:45 am]

BILLING CODE 6210-01-M

**First Bank System, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company**

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1988.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire at least 88.55 percent of the voting shares of Central Bancorporation, Inc., Denver, Colorado, and thereby indirectly acquire The Academy Boulevard Bank, d/b/a Central Bank of Academy Boulevard, Colorado Springs, Colorado; Central Bank of Chapel Hills, N.A., Colorado Springs, Colorado; The Central Colorado Bank, d/b/a Central Bank of Colorado Springs, Colorado Springs, Colorado; Central Bank of Garden of the Gods, N.A., Colorado Springs, Colorado; Central Bank of Pueblo, N.A., Pueblo, Colorado; The First National Bank of Rocky Ford, Rock Ford, Colorado; Central Bank of Grand Junction, N.A., Grand Junction, Colorado; Central Bank of Craig, N.A., Craig, Colorado; Peoples Bank of Arapahoe County, d/b/a Central Bank of Aurora, Aurora, Colorado; Central Bank of Chatfield, Jefferson County, Colorado; Central Bank of Centennial, N.A., Littleton, Colorado; Central Bank of Inverness, N.A., Englewood, Colorado; Central Bank of Glenwood Springs, N.A., Glenwood Springs, Colorado; Central Bank of Aspen, N.A., Aspen, Colorado; Central Bank of Greeley, Greeley, Colorado; Broomfield State Bank, d/b/a Central Bank of Broomfield, Broomfield, Colorado; North Denver Bank, d/b/a Central Bank of North Denver, Denver, Colorado; Central Bank of Westminister, N.A., Westminister, Colorado; and Central Bank of Denver, Denver, Colorado.

In connection with this application, Applicant also proposes to acquire Central Bancorporation Life Insurance Company, Denver, Colorado, and thereby engage in underwriting credit life insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Colorado.

Board of Governors of the Federal Reserve System, August 4, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-18006 Filed 8-9-88; 8:45 am]

BILLING CODE 6210-01-M

**Mason City National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1988.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mason City National Bancorp, Inc.*, Mason City, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Mason City National Bank, Mason City, Illinois.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Worthington Bancshares, Inc.*, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Worthington State Bank, Worthington, Indiana.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Frandsen Financial Corporation*, Luck, Wisconsin; to acquire 100 percent of the voting shares of First State Bank, Braham, Minnesota.

2. *Frandsen Financial Corporation*, Luck, Wisconsin; to acquire 100 percent of the voting shares of Lakeside State Bank, Isle, Minnesota.

**D. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Kolob Investment Company*, Springville, Utah; to become a bank holding company by acquiring 34.1 percent of the voting shares of M.O. Packard Investment Company, Springville, Utah, and thereby indirectly acquire Central Bank and Trust Company, Springville, Utah.

2. *Washington Commercial Bancorp*, Redmond Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Redmond National Bank, Redmond, Washington, a

de novo bank. Comments on this application must be received by August 31, 1988.

Board of Governors of the Federal Reserve System, August 4, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-18007 Filed 8-9-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

[Announcement Number 904]

### Cooperative Agreements for Acquired Immunodeficiency Syndrome National Organization and Consortiums Information and Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1989

#### Introduction

The Centers for Disease Control (CDC), announce the availability of Fiscal Year 1989 Cooperative Agreement funds to support information and education programs about Acquired Immunodeficiency Syndrome (AIDS) carried out by national non-profit organizations and/or consortiums.

#### Authorizing Legislation

This program is authorized under the Public Health Service Act: Section 301(a) (42 U.S.C. 241), and Section 318, (42 U.S.C. 247c) as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

#### Background

AIDS constitutes a significant threat to the health of all people in the United States. Although the vast majority of AIDS cases have occurred among homosexual and bisexual men (70%) and intravenous drug abusers (19%), Human Immunodeficiency Virus (HIV) infection can be transmitted through heterosexual practices (from man to woman or woman to man) and perinatally (from infected mother to newborn child). An estimated 1–1.5 million Americans already are infected with the virus and cases resulting from heterosexual transmission of the virus are expected to increase. The only means currently available to control the epidemic is through effective education about the behaviors that spread the virus from an infected person to an uninfected person, the consequences of infection, and how to prevent becoming infected.

To help prevent the spread of HIV infection CDC proposes to support national organizations and consortiums in developing and implementing national AIDS health education/risk-reduction programs. These national organizations and consortiums must have established communication links with both their constituent communities and with the general public.

#### Program Purpose

The purpose of the proposed program is: (1) To assist appropriate national organizations, associations, consortiums and/or professional groups that have existing organizational capacities to carry out on a national basis, immediate, as well as long-term actions to provide HIV/AIDS education/risk-reduction projects targeted to the needs of their constituencies; (2) to support activities on a national or regional basis which will complement and supplement State and local efforts to inform and educate the public at risk of HIV infection; (3) to encourage alternative national approaches to health education and risk-reduction which are sensitive and appropriate to the needs of specific target populations; (4) to educate and involve greater numbers of national organizations and to stimulate the development of appropriate consortiums in HIV/AIDS information/education activities; (5) to assure coordination of these activities with education and prevention efforts of State and local health departments; and (6) to identify existing HIV/AIDS information/education needs, and address these needs through resources not currently involved in AIDS prevention.

#### Eligibility Requirements

Applications may be submitted by a single organization or a group of two or more organizations. If two or more organizations combine to submit an application, one must be designated as the primary recipient of the award. That organization shall have primary responsibility for submission of the application, and any subsequent award, with appropriate subcontract arrangements with participating organizations. The Project Director must be an employee of the applicant organization. The application must describe in full detail all such planned arrangements.

An eligible applicant organization will be of one of the following two types:

1. An established *national non-profit organization* which may be health, education, social service, professional, or voluntary; which has the capacity and organizational experience to implement and manage programs of national scope; and which demonstrates the capacity to operate and centrally administer a coordinated HIV/AIDS information/education/risk-reduction program or network on a national basis; *OR*

2. An established or newly formed *national non-profit consortia or group of organizations* which brings together a range of capabilities of national scope, and which demonstrate a capacity to operate and centrally administer a regionally or nationally coordinated AIDS information/education program.

#### Availability of Funds

Approximately $1,000,000 will be available in Fiscal Year 1989 to fund approximately 8–12 cooperative agreements under this announcement. It is expected that the range of awards will be between $25,000 and $150,000.

It is expected that the initial awards will be made on or about November 15, 1988, and will be initially funded for a 12-month budget period, with a project period of up to 5 years.

Organizations and consortia may submit more than one application under this program, but no specific organization or consortium member will receive more than one award each through this program.

#### Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, their training, travel, equipment, supplies and services, including contractual services (i.e., contracts with community organizations) directly related to planning, organizing, and conducting the AIDS Information/Education Program described in this announcement.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS risk-reduction education efforts, if approved in accordance with the CDC guidance document titled CONTENT AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS IN CENTERS FOR DISEASE CONTROL ASSISTANCE PROGRAMS (JANUARY 1988), as published in the **Federal Register** (53 FR 6034, February 29, 1988).

#### Purpose/Cooperative Activities/Other Requirements and Information

*A. Purpose*

Consideration will be given to national projects directed toward the general population or toward one or more of the target populations identified

below. Proposed projects should include one or more of the following activities:

(1) Development and implementation of information and education/risk reduction programs on HIV/AIDS aimed at their membership, affiliates, employees, constituents, etc. These efforts should emphasize activities which demonstrate knowledge about and which are sensitive to either specific target groups; such as high-risk individuals, disadvantaged women, young adults, health care employees, racial and ethnic minorities or the general public.

(2) Development and operation of HIV/AIDS informational/educational programs between recipient organization(s), other interested organizations, and/or membership affiliates, employees, constituents, etc., with special emphasis on those organizations with current limited involvement in HIV/AIDS education.

(3) Development and implementation of information/education/risk-reduction demonstration programs at the State and local level(s) by affiliate organizations. These demonstration programs must be coordinated with appropriate State and local AIDS Coordinators and Programs and specifically address gaps in existing State and Local Program Activities.

(4) Development of information, training and/or technical assistance to member affiliates; and creative and effective application of available resources to address public health problems which will positively affect HIV/AIDS morbidity and mortality. The CDC has established grants and cooperative agreements with many official State and local health agencies, as well as other public and private entities for HIV/AIDS prevention programs, and envisions that applicants' proposed programs will complement and be coordinated with these agencies' programs.

*B. Cooperative Activities*

1. Recipient Activities

a. Establish programs to increase the number of national organizations and coalitions providing effective AIDS education, or stimulate the development or expansion of the number of organizations collaborating to deliver effective AIDS information and education programs to the public or to specific populations at increased risk of becoming infected. Programs must have time-framed, measurable and realistic objectives and should have plans to monitor the levels of AIDS-related knowledge, attitudes, beliefs and behaviors among targeted populations.

b. Collaborate with State and local health agencies in carrying out HIV/AIDS health education/risk-reduction programs and in planning, implementing, and evaluating effective AIDS education including:

(1) Providing consultation and technical assistance to affiliates/constituents, etc., during the planning and development phases of the program;

(2) Developing, selecting, and reviewing educational materials used by the program;

(3) Providing logistical and technical support (e.g., arranging to have AIDS experts available for program workshop, meetings, conferences, etc.) to facilitate the implementation and evaluation of the program; and

(4) Ensuring a close coordination of this initiative with the State or local AIDS health education/risk-reduction Program.

c. Assess program progress in achieving objectives and in carrying out activities.

d. Participate in sharing HIV/AIDS program descriptions, progress reports, and educational materials through the Centers for Disease Control National Information Clearinghouse database and in utilizing the database to avoid duplication of efforts.

e. Participate in CDC-sponsored conferences dealing with program activities.

2. CDC Activities

a. Provide technical assistance and guidance in the planning and implementation of programs.

b. Assist in the identification and acquisition of appropriate educational materials to be used in the program; examples: clearinghouse, hotlines, campaign materials, etc.

c. Provide technical assistance in the development and implementation of evaluation efforts for the program.

d. Provide access to the National AIDS Clearinghouse's database of AIDS programs and materials.

**Review and Evaluation Criteria**

1. *Knowledge of Target Population:* (15%)
2. *Proposed Program:* (30%)
3. *Applicant Capability and Coordination Efforts:* (35%)
4. *Evaluation Design:* (10%)
5. *Program Personnel:* (10%)
6. *Program Budget:* NOT SCORED

**Application and Submission Deadline**

The original and two (2) copies of the application (PHS 5161–1, revised 3/86) must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, GA, 30305, on or before September 26, 1988.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(A) Received on or before the deadline date.

(B) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1A. or B. are considered late applications. Late applications will not be considered in the current competition, and will be returned to the applicant.

**Other Requirements**

Applications are not subject to review as governed by Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

**Availability of Complete Program Description and Application Assistance**

A full description of the program, including criteria for review of applications, application format, application procedures, copies of application forms PHS 5161–1, and other materials may be obtained from Terry Maricle, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 842–6511.

Announcement Number 904, "Cooperative Agreements for Acquired Immunodeficiency Syndrome National Organization and Consortiums Information and Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1989," must be referenced in all requests for information pertaining to these projects.

Technical Information may be obtained from Beverly Schwartz, National AIDS Information and Education Program, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639–2384.

Dated: August 3, 1988.

**Robert L. Foster,**

*Acting Director, Office of Program Support Centers for Disease Control.*

[FR Doc. 88–18029 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

[Docket No. 88M-0263]

### Bunnell, Inc.; Premarket Approval of Model 203 Life Pulse High Frequency Ventilator

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Bunnell, Inc., Salt Lake City, UT, for premarket approval, under the Medical Device Amendments of 1976, of the Model 203 Life Pulse High Frequency Ventilator. After reviewing the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 30, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by September 9, 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 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** E. Carolyn Derrer, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

**SUPPLEMENTARY INFORMATION:** On May 21, 1986, Bunnell, Inc., Salt Lake City, UT 84115, submitted to CDRH an application for premarket approval of the Model 203 Life Pulse High Frequency Ventilator, which is indicated for use in ventilating critically ill infants with respiratory distress syndrome complicated by pulmonary air leaks, who are, in the opinion of their physicians, failing on conventional ventilation. All other uses of the Model 203 Life Pulse High Frequency Ventilator remain investigational.

On November 21, 1986, the Anesthesiology and Respiratory Therapy Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. The panel, however, noted a lack of data supporting the use of this device at frequencies greater than 660 breaths per minutes. As a result, the applicant has modified the device by limiting the maxmium frequency to 660 breaths per minute. The panel also recommended that the applicant provide additional information to support the correct use of the device, more concise instructions for use, and long-term follow-up data to examine the incidence of residual pulmonary pathology. This additional information has been submitted by the applicant. CDRH concurred with the recommendation of the Anesthesiology and Resipiratory Therapy Devices Panel. In addition, CDRH recommended that the maximum peak inspiratory pressure be limited to 50 centimeters of water and that the maximum inspiratory: expiratory ratio be limited to 0.035 seconds. The applicant has modified the Model 203 Life Pulse High Frequency Ventilator accordingly. On June 30, 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 E. Carolyn Derrer (HFZ-430), address above.

#### 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 persons 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 September 9, 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: August 3, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88-18068 Filed 8-9-88; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 88M-0266]

### Sonocare, Inc.; Premarket Approval of Model CST-100 Therapeutic Ultrasound System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Sonocare, Inc., Upper Saddle River, NJ, for for premarket approval, under the Medical Device Amendments of 1976, of the Model CST-100 Therapeutic Ultrasound System. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 30, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by Septebmer 9, 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 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

**SUPPLEMENTARY INFORMATION:** On January 21, 1987, Sonocare, Inc., Upper Saddle River, NJ 07458, submitted to CDRH an application for premarket approval of the Model CST–100 Therapeutic Ultrasound System. The Model CST–100 Therapeutic Ultrasound System is a device that produces a focused high intensity ultrasound beam and is indicated for the treatmnent of refractory glaucoma.

On May 28, 1987, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On June 30, 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 Robert A. Phillips (HFZ–460), address above.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

### 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 persons 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 September 9, 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: August 3, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88–18067 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 88M–0264]**

## Trimedyne, Inc.; Premarket Approval or the Spectraprobe-PLR™ Catheter and Model 900 Optilase™ Contract Laser Source System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Trimedyne, Inc., Santa Ana, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Spectraprobe-PLR™ Catheter and Model 900 Optilase™ Contract Laser Source System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 30, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by September 9, 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 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Brad C. Astor, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7371.

**SUPPLEMENTARY INFORMATION:** On November 6, 1987, Trimedyne, Inc., Santa Ana, CA 92705, submitted to CDRH an application for premarket approval of the Spectraprobe-PLR™ Catheter and Model 900 Optilase™ Contract Laser Source System. This device is indicated for use via surgical cutdown or percutaneous introduction as the sole therapeutic procedure, as an adjunct to balloon dilatation or as an adjunct to peripheral vascular surgery (i.e., bypass graft surgery) for the treatment of total occlusions or stenoses in the iliac, femoral, popliteal, and tibial arteries.

On March 11, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 30, 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 Brad C. Astor (HFZ–450), address above.

### 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 persons 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 September 9, 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: August 3, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88–18069 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1988:

Name: National Advisory Committee on Rural Health

Date and Time: September 19–21, 1988, 8:30 a.m.

Place: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, Financing, research, development and administration of health care service in rural areas.

Agenda: The meeting will tentatively include welcome and opening remarks; Department perspective; the Congressional perspective; the role of the Committee; a Press Conference; the Public Health perspective; public comments/testimony; perspectives of the Health Resources and Service Administration Bureau; and development of an action plan for the Committee's operation.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Persons interested in providing testimony during the public comments segment of the agenda on September 19, should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 88–18070 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–15–M

## Public Health Service

### Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409–24, August 31, 1982, as amended most recently in pertinent part at 51 FR 27916, August 4, 1986), is amended to reflect the establishment of the Division of Special Populations Program Development in the Bureau of Health Care Delivery and Assistance, within the Health Resources and Services Administration (HRSA).

*Under HB–10, Organization and Functions,* amend the functional statement for the *Bureau of Health Care Delivery and Assistance (HBC)* by adding the following after the functional statement for the *Division of Federal Occupational and Beneficiary Health Services (HBCA):*

*Division of Special Population Development (HBCB).* This division researches issues and develops program plans which identify health care needs of special population groups. Such research may include issues related to: (1) The health care of the homeless, substance abusers, the elderly, and victims of AIDS and Alzheimer's Disease; perinatal and other infant mortality reduction programs; home health services, environmental, occupational, and rural health, etc., (2) coordinates the identification of issues and establishes Agency/Bureau priorities with the Division of Primary Care Services; (3) directs nationwide efforts to coordinate health care needs of special populations and encourages State and local assistance in meeting needs; (4) provides guidance and direction in the development of health care partnerships and networks and coordinates the management plans with regional offices, other Federal programs, and State and private organizations; (5) develops guidance materials and implements plans to meet needs of identified areas; (6) coordinates health needs of special populations with the Division of Primary Care Services ensuring that funds are allocated according to Bureau priorities and legislative intent; (7) develops, conducts, and evaluates demonstration projects utilizing data collected as a base line for the integration of primary care systems or expanding existing health care networks; and (8) provides technical assistance in the interaction of community based systems.

This establishment is effective upon date of signature.

Date: August 4, 1988.

**Wilford J. Forbush,**

*Director, Office of Management.*

[FR Doc. 88–18084 Filed 8–9–88; 8:45 am]

BILLING CODE 4160–15–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–88–1841]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of house needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 3, 1988.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* National Survey of Shelters for the Homeless.
*Office:* Policy Development and Research.
*Description of the Need for the Information and its Proposed Use:* This survey is intended to provide information about the Nation's system of shelters for the homeless, including the number of shelter facilities and beds, amenities and services available, rules and regulations, and the characteristics of shelter occupants. The information is needed for purposes of policy development and program administration, as well as for more general use by other Federal agencies, the Congress, and the general public.
*Form Number:* None.
*Respondents:* Non-profit institutions and state or local governments.
*Frequency of Submission:* One-time.
*Reporting Burden:*

| Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| 200 | | 1 | | .50 | | 100 |

*Total Estimated Burden Hours:* 100
*Status:* New
*Contact:*
Terry Connell, HUD, (202) 755–5541
John Allison, OMB, (202) 395–6880

Date: August 3, 1988.

Supporting Statement for OMB Review

Survey of Shelters for Homeless Persons

Contract No. HC–5772

Task Order No. 3

Dr. Martin Abravanel, Director and Governmental Technical Representative
Dr. Terrance Connell, Governmental Technical Monitor, Division of Policy Studies, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Washington, DC 20410
Dr. Garrett Moran, Task Order Manager, Westat, Inc., 1650 Research Boulevard, Rockville, Maryland 20850

August 2, 1988.

**Table of Contents**

*Section*



1. Justification

*A. Need for Data Collection*

The Housing and Community Development Act of 1970, section 501, authorizes the Secretary of Housing and Urban Development (HUD) to undertake such programs of research, studies, testing and demonstrations relating to the mission and programs of the Department as he determines to be necessary and appropriate. Under this authorization, the Division of Policy Studies has been assigned the responsibility of studying shelters for the homeless.

On July 22, 1987 the Stewart B. McKinney Homeless Assistance Act was signed into law. The amount appropriated for the McKinney programs administered by HUD was $195 million in FY 1987. An additional $280 million was authorized for FY 1988, of which $73 million has been appropriated. The HUD programs include grants to state, county, and local governments to renovate and operate homeless facilities; funds to public agencies and private non-profit organizations to develop innovative

approaches to providing "transitional" housing to move capable homeless persons to independent living; funds to states for long-term housing for handicapped homeless; and additional funding for rehabilitation of single room occupancy dwellings for priority use by the homeless.

As these programs begin, it is important for the Department to understand the present and potential role of the HUD McKinney Act programs with respect to how shelters for the homeless address homeless issues. Since the programs have just begun, it is not possible to obtain in-depth evaluation results at this time. OMB, Congress, various HUD offices, and organizations addressing homeless issues, however, have a major interest in whatever preliminary information can be obtained over the next few months. Therefore, the Division of Policy Studies in the Office of Policy Development and Research (PD&R) will study the role of the HUD McKinney Act programs in the context of the ability of a community to provide appropriate shelter and services to the homeless.

Little is known about the impact and adequacy of such policies and expenditures, the characteristics of the homeless who have been helped by them, nor the extent to which they supplement private efforts to provide shelter for the homeless.

*B. Purpose of Data Collection*

A telephone survey of a national sample of shelter managers and shelter voucher program managers is proposed in order to obtain information on the operation and funding of the shelters and voucher programs, and the characteristics of those who use them.

Most shelters are operated by private groups, but as noted in the preceding section, considerable Federal funds have been allocated to support their operation. Voucher programs rely on a combination of funding sources. The survey would gather data on the cost of providing accommodation for the homeless and the source of funds for different types of shelters (Federal, state, local government, and private).

Information will be gathered on demographic characteristics, extent of shelter use, employment, mental health and alcohol/drug abuse.

In order to assess the extent to which shelters are meeting existing needs, the survey will obtain statistics on shelter capacities, occupancy and turnaway rates. Eligibility criteria and availability of additional support services will also be examined for shelters and voucher programs.

*C. Existing Information*

Early references to shelter policies, funding, and user characteristics can be found in "A Report to the Secretary on the Homeless and Emergency Shelters." [1] More recent references include the Congressional Hearing that was held in support of the McKinney Act: "Urgent Relief for the Homeless Act" [2]; and other Congressional Hearings such as: "Homelessness in America" [3]; "Homelessness in America—1988" [4]; "The Crisis in Homelessness: Effects on Children and Families" [5]; and "Effect of Our Nation's Housing Policy on Homelessness." [6] There have been few national probability samples of shelters that will allow generalizations to be made about the national situation. In 1984, HUD commissioned the first national sample of shelters and this will be a follow-up to that study.

*D. Efforts to Identify Duplication*

Discussions with HUD staff, and an extensive search of the literature both within the government and in the private sector, have revealed no comparable nationwide studies or surveys of the shelter situation that have been conducted within the last four years.

The study that is most similar to that proposed here is a national Food and Nutrition Survey conducted for the Department of Agriculture under OMB clearance number 0584–0360. This survey focused on meals served to the homeless in soup kitchens and to a lesser extent meals served in shelters. Only twenty cities were included in this survey. It would not be possible to produce national estimates on the variables of interest for our proposed survey from the data gathered by the Department of Agriculture survey.

*E. Consideration of Alternatives*

Consideration of alternative means of collecting the required data was given. For the following reasons the current plan of research was retained.

- The current plan of research maximizes comparability with the 1984 study, thus allowing examination of trends over time.
- The proposed survey will provide national estimates of shelter provision, while localized studies would not.
- A telephone survey is an economical means of gathering national data.

**2. Description of Information Collected**

*A. Universe and Sampling Methods*

Frame Creation

The shelter survey will use a two-stage sample design; first selecting a sample of counties or central cities, then selecting a subsample among the shelters located in those jurisdictions. The frame of counties and central cities will come from the Census Bureau's City/County Databook from the 1980 Census.

No complete listing of shelters throughout the country is available. Therefore, for each selected primary sampling unit (county/central city) the contractor will review the Comprehensive Homeless Assistance Plan (CHAP) and any other available secondary sources of information on shelters in that jurisdiction. Some phone conversations may be made to CHAP authors or other relevant governmental and private sector agencies (including homeless referral centers) knowledgeable about area homeless shelters. From those sources, lists of all shelters serving the homeless, and their number of beds, will be compiled for the eligible first-stage communities.

The most applicable SIC codes for shelters for the homeless are 6399—Social Services Not Elsewhere Classified or 9531—Housing Programs.

Definition of Eligible First-Stage Communities

All counties in the United States with a population of 25,000 or more will be eligible for this survey. If a county contains an SMSA central city with a population greater than 250,000, the central city will be sampled separately

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[1] U.S. Department of Housing and Urban Development, *A Report to the Secretary on the Homeless and Emergency Shelters*, 1984, Washington, D.C.: U.S. Government Printing Office.

[2] "Urgent Relief for the Homeless Act": hearing before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, One-hundredth Congress, first session, on H.R. 558, February 4, 1987.

[3] "Homelessness in America": hearing before the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs, United States Senate, One hundredth Congress, first session, January 29, 1987.

[4] "Homelessness in America—1988": hearing before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, One-hundredth Congress, second session, January 26, 1988.

[5] "The crisis in homelessness: effects on children and families": hearing before the Select Committee on Children, Youth, and Families, House of Representatives, One hundredth Congress, first session, hearing held in Washington, DC, February 24, 1987.

[6] "Effect of our nation's housing policy on homelessness": hearing before the Ad Hoc Task Force on the Homeless and Housing of the Committee on the Budget, House of Representatives, One Hundredth Congress, first session, January 21, 1988.

to insure adequate representation in the sample. The remaining portion of a county that contains an eligible SMSA central city will itself be eligible for selection, if the non-central city population exceeds 25,000.

Definition of Eligible Homeless Shelters

All shelters for the homeless and voucher programs that provide shelter to the homeless are eligible for inclusion in the survey, with the exception of:

- Shelters or programs open less than 30 days during the past 12 months;
- Shelters used exclusively for juvenile runaways;
- Hospitals;
- Prisons; and
- Detoxification centers located outside of a shelter.

Specifically included in the survey are:

- Shelters for adult men or women;
- Shelters for families;
- Shelters for battered women;
- Transitional housing;
- Boarding houses, welfare hotels, and single room occupancy (SRO) hotels primarily or exclusively used by the homeless that accept direct client payment;
- Other shelters used to house the homeless; and
- Commercial lodging providers that serve the homeless through voucher programs and contractual arrangements.

Sample Selection Methodology

Sixty five first-stage units (counties/central cities) will be selected with probabilities proportional to size (PPS). The size measure will be the maximum of the number of renters or 20 percent of the total population. Number of renters is considered in calculating the measure of size because it is likely to be more highly correlated with the presence of shelters for the homeless than is general population size. This correlation results from the tendency of the homeless to gather in more urban, densely populated areas where most renters are likely to be found. There may, however, be some very large suburban counties with very small rental populations. To prevent such counties from being excluded, and to control the variation in sampling weights, general population size is also factored into the calculation of the measure of size. This approach should increase the accuracy of the survey estimates. (Nationally, about one-third of all households are renters.)

Two hundred second-stage units (shelters and voucher programs) will be selected with probability inversely proportional to their first-stage unit's probability of selection, and all shelters and voucher programs thought to exceed a specified size will be selected with certainty. There will be at least two additional size strata, with those in the larger stratum having a higher probability of selection whan the smallest size shelters or programs. This procedure will ensure adequate representation of shelters which provide services to the greatest number of homeless. It will also provide, to the extent possible, an equally weighted sample of shelters within these three size strata. This will maximize the precision of the estimates.

*B. Information Collection Procedures*

After receipt of final information collection clearance, trained telephone interviewers will contact managers of approximately 200 shelters or voucher programs for the homeless in 65 cities or counties nationwide. Shelters and voucher programs will be sampled from a universe developed by reviewing CHAPs, other existing documentation, and lists obtained from the local areas. Interviewers will be trained to first identify the manager in order to conduct the interview. Once contacted, interviewers will ask managers questions to determine shelter or program characteristics, characteristics of those served, capacity, and extent of use.

Interviewers selected for this survey will have all undergone a rigorous and carefully planned training program that covers general techniques of interviewing as well as a session specifically designed to familiarize them with and enable them to administer the Survey of Shelters for the Homeless.

*C. Pre-Testing*

During the month of August 1988, project staff will pretest this questionnaire with no more than nine shelter managers in cities not included in the sample. This pretesting and subsequent review may result in revisions to the draft questionnaire.

*D. Expected Response Rate*

A very high response rate (90% or more) is anticipated in this survey. This response rate is anticipated based on the 95 percent response rate achieved in the 1984 suvey. A high response rate was achieved across strata in 1984, and it is anticipated that similar rates will be achieved in this survey. Oversampling will be provided to allow for nonresponse and out-of-scope shelters (e.g., shelter no longer exists).

For a sample size of 200 and an estimated proportion of 50 percent, the 95 percent confidence interval, excluding design effects, is 50 ± 6.9 percent. At an estimated proportion of 10 percent, the corresponding 95 percent confidence interval is 10 ± 4.2 percent, excluding design effects.

*E. Sampling Statisticians*

The sampling approach for this survey was designed by David Marker and David Morganstein, sampling statisticians with Westat, Inc., and was implemented under their supervision.

Telephone numbers are as follows:
David Marker (301) 251–1500
David Morganstein, (301) 251–1500

*F. Confidentiality Provisions*

To ensure that the data collected are processed in a confidential manner, a set of standard procedures will be followed:

- All project staff will sign an assurance of confidentiality.
- Employees will keep completely confidential the names of all shelter respondents, all information or opinions collected in the course of interviews, and any information about respondents learned incidentally.
- Survey data containing personal identifiers will be kept in a locked container when not being used each working day in routine survey activities. Reasonable caution will be exercised in limiting access to survey data only to persons working on the project who have been instructed in the applicable confidentiality requirements for the project.
- The project director and survey manager will be responsible for ensuring that all personnel involved in handling survey data on the project are instructed in these procedures, have signed the pledge, and comply with these procedures throughout the period of survey performance.
- Special handling instructions not only will demand enforcement of the confidentiality of received questionnaires, but will assure strict control of questionnaire whereabouts.

To assure respondents of the confidentiality of the data collected, interviewers will read the following statement before beginning each interview:

> Before I begin I'd like to inform you that your response is voluntary and the information you provide will be treated as confidential and will only be used in combination with other responses in statistical reports. No information other than city name will be published or released that identifies individual respondents or shelters with their responses.

To ensure that the data will not be used in an inappropriate or unauthorized manner while in the care

of the contractors, standard confidentiality procedures will also be used. All the necessary information and documents relating to computer data files will be kept in a file accessible only by project analysts under the supervision of the project director. Final analysis and reporting of the data will not contain identifying information such as name, address, or telephone number.

*G. Remuneration*

No remuneration of any kind is being offered to any respondents to the proposed survey.

*H. Tabulation and Publication*

Tabulation

The data collected by telephone interview will be coded, key entered, and cleaned by the contractor. The resulting data file will be computer-processed by standard statistical software packages.

A set of frequency distributions on all collected items will be made. A critical examination of the quality of the data shall be prepared and sumbitted. It will include comment on accuracy, validity, response rates, extent of missing data, and known and potential biases. The contractor will also provide a report that explains the methodology, identifies the number of responses and relative precents, and details the work performed under the contract, including data and procedural recommendations.

Publication

HUD will use contractor provided information and additional tabulations produced by HUD analysts in preparing a report on homeless shelters.

**3. Time Schedule**

The contract for the survey of shelters for the homeless was awarded in June 1988 and is expected to be completed before the end of 1988. It is anticipated that interviews will be conducted in the August 22nd to September 5th time period, assuming extensive modifications are not required following pretesting, OMB and HUD reviews, and the instrument approval process. Delivery of data file and documentation is expected approximately three weeks after completion of interviews.

**4. Outside Consultation**

*A. Public Contacts*

In addition to talking to members of various offices within HUD, the contractor has discussed the issues with shelter managers and others concerned with problems of homelessness to determine what information is readily available and the terminology and units of measure commonly used.

*B. Identity of Informaiton Collectors*

Telephone survey data will be collected by employees of Westat, Inc., 1650 Research Blvd., Rockville, MD 20850.

**5. Respondents Burden**

The total respondent burden for this one-time data collection is 100 hours based on 200 respondents at one-half hour each. No special record keeping is required. Nearly all responses can be made by recall. A few questions involve referral to readily available statistics on numbers of clients using shelter. There is very little variation in burden from one respondent to another since there are very few skip patterns, all of which are short.

**6. Sensitive Questions**

None of the questions deal with sensitive matters.

**7. Cost to the Federal Government**

The total cost of the proposed data collection to the Federal Government will be approximately $55,000. This includes the cost of the sampling activities, developing the survey instrument, collecting data by telephone, and providing frequency distributions and an edited data set on floppy diskette.

**8. Item Justification**

*A. Overview*

The following section provides a description of questionnaire items in the Survey of Shelters for the Homeless and a justification of the means by which each of the questions support the overall research plan. Groupings include: General shelter characteristics; eligibility and rules; characteristics of users; manpower and cost; and administrative problems.

The questionnaire is designed to capture such information as capacity, services provided, facilities included, extent of use, and staffing. Questions will also focus on the type of person most likely to use a shelter. These characteristics include sex, family status, mental illness, employment, and other problems.

*B. Shelter Characteristics*

Questions under this heading will provide general information about the characteristics of the shelter. To determine these, the following questions are included:

SH1–VP5. Cost to homeless person of using shelter—differentiation between voucher and contract programs, and services provided by both.
1. Age of shelter.
2–2a. Usage availability of shelter–year-round.
3. Client referral sources.
4–5. Extent of use, and average daily occupancy.
6–6c. Capacity and overflow practices.
8. Style of accommodation.
12. Services and facilities included.

*C. Eligiblity Requirements and Rules*

These questions will derive information about who is eligible to use the shelter, what conditions influence continued use, and what rules must be followed.

7–7f. Eligibility.
9–9c. Maximum nights allowed to stay/use shelter.
10–11. Rules.

*D. Characteristics of Users*

Previous research suggests that the homeless are comprised of several very diverse groups. These questions are administered to focus on the type of person who currently uses and needs the shelter to ascertain any significant changes in the kinds of people who have become homeless over the past few years.

7–7f. Characteristics of users (sex, family status, race, age, employment, social problems like alcoholism, drug abuse, mental health, and duration of homelessness).

*E. Manpower and Cost*

These questions will provide necessary information about cost of operating the shelters and who is bearing them.

13–15. Staff hours worked, both volunteer and paid.
16. Operating budget.
17–17a. Source of funds.

*F. Administrative Problems*

Questions 18–18a ask about any hindrances to the operation of the shelter that may result from any city, state or federal agency such as zoning restrictions.

*G. Expression of Appreciation and Address Request*

Question 19 offers the respondent a copy of the HUD report on homelessness and Question 20 verifies the shelter's address.

**Appendix A**

BILLING CODE 4210-01-M

OMB No.: ____-
Expires: __-__-

Department of Housing and Urban Development
National Survey of Homeless Shelters
Telephone Questionnaire

**DRAFT**
August 2, 1988

TO SWITCHBOARD - IF NO CONTACT NAME AVAILABLE:

Hello, my name is _____ and I'm calling on behalf of the U.S. Department of Housing & Urban Development. May I have the name of the shelter Director/Manager please? **[RECORD NAME ON RESPONDENT INFORMATION SHEET (RIS)]**

TO SHELTER MANAGER:

Hello, may I speak to _____, the manager of the SHELTER/PROGRAM. Hello, my name is _____. I am with Westat, a national survey research firm. We are conducting a national survey of shelters for the homeless for the Federal Department of Housing and Urban Development. The purpose of the survey is to collect some information about shelters and the homeless who uses them.

CONFIDENTIALITY PLEDGE

Before I begin I'd like to inform you that your response is voluntary. The information you provide will be treated as confidential and will only be used in combination with other responses in statistical reports. No information other than city name will be published or released that identifies individual respondents or shelters with their responses.

**[IF RESPONDENT IS A VOUCHER PROGRAM THEN SKIP TO PAGE 3. IF RESPONDENT IS A SHELTER MANAGER, GO ON TO PAGE 2.]**

We are aware that some shelters are operated solely as a community service, while others provide lodging only in return for financial reimbursement.

S1. Does your shelter require vouchers in return for providing lodging to homeless people?
(CIRCLE ONE)

1 Yes --> **[COMPLETE S1a. AND S2. THEN TERMINATE INTERVIEW]**

2 No --> **[CONTINUE WITH S2.]**

S1a. What agency(s) distributes the vouchers you accept?

_____

_____

S2. Do you have a contract or a comparable arrangement for payment by a third party for beds provided to the homeless? Payment might be by a government agency, religious group, or other organization.
(CIRCLE ONE)

1 Yes --> **[COMPLETE S2a. THEN TERMINATE INTERVIEW]**

2 No --> **[IF S1 WAS ALSO NO, THEN PROCEED WITH INTERVIEW. IF S1 WAS YES, THEN TERMINATE INTERVIEW]**

S2a. With what organization(s) do you have this contract?

_____

_____

**[TERMINATION DUE TO INELIGIBILITY]:** We will be interviewing voucher providers and contracting organizations about all of the services they offer. For this reason, we don't need to obtain any more information about your facility. Thank you for your time and cooperation.

**[ELIGIBLE SHELTERS/PROGRAMS CONTINUE HERE]** During this interview I'd like to get information about the people served by your SHELTER/PROGRAM in the past year, and how much it cost to run that service. If you have any records on these issues, it would be helpful if you could pull them out now, and refer to them whenever you need to.

**[SHELTER PROCEED WITH SH1--VOUCHER PROGRAMS SKIP TO VP1]**

SH1. Does your shelter require homeless people to pay for their lodging?
(CIRCLE ONE)

1 Yes --> **[CONTINUE WITH SH1a.]**

2 No --> **[SKIP TO 2.]**

SH1a. How much do you charge a homeless person for a nights lodging? And is the charge based on a sliding scale, a fixed fee, or a voluntary contribution?
(CIRCLE ONE)

1 Sliding Scale --> (INDICATE SCALE RANGE)

$ ☐☐.☐☐ Minimum $ ☐☐.☐☐ Maximum

2 Fixed Fee --> $ ☐☐.☐☐ Per Night

3 Voluntary Contributions

4 Other: _____

**[VP QUESTIONS FOR VOUCHER OR CONTRACT PROGRAMS ONLY]**

VP1. Does your organization administer a voucher program, a shelter provision contract program, or both?
(CIRCLE ONE)

1 Voucher program

2 Shelter contract program

3 Both Voucher and Contract programs

4 Other: _____



VP2. How many hotels, boarding houses, or other lodging providers participate in the voucher/contract program?

| Number | |
|---|---|
| ☐☐☐☐ | Voucher facilities |
| ☐☐☐☐ | Contract facilities |

VP3. I'd like to find out how much is usually spent for a night's lodging under this program. Do you serve individuals, families, or both?
(CIRCLE ONE)

1 Individuals Only

2 Families Only

3 Both Individuals and Families

VP4. Do you pay a single fixed rate to house an INDIVIDUAL/FAMILY/(OR BOTH) for a night, or do the costs vary across facilities? How much does it cost? **[IF FAMILY, INSTRUCT THEM TO ESTIMATE BASED ON A FAMILY OF FOUR]**

| | Fixed | Low | High |
|---|---|---|---|
| Individual | $ ☐☐☐ | $ ☐☐☐ | $ ☐☐☐ |
| Family | $ ☐☐☐ | $ ☐☐☐ | $ ☐☐☐ |

VP5. **[FOR VOUCHER PROGRAMS ONLY--SKIP TO QUESTION 1 IF THE RESPONDENT IS A CONTRACT PROGRAM]** What percent of the vouchers your program distributes to homeless persons are subsequently used?

☐☐☐ Percent --> **[GO TO VP5a. IF LESS THAN 100%. ELSE SKIP TO 1.]**

VP5a. Do you know what accounts for the fact that not all of the vouchers are used?
(CIRCLE ONE)

1 Bed space not available

2 Other: _____

_____

1 In what year did your SHELTER/PROGRAM first open? **[IF THE ORGANIZATION OPERATES MORE THAN ONE FACILITY, ASK THIS QUESTION ONLY WITH RESPECT TO FACILITY NAMED ON THE RESPONDENT INFORMATION SHEET (RIS)]**

| 1 | 9 | | |
|---|---|---|---|

Year

2. Does your SHELTER/PROGRAM provide lodging 365 nights per year?
(CIRCLE ONE)

1 Yes --> (SKIP TO QUESTION 3.)

2 No --> (GO ON TO QUESTION 2a.)

2a. When is your SHELTER/PROGRAM closed?
(CIRCLE MONTHS AND DAYS WHEN PROGRAM IS CLOSED)

SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG

MON TUE WED THUR FRI SAT SUN

Other: _____

_____

3. Of the people who used your shelter on an average night, what percentage would you say were referred to you from each of the following sources? **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR PERCENTS]**

| Pct. |
|---|
| |
| |
| |
| |

Self referral/Drop in

Referred by another shelter

Referred by centralized Referral Center

Other: _____

4. Between September of 1987 and August 1988, what was the average number of people your SHELTER/PROGRAM served per night? **[IF ONLY OPEN PART YEAR, BASE AVERAGE ON THE TIME OPEN]**

| | , | | | |
|---|---|---|---|---|

Average daily occupancy
**[RECORD ANSWER HERE AND IN QUESTION 7]**



5. For the series of questions that follows, whenever I mention the past year I'll be referring to this period between September of 1987 and August 1988. During this year, which season produced the highest occupancy?

FALL WINTER SPRING SUMMER

6. What is the maximum number of people your SHELTER/PROGRAM can accommodate overnight in beds or cots?

| | , | | | |
|---|---|---|---|---|

People

☐ Unlimited
**[IF UNLIMITED, THEN SKIP TO 7.]**

6a. How many nights during this year were all of your available beds or cots occupied?

| | | |
|---|---|---|
| | | |

**[SKIP TO 7. IF ZERO NIGHTS]**
Nights

☐ Every Night SHELTER/PROGRAM operated

6b. On a typical night when all of your available beds or cots were occupied, how many people:

| People |
|---|
| |
| |
| |

Slept in chairs/floor in your shelter?

Were referred to alternate shelters?

Were turned away without referral?

6c. **[ASK ONLY IF THERE WERE REFERRALS OR TURN AWAYS IN 6b.]** Do you know what happens to those you refer elsewhere or turn away?
(CIRCLE ONE)

1 Don't Know

2 Most find other shelter

3 Most remain on the street

4 Other: _____

7. I'd like to get a clear picture of the kind of people that are served by your SHELTER/PROGRAM. I'm going to ask you a whole series of questions about different characteristics of the people served by your SHELTER/PROGRAM. Throughout these questions I'd like you to think of the people you served during an average night this year. Earlier you told me that you served

[ ][ ], [ ][ ][ ] **[RECORD ANSWER TO QUESTION 4 HERE]**

people on an average night. I'd like you to think of those people and their characteristics during these questions. Let's start with their sex and family makeup. How many were from each of the following groups **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]:**

---

**[THROUGHOUT QUESTION 7, WHEN AN ANSWER IS ZERO, PROMPT WITH "IS THIS GROUP INELIGIBLE FOR SERVICE BY YOUR SHELTER/PROGRAM?" IF YES, CODE AN "X" IN LEFT-MOST BOX FOR THAT RESPONSE. ACCEPT NUMBERS OR PERCENTS, CIRCLING "NUMB" OR "PCT." IN TOP BOX]**

| Numb/Pct. | |
|---|---|
| | Unaccompanied Men |
| | Unaccompanied Women |
| | People who are in single parent families with children |
| | People who are in two parent families with children |
| | People together as adult couples without children |
| | Unaccompanied youth under 18 |



7a. I'd also like to get an idea of the ages of those served. If I break the age range into five groups: Under 18; 18 to 30; 30 to 50; 50 to 65; and Over 65; could you give me your best estimate of the number of those you serve that fit into each of these groups.

| Numb/Pct. | |
|---|---|
| | Under 18 |
| | Between 18 and 30 |
| | Between 30 and 50 |
| | Between 50 and 65 |
| | Over 65 |

7b. And what number would you say are of these different racial and ethnic groups? **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Numb/Pct. | |
|---|---|
| | Black |
| | White Non-Hispanic |
| | Hispanic |
| | Asian |
| | American Indian |
| | Other |

7c. I'd like to ask about employment or other sources of cash income now, so please only give me numbers for the adults you serve. And let me remind you that I would like this answered about the people you serve on an average night. How many of those using your SHELTER/PROGRAM would you say are: **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Numb/Pct. | |
|---|---|
| | Employed at least one half time |
| | Without any regular source of income |
| | Recipients of Welfare, a pension, or other non-wage payments (excluding food stamps and other non-cash in-kind benefits) |
| | Other: _____ |

7d. Among the people you served on an average night this year, how many would you say had been homeless for more than three (3) months?

| Numb/Pct. | |
|---|---|
| | More than three months |

7e. Are most of those you serve from your local area, or do they come from somewhere else? What number are: **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Numb/Pct. | |
|---|---|
| | Local for 1 year or more |
| | Not local |



7f. Now I'd like to ask about the kind of problems the people you serve have? I understand that one person might have more than one of these problems, so I'd like you to tell me the number who have each of these problems. For this question too, I'd like you to think only of the adults, not the children. How many adults have the problem of:

| Numb/Pct. | |
|---|---|
| | Domestic violence/battering |
| | Diagnosis of AIDS or AIDS Related Complex (ARC) |
| | Other physical disability |
| | Mental Illness |
| | Alcoholism |
| | Drug Abuse |
| | **Now I recognize that you will already have included these people in the groups above, but I would like to get a separate count here too. How many adults have the combined problems of** Mental Illness AND Drug or Alcohol Abuse |
| | Other: _____ |

8. I'd like to ask about the arrangement of bed space in your SHELTER/PROGRAM. How many rooms of the following types do you have: **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Rooms | |
|---|---|
| | Private rooms for individuals or families |
| | Rooms with 2 to 4 beds **[EXCLUSIVE OF FIRST GROUP]** |
| | Rooms with 5 to 10 beds |
| | Rooms with 11 to 20 beds |
| | Rooms with more than 20 beds |

9. Do you have a standard policy on the number of nights an individual can use your SHELTER/PROGRAM?

1 Yes --> (GO ON TO QUESTION 9a.)

2 No --> (SKIP TO QUESTION 10.)

9a. What is your policy?
(Circle One)

[ ][ ][ ] Nights stay per NA WEEK MONTH YEAR
CONSECUTIVE APPLICATION

[ ][ ][ ] Nights intervening interval NA WEEK MONTH YEAR
CONSECUTIVE APPLICATION

Other: _____

_____

9b. Why did you adopt this policy?
(Circle All That Apply)

1 Because of limited staff/funds

2 To serve more people

3 Other: _____

_____

9c. On an average night this year, how many people had to move on to a new shelter because they had stayed at your shelter for the maximum time allowed by your policy?

[ ][ ][ ] People



10. Many SHELTER/PROGRAMs have rules for people who stay at the SHELTER/PROGRAM. I'd like to get some information about your rules. Can people stay at your shelter all day?

1 Yes --> (SKIP TO QUESTION 11.)

2 No --> (GO ON TO QUESTION 10a.)

3 Yes if they are sick, or under other special circumstances (GO ON TO QUESTION 10a.)

Explain: _____

10a. What time of day must (they/those who must leave) be outside of the shelter?

From: [ ][ ]:[ ][ ] AM/PM To: [ ][ ]:[ ][ ] AM/PM

10b. Why do you have this policy?

_____

_____

(Circle All That Apply)

1 We don't have the staff/funds to allow them to stay

2 We have to use the space for some other purpose

11. Are those using your SHELTER/PROGRAM required to:

Y N Receive counseling or meet with a case worker regularly?

Y N Perform chores?

Y N Attend religious services?

Y N Are there other requirements?

Specify: _____

12. I am going to list some services or amenities that some homeless SHELTER/PROGRAMs provide to those they serve. I would like you to tell me if any of these services are routinely provided to those you serve. And if the service is routinely provided, I'd like to know if it is provided by your own staff (including volunteers) of your SHELTER/PROGRAM or by others?

| Provided | | Own Staff | | Service or Amenity |
|---|---|---|---|---|
| Y | N | Y | N | Full breakfast |
| Y | N | Y | N | Lunch |
| Y | N | Y | N | Dinner |
| Y | N | Y | N | Laundry facilities |
| Y | N | Y | N | Clothing |
| Y | N | Y | N | Mail receiving |
| Y | N | Y | N | Storage of personal items |
| Y | N | Y | N | Financial management assistance |
| Y | N | Y | N | Employment training/job location help |
| Y | N | Y | N | Help in finding permanent housing |
| Y | N | Y | N | Health care services |
| Y | N | Y | N | Mental health services |
| Y | N | Y | N | Substance abuse services (inc. alcohol) |
| Y | N | Y | N | Assistance in obtaining entitlements |
| Y | N | Y | N | Child care |
| Y | N | Y | N | Legal services |
| Y | N | Y | N | Transportation assistance |
| Y | N | Y | N | Case Management |
| Y | N | Y | N | Other: _____ |
| Y | N | Y | N | Other: _____ |



13. How many full time paid staff do you have?

☐☐☐ Paid Full Time Staff

13a. How many paid part time staff do you have, and, on average, how many hours do they work per week?

☐☐☐ Paid Part Time Staff ☐☐ Average hours per week

14. How many volunteer staff do you have, and how many hours do they work per week? **[READ OFF LIST BELOW BEFORE ASKING RESPONDENT FOR NUMBERS]**

| Vols. | |
|---|---|
| ☐☐☐ | Number working more than 30 hours per week? |
| ☐☐☐ | Number working 20 to 30 hours per week? |
| ☐☐☐ | Number working 5 to 19 hours per week? |
| ☐☐☐ | Number working less than 5 hours per week? |

15. Of your total staff hours, paid and volunteer, what percent would you estimate are used for training, counseling, or providing similar services to your clients? **[SIMILAR SERVICES WOULD INCLUDE FINANCIAL MANAGEMENT ASSISTANCE, EMPLOYMENT TRAINING, PERMANENT HOUSING ASSIST., ENTITLEMENT ASSIST., LEGAL SERVICES, AND CASE MANAGEMENT.]**

☐☐☐ Percent of staff hours

16. What is the total annual budget for running your SHELTER/PROGRAM?

$☐☐,☐☐☐,☐☐☐ Total annual cost

17. I'd like you to divide your income into two types--Government sources and Private sources. Please tell me how much money your SHELTER/PROGRAM received from each during your last full fiscal year, or if it is easier for you, what percent of your total funding is from each? Altogether, how much of your budget for the last full fiscal year came from government sources? From private sources?

$ ☐☐☐,☐☐☐,☐☐☐ Government ☐☐☐ %

$ ☐☐☐,☐☐☐,☐☐☐ Private ☐☐☐ %

17a. **[SKIP TO 18 IF THEY RECEIVED NO GOVERNMENT FUNDS]** Now I'm going to read off a list of government programs that sometimes help to support programs for the homeless. Please tell me if your SHELTER/PROGRAM got any money from each program during your last fiscal year, or indicate if you don't know.

| | | | |
|---|---|---|---|
| Y | N | DK | Federal Emergency Management Agency (FEMA) |
| Y | N | DK | Emergency Shelter Grants (ESG) |
| Y | N | DK | Community Development Block Grants CDBG) |
| Y | N | DK | Community Services Block Grants (CSBG) |
| Y | N | DK | Other Federal sources |
| Y | N | DK | State sources |
| Y | N | DK | Local sources |

18. Have you been hindered by any city, state or Federal agency regulation such as zoning or other regulation?

1 Yes --> (GO ON TO QUESTION 18a.)

2 No --> (GO ON TO QUESTION 19.)

18a. Please describe the problem(s)?

_____

_____

_____



[FR Doc. 88-17966 Filed 8-9-88; 8:45 am]
BILLING CODE 4210-01-C

19. I appreciate your cooperation in this survey. If you would like, we will arrange for HUD to send you their report on SHELTER/PROGRAMs for the homeless in the U.S. Would you like to receive a copy of this report? (CIRCLE ONE)

1 Yes --> **[CONTINUE WITH 20]**

2 No --> **[GO TO THANK YOU]**

20. May I verify your SHELTER/PROGRAM name and have your mailing address?

_____

_____

_____

_____

Thank you again for taking the time to answer my questions. Your cooperation is appreciated.

## Fish and Wildlife Service

### Processing of Application From the Cincinnati Zoo for Import of a Giant Panda

**SUMMARY:** On June 24, 1988, the Fish and Wildlife Service (Service) announced its intent to develop any necessary new policies or guidelines relating to the evaluation of further permit applications for import of giant pandas (*Ailuropoda melanoleuca*) for temporary exhibition purposes (53 FR 23847). That notice temporarily suspended review and processing of new applications pending completion of an evalaution of the situation and development of any necessary new guidance or policy. On June 1, 1988, an application in final form was received from the Cincinnati Zoo to import one male giant panda from the London Zoo and then to re-export it to Mexico for breeding purposes. No processing of the application has been done, in accordance with the sense of the June 24 notice cited above. The Service now intends to make an exception to its suspension notice and process this application form the Cincinnati Zoo to a final decision to issue or deny a permit while it continues to develop any necessary new panda guidance.

**DATES:** Public comment on this notice will be accepted on or before August 22, 1988, with regard to the Cincinnati Zoo application.

**ADDRESS:** Comments may be submitted to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329.

**FOR FURTHER INFORMATION CONTACT:** R.K. Robinson, Chief, Branch of Permits, at the address above, telephone (202) 343–4955.

**SUPPLEMENTARY INFORMATION:** On June 1, 1988, an amended application to import one male giant panda from the London Zoo and subsequently to reexport it to the Chapultepec Zoo in Mexico City for breeding purposes was received from the Cincinnati Zoo, Cincinnati, Ohio. The animal is entitled to the captive-held exemption from permitting requirements (popularly known as the "pre-Act" exemption) under section 9(b)(1) of the Endangered Species Act (Act) and 50 CFR 17.4. It was acquired by the London Zoo prior to January 23, 1984, the date the species was listed as endangered under the Act, and has not been held in the course of a commercial activity on or since that date. Therefore, the 30-day public comment notice of an application for a permit mandated by section 10(c) of the Act is not required in this case.

Because the animal was acquired by the London Zoo prior to December 6, 1983, the date the species was listed under the Convention on International Trade in Endangered Species (Convention) it is also entitled to a "pre-Convention" exemption. An Appendix I import permit under the Convention (50 CFR 23.15) will be required, however, because the United Kingdom has indicated its intention to honor the Secretariat's recommendation that Convention permits be required for pre-Convention giant pandas.

To date, all applications have been to import a pair of pandas for temporary exhibition only. In the Cincinnati application, the panda proposed for import is a solitary male that had previously been permanently removed from China and proceeds of the exhibition would be used to expand and improve existing panda facilities at the Chapultepec Zoo. Without these facilities, the zoo would be unable to accept and utilize the animal. Any remaining revenues would fund specific projects aimed at benefitting panda conservation. The ultimate goal of the transaction is to place a male panda in a breeding situation at a zoo having unmated female pandas. The Chapultepec Zoo has had the best captive breeding record of any facility outside China. According to information recently provided to the Service, four surviving young have been produced, but the breeding male recently died. The zoo now has three females of, or approaching, breeding age with no male suitable to continue the breeding program.

Because the ultimate intent of this permit request is to move a male to a breeding situation with unmated females in Mexico, the Service has determined that processing this application will not be contrary to the purpose of the previously announced suspension of processing, and requests all comments be submitted within 10 days as indicated above.

The Director of the Fish and Wildlife Service has authorized publication of this notice.

Dated: August 15, 1988.

**R.K. Robinson,**

*Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.*

[FR Doc. 88–78111 Filed 8–9–88; 8:45 am]

BILLING CODE 4310–55–M

### Receipt of Application for Permit

The public is invited to comment on the following amendment of application for permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

*Applicant*

Name: Chicago Zoological Society, Brookfield Zoo, 3300 Golf Road, Brookfield, IL 60513

File no. PRT–728111

*Type of Permit:* Scientific Research.

*Name of Animals:* Walrus (*Odobenus rosmarus*); one.

*Summary of Activity To Be Authorized:* The applicant proposes to import this animal from the Copenhagen Zoo, Denmark, for scientific research purposes.

*Source of Marine Mammals for Research:* Copenhagen Zoo; animal removed from wild in USSR in 1983.

*Period of Activity:* One year.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submited to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 "K" Street NW., Washington, DC.

Dated: August 5, 1988.

**R.K. Robinson,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 88–18112 Filed 8–9–88; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[UT–020–08–4322–12]

### Salt Lake District; Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on September 13, 1988. The meeting will begin at 9:00 a.m. at the Salt Lake District, Bureau of Land Management Office at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to: (1) Introduce new Board members; (2) Organize the new Board; (3) Review 1988, 8100 range improvement projects; (4) Review 1988, 7121 range improvement work; (5) Review proposed 1989, 8100 and 7121 range improvement projects; (6) Review the Bureau's sub-leasing policy; and (7) be given a report on the Bureau's Range Stewardship Program.

The meeting is open to the public and interested persons may make oral statements at the meeting between 10:00 a.m. and 10:30 a.m., or file a written statement for the Board's consideration.

Persons wishing to make statements to the Board are requested to contact Glade Anderson at (801) 524–5348 prior to September 2, so that adequate time can be included on the agenda.

**FOR FURTHER INFORMATION CONTACT:** Glade Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524–5348.

**Deane H. Zeller,**

*Salt Lake District Manager.*

[FR Doc. 88–18030 Filed 8–9–88; 8:45 am]

BILLING CODE 4310–DQ–M

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**[WY–920–08–4111–15; W–63030]**

## Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 2, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–63030 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–63030 effective May 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 88–18000 Filed 8–9–88; 8:45 am]

BILLING CODE 4310–22–M

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**[WY–920–08–4111–15; W–77460]**

## Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 2, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–77460 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–77460 effective May 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 88–18001 Filed 8–9–88; 8:45 am]

BILLING CODE 4310–22–M

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**[WY–920–08–4111–15; W–99140]**

## Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 2, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–99140 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–99140 effective May 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 88–18002 Filed 8–9–88; 8:45 am]

BILLING CODE 4310–22–M

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# INTERNATIONAL TRADE COMMISSION

**[Investigation No. 701–TA–296 (Preliminary) and Investigation No. 731–TA–420 (Preliminary)]**

## Certain Steel Wheels From Brazil

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–296 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of steel wheels,[1]

[1] For purposes of these investigations, the term "steel wheels" is defined as steel wheels (assembled or unassembled), designed to be mounted with pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and designed for use on passenger automobiles and light trucks in Gross Vehicle Weight (GVW) classifications 1, 2, and 3 (the trucks

Continued

provided for in item 692.32 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Government of Brazil.

The Commission hereby also gives notice of the institution of preliminary antidumping investigation No. 731-TA-420 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of steel wheels that are alleged to be sold in the United States at less than fair value.

As provided in sections 703(a) and 733(a), respectively, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by September 12, 1988.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** July 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Judith Zeck (202-252-1199), 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**

These investigations are being instituted in response to a petition filed on July 29, 1988, by The Kelsey-Hayes Co., Romulus, MI.

**Participation in the investigations**

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service list**

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 2073.), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Conference**

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 19, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Judith Zeck (202-252-1199) not later than August 17, 1988, to arrange for their appearance. Parties in support of the imposition of countervailing/antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

**Written submissions**

Any person may submit to the Commission on or before August 23, 1988 a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: August 2, 1988.

[FR Doc. 88-18110 Filed 8-9-88; 8:45 am]

BILLING CODE 7020-02-M

covered by classes 1, 2, and 3, are, generally, light trucks, for example pickup trucks, panel vans and mini-vans with gross vehicle weights of form under 6,000 lbs. up to 14,000 lbs.), as provided for in items 692.3230 of the *Tariff Schedules of the United States Annotated* (1987) (*TSUSA*); they are provided for in subheading 8708.70.80 of the proposed Harmonized Tariff Schedules of the United States (USITC Pub. 2030).

[332-256]

## The Western U.S. Steel Market: Analysis of Market Conditions and Assessment of the Economic Effects of the Voluntary Restraint Agreements on Steel-Producing and Steel-Consuming Industries

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of hearing.

**EFFECTIVE DATE:** August 3, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Avery, Minerals and Metals Division, Office of Industries, U.S. International Trade Commission, Washington, Dc 20436 (telephone 202-252-1429).

**Background And Scope Of Investigation**

The Commission instituted investigation No. 332-256 on the Western U.S. steel market under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), following receipt of a letter on July 7, 1988 from the Chairman of the Committee on Ways and Means, United States House of Representatives. As requested, the study will analyze market conditions and assess the economic effects of the voluntary restraint agreements on steel-producing and steel-consuming industries in the Western region.

As requested by the Committee, the Commission, in assessing market conditions and the effects of the voluntary restraint agreements (VRA's), will address the following issues:

(1) Structural changes which have occurred in the Western steel industry in recent years, including developments in Western States' capacity to produce the steel products subject to the investigation (see list below);

(2) Consumption of steel mill products in the Western region;

(3) Patterns of supply to the Western region (i.e., the changes in market share of imports from both VRA and non-VRA countries, Western regional production, and nonregional U.S. production in the market);

(4) Factors limiting the use of domestically-produced steel manufactured outside the Western region, including industry transportation costs relative to other regions;

(5) Factors affecting the importation cost of steel produced in foreign mills, including foreign inland freight and port costs, ocean freight and insurance, and U.S. port costs and other importation expenses;

(6) Issues affecting the Western steel market with respect to steel imports from non-VRA countries, including the impact of steel exported from VRA countries to non-VRA countries for further manufacture and reexport to the Western U.S. market; and

(7) The economic implications of continued import restraints on producers of steel products subject to the VRA's and selected major steel-consuming industries in the Western region.

In addition, as requested by the Committee, to the extent feasible, the investigation will provide product by product market information on a nonconfidential basis, as follows: Semifinished steel, plates, sheets and strip, bars, wire rods, wire and wire products, structural shapes and units, rails and railway products, and pipes and tubes. The Western region is defined to include California, Oregon, Washington, Idaho, Utah, Nevada, Arizona, New Mexico, Colorado, Wyoming, Alaska, and Hawaii.

The Committee has requested that the Commission furnish its report to the Committee on or before March 31, 1989.

**Public Hearing**

A public hearing in connection with this investigation will be held in the Hearing Room of the International Trade Commission, 500 E Street SW., Washington, DC 20436, on October 25, 1988, at 9:30 a.m. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than noon, October 18, 1988. Prehearing briefs (original and 14 copies) should be filed not later than noon, October 19, 1988. Post-hearing briefs are required by November 17, 1988.

**Written Submissions**

Interested persons are invited to submit written statements concerning the investigation in lieu of or in addition to appearing at the hearing. Written statements should be received by the close of business on November 17, 1988. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States 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 our TDD terminal on (202) 252–1809.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: August 5, 1988.

[FR Doc. 88–18109 Filed 8–9–88; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31295]**

### Service on the Delaware and Hudson Railway Co.

**[Directed Service Order No. 1504]**

### The New York, Susquehanna and Western Railway Corp.—Directed Service—the Delaware and Hudson Railway Co.; Supplemental Order No. 2

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Directed Service Order No. 1504, Supplemental Order No. 2.

**SUMMARY:** The Commission is extending for 10 days the authority for The New York, Susquehanna and Western Railway Corporation (NYS&W) to act as a directed rail carrier without federal subsidy or compensation under 49 U.S.C. 11125 over the lines of the Delaware and Hudson Railway Company (D&H), and in doing so the use D&H equipment (under a private compensation agreement), pending its consideration of comments the Commission recently requested.

**EFFECTIVE DATE:** Supplemental Order No. 2 shall be effective on August 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar (202) 275–7245 or Bernard Gaillard (202) 275–7849.

(TDD for hearing impaired: (202) 275–1721)

**SUPPLEMENTARY INFORMATION:** In a notice served July 20, 1988 (53 FR 27773, July 22, 1988), the Commission sought comment from affected parties, including localities and States (including the D&H trustee in bankruptcy), on several issues concerning service over the D&H system. The date set for filing comments was August 1, 1988. NYS&W's authorization to provide service on the D&H system is due to expire August 7, 1988. In order to prevent interruption of rail service on the D&H system while the Commission considers the comments, NYS&W authorization to provide service will be extended for 10 days.

This notice will be served on all parties to this proceeding including those listed in our June 22, 1988 decision, as well as the trustee in bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88–2427).

This action will not significantly affect either the quality of the human environment or energy conservation.

*It is ordered*

1. NYS&W is authorized for an additional 10 days to continue to operate D&H's lines under the conditions previously established.

2. This decision and order shall be effective on August 7, 1988.

Decided: August 4, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Vice Chairman Andre and Commissioner Sterrett did not participate.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–18039 Filed 8–9–88; 8:45 am]

BILLING CODE 7035–01–M

**[Docket No. AB–290 (Sub-15X)]**

### Exemption; Norfolk and Western Railway Co.—Abandonment Exemption—Between Connersville and Beesons, IN

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 4.8-mile line of railroad between milepost 0.0 near Connersville, Fayette

County, IN and milepost 4.8 at Beesons, Wayne County, IN.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 9, 1988, unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 22, 1988 and petitions for reconsideration, including environmental energy and public use concerns, must be filed by August 30, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Solicitor, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 15, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 28, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–17549 Filed 8–9–88; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to Federal Water Pollution Control Act; Central Valley Water Reclamation Facility Board et al.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on July 15, 1988 a proposed Consent Decree in *United States v. Central Valley Water Reclamation Facility Board, et al.*, Civil No. 87C–0522W was lodged with the United States District Court for the District of Utah. The proposed Consent Decree concerns violations by the Central Valley Water Reclamation Facility Board and its member entities of their National Pollutant Discharge Elimination System (NPDES) permits required by the Federal water Pollution Control Act, 33 U.S.C. 1319. The violations include the exceeding of effluent limitations, bypassing, and failing to develop and implement pretreatment programs. The proposed Concent Decree imposes a civil penalty totaling four hundred and fifty thousand ($450,000) dollars.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Central Valley Water Reclamation Facility Board, et al.*, DJ Ref. 90–5–1–1–2602.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 350 South Main Street, Salt Lake City, Utah 84101 and at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, One Denver Place, Denver, Co 80202–2405 and at the Environmental Enforcement Section, Rm. 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 $2.90 (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. 88–17997 Filed 8–9–88; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in United States v. City Industries et al.

In accordance with Department policy, 28 CFR 50.7 and section 122(i) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99–499, 100 Stat 1613 (1986), notice is hereby given that on July 7, 1988, a proposed Consent Decree in *United states* v. *City Industries, et al.* Civil Action No. 87–472–CIV–ORL–18 was lodged with the United States District Court for the Middle District of Florida.

According to this Consent Decree the defendants will pay the government $502,245.00. This is in compensation for response costs associated with the surface cleanup of a hazardous waste facility known as the city Chemical Company/City Industries Site located in Orlando, Florida.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addessed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City Industries, et al.*, D.O.J. number 90–11–3–5.

The proposed Consent Decree may be examined at the office of the United States Attorney, Fourth Floor, 500 Zack

Street, Tampa, Florida 33602. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of justice, 6th and Pennsylvania Avenue, NW., Washington, DC 20530.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-17998 Filed 8-9-88; 8:45am]

BILLING CODE 4410-01-M

## Office of Juvenile and Delinquency Prevention

## Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

**ACTION:** Notice of meeting.

The thrid quarterly meeting for the 1988 calendar year of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held on September 28, 1988, from 9:00 a.m. until 12:30 p.m. The meeting will take place at the Department of Health and Human Services, Hubert H. Humphrey Building, Main Auditorium, 200 Independence Avenue SW., Washington, DC

This meeting of the Coordinating Council will address the topic "The Human Immunodeficiency Virus Epidemic: Implications for the Juvenile Justice System." The agenda will include presentations on the HIV epidemic and high risk youth.

Individuals and organizations concerned with this issue are encouraged to attend this meeting. Because of limited seating, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655 to reserve seating. Requests will be received until space is filled or until 4:00 p.m. on September 19, 1988, whichever occurs first.

Dated: August 4, 1988.

Approved:

**Verne L. Speirs,**

*Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 88-18049 Filed 8-9-88; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

## Employment and Training Administration

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Allied-Signal, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 22, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 22, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 1st day of August 1988.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner: Union/workers/firm— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Allied-Signal Inc. (Company) | Edison, NJ | 8/1/88 | 7/20/88 | 20,841 | Halon filled compounds. |
| Bennett Petroleum Corp. (Company) | Denver, CO | 8/1/88 | 7/19/88 | 20,842 | Oil, gas and related products. |
| DeRossi & Son Co. (ACTWU) | Vineland, NJ | 8/1/88 | 7/22/88 | 20,843 | Uniforms. |
| From Here to Maternity (ILGWU) | Philadelphia, PA | 8/1/88 | 7/18/88 | 20,844 | Maternity dresses. |
| General Motors Corp., Major Stamping Facility; Plant #14 (workers). | Pontiac, MI | 8/1/88 | 6/29/88 | 20,845 | Stampings. |
| Iselle Mfg. Co., (workers) | Philadelphia, PA | 8/1/88 | 7/18/88 | 20,846 | Ladies skirts, tops and pants. |
| Joy Technologies, Inc., Plants #1&2, (workers) | Franklin & Reno, PA | 8/1/88 | 7/17/88 | 20,847 | Mining machinery. |
| NCR Comten, Inc., (workers) | Minneapolis, MN | 8/1/88 | 7/17/88 | 20,848 | Data communications. |
| Paradyne Products (ILGWU) | Paterson, NJ | 8/1/88 | 7/14/88 | 20,849 | Ladies' and misses dresses. |
| Phoenix Glass (UPGWU) | Monaca, PA | 8/1/88 | 7/18/88 | 20,850 | Security guarding services. |
| Robyn Enterprises, Inc. (ACTWU) | Philadelphia, PA | 8/1/88 | 7/18/88 | 20,851 | Skirts, slacks and shorts. |
| Rose Dress (ILGWU) | Garfield, NJ | 8/1/88 | 7/14/88 | 20,852 | Ladies' dresses. |
| Stranahan Foil (GCAWA) | South Hackensack, NJ. | 8/1/88 | 7/21/88 | 20,853 | Packing materials. |

[FR Doc. 88-18022 Filed 8-9-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,503]

## General Electric Co., General Electric Lighting, Incandescent Production Department, Austintown, OH; Affirmative Determination and Setting Aside a Negative Determination

On May 6, 1988, the Department denied trade adjustment assistance to workers and former workers at the General Electric Company, General Electric Lighting, Incandescent Production Department, Austintown, Ohio. The denial notice was published in the Federal Register on May 17, 1988 (53 FR 17514).

After reexaming the investigative file on the subject negative determination, the Department, on its own motion, set aside that part of the determination concerning the light bulb packaging operations at the Austintown plant. The Department has determined that workers engaged in light bulb packaging were adversely affected by the transfer of some packaging operations to overseas locations and increased company imports of packaged light bulbs.

### Conclusion

After reexamining the investigative files, it is concluded that increased imports of articles like or directly competitive with packaged light bulbs produced at General Electric Company, Austintown, Ohio contributed importantly to the decline in production and to the total or partial separation of workers and former workers of the Incandescent Production Department of General Electric Company, Austintown, Ohio. In accordance with provisions of the Trade Act of 1974, I make the following revised determination:

All workers engaged in employment related to the packaging of light bulbs at General Electric Company Austintown, Ohio who became totally or partially separated from employment on or after October 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

The Department's negative determination for all other workers at General Electric Company's Austintown, Ohio plant is affirmed.

Signed at Washington, DC, this 29th day of July 1988.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 88-18023 Filed 8-9-88; 8:45 am]

BILLING CODE 4510-30-M

## Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Hialeah Industries, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 18, 1988–July 22, 1988 and July 25, 1988–July 29, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-20,686; Hialeah Industries, Inc., Miami Lakes, FL*

*TA-W-20,685; Champion Lighting, Inc., Hialeah, FL*

*TA-W-20,692; Stackpole Carbon Co., St. Marys, PA*

*TA-W-20,700; Diamond Power Specialty Co., Lancaster, OH*

*TA-W-20,706; Omnisport, Inc., Woonsocket, RI*

*TA-W-20,708; Presswell Records Mfg. Co., Ancora, NJ*

*TA-W-20,702; General Electric Co., G.E. Aircraft Engines, Evendale, OH*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA-W-20,689; Key Tronic Corp., Research and Administration Bldg, Spokane, WA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-20,698; Cornelison Engine Maintenance Co., Seminole, OK*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-20,697; Chicago Pneumatic Tool Co., Office Personnel Utica, NY*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-20,713; Core Laboratories, Irving, TX*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-20,699; Commercial Testing and Engineering Co., Charleroi, PA*

The workers' firm does not produce an article as required under certification under section 222 of the Trade Act of 1974.

*TA-W-20,710; Whitney Supply Co., Tulsa, OK*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

### Affirmative Determinations

*TA-W-20,694; Philips Consumer Electronics Corp., Greenville, TN*

A certification was issued covering all workers separated on or after May 6, 1987.

*TA-W-20,691; Oxnard Frozen Foods Cooperative, Oxnard, CA*

A certification was issued covering all workers separated on or after May 10, 1987.

*TA-W-20,707; Oomphies, Inc., Lawrence, MA*

A certification was issued covering all workers separated on or after May 20, 1987.

*TA-W-20,718; Spun Steel, Inc., Corinth, MS*

A certification was issued covering all workers separated on or after May 1, 1988.

*TA-W-20,732; Carter Footwear, Wilkes Barre, PA*

A certification was issued covering all workers of the Stitching and Fitting Dept. of Carter Footwear, Wilkes Barre, PA engaged in the production of injection molded fabric footwear separated on or after April 3, 1988.

*TA-W-20,693; Transfer Machine, Inc., Troy, MI*

A certification was issued covering all workers separated on or after May 10, 1987.

*TA-W-20,684; Altair International, Inc., (Plant #7), Mt. Clemens, MI*

A certification was issued covering all workers separated on or after May 3, 1987.

*TA-W-20,709; Westwood Lighting Corp., Inc., Paterson, NJ*

A certification was issued covering all workers separated on or after May 13, 1987.

*TA-W-20,696; Bentley Industries, Inc., Evans City, PA*

A certification was issued covering all workers separated on or after May 6, 1987.

*TA-W-20,704; Jaton Corp., Boston, MA*

A certification was issued covering all workers separated on or after May 16, 1987.

*TA-W-20,687; J.T. Sportswear Inc., Quincy, MA*

A certification was issued covering all workers separated on or after May 23, 1987 and before May 8, 1988.

*TA-W-20,730; Z Sportswear, Limited, Boston, MA*

A certification was issued covering all workers separated on or after June 13, 1987 and before June 20, 1988.

I hereby certify that the aforementioned determinations were issued during the period July 18, 1988–July 22, 1988 and July 25, 1988–July 29, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 2, 1988.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 88-18021 Filed 8-9-88; 8:45 am]

BILLING CODE 4510-30-M

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**[TA-W-20,537]**

## Parsons Footwear, Inc., Parsons, WV; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 26, 1988 applicable to all workers in the stitching department engaged in the production of fabric footwear of Parsons Footwear, Inc., Parsons, West Virginia. The Certification was published in the **Federal Register** on May 10, 1988 (53 Fr 16599).

In order to clarify the subject determination the Department is amending the certification to show clearly that only those workers in the stitching department at Parsons Footwear, Inc., in Parsons, West Virginia are covered and all other workers are denied eligibility to apply for adjustment assistance.

The amended notice applicable to TA-W-20,537 is hereby issued as follows:

All workers in the stitching department engaged in the production of fabric footwear of Parson Footwear, Incorporated, Parsons, West Virginia who become totally or partially separated from employment on or after June 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

It is further determined that all other workers at Parsons Footwear, Incorporated, Parsons, West Virginia are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of August 1988.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 88-18020 Filed 8-9-88; 8:45 am]

BILLING CODE 4510-30-M

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-416**

## Mississippi Power & Light Co., Systems Energy Resources, Inc. and South Mississippi Electric Power Association; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 46 to Facility Operating License No. NPF-29 issued to Mississippi Power & Light Company, Systems Energy Resources, Inc., and South Mississippi Electric Power Association, which revised the Technical Specifications for the operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. The amemdment is effective as of the date of issuance.

The amendment changes the onsite diesel generator test schedule in the Technical Specifications by changing the criterion for more frequent testing.

The application for the amendments 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 amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 2, 1988 (53 FR 15609). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated April 8, 1988, as supplemental June 21, 1988, (2) Amendment No. 46 to License No. NPF-29, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the George M. McLendon Library, Hinds Junior College, Main Street, Raymond, Mississippi 39154. 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 I/II.

Dated at Rockville, Maryland this 1st day of August, 1988.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director, Project Directorate II-I, Divisions of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-18051 Filed 8-9-88; 8:45 am]

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**[Docket No. 50-244]**

## Rochester Gas and Electric Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License No. DRP–18, issued to the Rochester Gas and Electric Corporation (the licensee), for operation of the R.E. Ginna Nuclear Power Plant, located in Wayne County, New York.

The proposed amendment would modify the Technical Specifications to reflect testing requirements for snubbers that ensure structural integrity of systems following a seismic or other event initiating dynamic loads.

The licensee's application, dated July 24, 1987 was supplemented on May 4, 1988 and June 21, 1988.

Prior to the issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 9, 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 request for hearing and 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 Panel, will rule on the request and/or petition, and the Secretary of 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 particularly 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 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 oportunity 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 requested that the petitioner or representative for 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 Richard H. Wessman: 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 Harry Voigt Esg., LeBoeuf, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue NW., Washington, DC 20036, attorney for the licensee.

Nontimely fillings 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 specified 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 amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice of public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 24, 1987 as supplemented on May 4, 1988 and June 21, 1988, 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, Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 4th day of August, 1988.

For the Nuclear Regulatory Commission.

**Daniel McDonald,**

*Acting Director, Project Directorate I–3, Division of Reactor Projects I/II.*

[FR Doc. 88–18052 Filed 8–9–88; 8:45 am]

BILLING CODE 7590–01–M

## 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 July 18, 1988 through July 29, 1988. The last biweekly notice was published on July 27, 1988 (53 FR 28282).

## 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 P-216 Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland 20814 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 September 9, 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 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 (*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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3 Maricopa County, Arizona**

*Date of amendment request:* March 16, 1988, as supplemented by letter dated July 6, 1988.

*Description of amendment request:* The proposed amendment consists of changes to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41, NPF-51 and NPF-74 for PVNGS Units 1, 2 and 3).

The proposed change will revise Surveillance Requirement 4.5.2.h which specifies flow requirements that the Low Pressure Safety Injection (LPSI) subsystem must meet during flow balance testing. The current requirement states that each LPSI injection loop must be capable of delivering a total flow equal to 4900 ± 100 gpm and that each injection leg shall be within 100 gpm of the other. The proposed change will revise the total injection loop flow to 4800 ± 200 gpm and the injection leg maximum deviation to 200 gpm.

*Basis for Proposed No Significant Hazards Consideration Determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensees have provided a discussion of the proposed changes they as relate to these standards; the discussion is presented below.

*Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated*

The proposed amendments involve revising the acceptance criteria for the LPSI flow balance test of Surveillance Requirement 4.5.2.h. The LPSI subsystem is used, in conjunction with the other ECCS subsystems and the Safety Injection Tanks (SITs), to provide sufficient core cooling flow during postulated Loss of Coolant Accidents (LOCAs). This change to the LPSI flowrates has no impact on the probability of occurrence of a LOCA event or any other design basis accident. Additionally, the proposed Technical Specification change will not increase the consequences of any accident previously evaluated in the FSAR. The design basis accident most impacted by the revised LPSI flowrates is the large break LOCA. The most limiting large break LOCA is the double ended guillotine break of a Reactor Coolant Pump (RCP) discharge line. An evaluation was performed to determine the effects of the LPSI flowrate changes on this limiting event. It was determined that the flowrate changes would not impact the event consequences since the reduced flow is still sufficient to keep the reactor vessel downcomer annulus full following discharge of the SITs. Therefore, this proposed Technical Specification amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

*Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated*

The proposed Technical Specification amendments will not create the possibility of a new or different kind of accident from any accident previously analyzed. The change only allows for a slightly larger variation in LPSI flowrate to account for the variability of throttle valve positions. The LPSI pumps are the only equipment impacted by this proposed amendment. With the change, the LPSI pumps will still be operated within their design envelope. Therefore, the change will not create the possibility of a new or different kind of accident.

*Standard 3 - Involve a Significant Reduction in a Margin of Safety*

The proposed Technical Specification amendments will not involve a significant reduction in a margin of safety. Technical Specification bases section 3/4.5.2 states that, "Maintenance of proper flow resistance and pressure drop in the piping system to each injection point is necessary to: (1) prevent total pump flow from exceeding runout conditions when the system is in its minimum resistance configuration, (2) provide the proper flow split between injection points in accordance with the assumptions used in the ECCS-LOCA analyses, and (3) provide an acceptable level of total ECCS flow to all injection points equal to or above that assumed in the ECCS-LOCA analyses." These bases requirements are satisfied for the proposed amendment as follows: (1) pump runout conditions are prevented by maintaining the maximum LPSI flowrate, allowed by Technical Specifications, at 5000 gpm, (2 and 3) the proposed amendment was evaluated against the existing ECCS-LOCA analyses and it was determined that the LPSI flowrate change will not adversely impact the analysis results.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

*Local Public Document Room location:* Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

*Attorney for licensees:* Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 58007.

*NRC Project Director:* George W. Knighton

**Arkansas Power and Light Company, Docket Nos. 45-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas**

*Date of amendment request:* July 1, 1988

*Description of amendment request:* The proposed amendment would revise Facility Operating License Nos. DPR-51 and NPF-6 for Arkansas Nuclear One, Units 1 and 2 (ANO-1&2) to authorize Systems Energy Resources, Incorporated (SERI) to act on behalf of Arkansas Power and Light (AP&L), with responsibility for and control over the physical construction, operation, and maintenance of the facility. This action is proposed in conjunction with SERI becoming the operator of Waterford Steam Electric Station, Unit 3 as well as continuing as operator and owner of Grand Gulf Units, 1 and 2.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility

in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, (3) involve a significant reduction in a margin of safety. AP&L has evaluated the proposed change to Facility Operating Licenses DPR-51 and NPF-6 and has determined the following.

SERI presently owns and operates Grand Gulf. The employees of AP&L presently engaged in the operation of ANO-1&2 will become employees of SERI. The organizational structure of SERI will provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility.

As a result of the proposed amendment, there will not be physical changes to the facility, and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. With the exception of administrative changes to reflect the role of SERI, the quality assurance program, security plan, and training program are unaffected. With regard to emergency plans, certain physical and personnel resources, limited to support in administrative areas but not inclusive of decision making authority, will continue to be provided by AP&L in support of these activities. The licensee states that decisional responsibilities related to accident recognition and classification, mitigation and corrective actions, radiological assessment and protective action recommendations and coordination with state and local authorities will rest with SERI personnel. AP&L corporate management will provide direction to other non-nuclear AP&L facilities for support to ANO-1&2. Operating agreements will ensure continued compliance with among others, General Design Criterion 17 of Appendix A to 10 CFR Part 50 on Electrical Power Systems. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The design and design bases of ANO-1&2 remain the same. Therefore, the current plant safety analyses remain complete and accurate in addressing the licensing basis events and analyzing plant response and consequences. The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits are not affected by the proposed amendment. With the exception of administrative changes to reflect the role of SERI, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed are still valid. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

Plant safety margins are established for and reflected in Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these or any other margins. The proposed amendment therefore will not involve a reduction in a margin of safety.

The staff has reviewed the licensee's evaluation and agrees with the conclusions. Therefore, based on the above, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

*Local Public Document Room Location:* Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

*NRC Project Director:* Jose A. Calvo

**Commonwealth Edison Company, Docket Nos. STN 50-237 and STN 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois**

*Date of application for amendment request:* March 18, 1988

*Description of amendment request:* The proposed amendment would clarify the applicability of the containment oxygen concentration and drywell torus differential pressure Limiting Conditions of Operation (LCO) and Surveillance Requirements. The changes that are described in this proposed amendment are intended to provide a clear action statement should the oxygen concentration or torus drywell differential pressure LCOs be exceeded. The action statement would provide 24 hours to either restore the LCO or be in startup/hot standby in the subsequent 6 hours and cold shutdown in the following 24 hours. There are several administrative changes associated with this amendment where the affected oxygen concentration or torus drywell differential pressure Technical Specifications have been renumbered as a result of this change. Finally, several changes have been made to the Technical Specification and/or Bases for clarification. These changes, as well as the numbering changes, are considered to be administrative in nature.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Commonwealth Edison has evaluated this proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria of 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 because:

(a) Power operation is presently permitted with containment oxygen concentration greater than 4% for only 24 hours subsequent to going to run and 24 hours prior to a reactor shutdown. The change permits 24 hours of power operation with the primary containment deinerted unrelated to reactor startup or shutdown to allow personnel to enter the drywell at power. Drywell entries are made to identify any water leakage, affect minor repairs and enable equipment lubrication. Drywell entries other than during startup are rare. The change in time that the drywell will not be inerted during power operation allowed by this proposed change is small. Additionally, there are currently several other Mark I BWRs that are licensed for operation with a deinerted containment for periods greater than 24 hours.

Power operation is presently permitted with drywell or torus differential pressure less and 1 psid for only 24 hours subsequent to going to run and 24 hours prior to a reactor shutdown. The change permits 24 hours of power operation without 1 psi differential pressure unrelated to reactor startup or shutdown to allow personnel to enter the drywell as power. There is

no change in consequences of relaxing the 1 psi differential pressure because the torus was analyzed for 0.0 psi presure differential as part of the MARK I Containment Short Term Program and was found to meet the NRC staffs' acceptance criteria.

Therefore, these changes do not significantly increase the probability or consequences of previously evaluated accidents.

(b) The other changes to the Technical Specifications include the renumbering of other inter-related portions of the Technical Specifications (which were affected by the proposed change) or are changes that are being sought for clarification purposes. These changes are considered to be administrative in nature.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

(a) The effects of short-term deinerting have been analyzed in the FSAR. Additionally, the torus was analyzed for 0.0 psi drywell to torus differential pressure as part of the Mark I Containment Short Term Program and was found to meet the NRC staffs' acceptance criteria.

Consequently, the possibility of creating a new or different kind of accident from any accident previously evaluated is unchanged.

(b) The other types of changes noted in the proposed amendment are administrative in nature.

(3) Involve a significant reduction in the margin of safety because:

(a) FSAR analyses have shown that for design basis accidents, the long term combustible gas control system (ACAD/CAM) can prevent a combustible gas mixture of 4% hydrogen even with a deinerted containment. Therefore, peak containment pressure is bounded by the FSAR LOCA analysis. The margin of safety for the torus drywell differential pressure is not degraded as a result of this change because the torus was analyzed for 0.0 psi drywell to torus differential pressure as part of the Mark I Containment Short Term Program and was found to meet the NRC staffs' acceptance criteria. Therefore, the pressure suppression is maintained and the changes do not reduce the margin of safety.

(b) These changes are administrative and therefore do not impact the margin of safety.

Therefore, since the proposed license amendment satisfies the criteria specified in 10 CFR 50.92, Commonwealth Edison has determined that a no significant hazards consideration exist for these items.

The staff has reviewed Commonwealth Edison's no significant hazards analysis and concurs with its conclusions. Therefore, the staff proposes to determine that the requested changes do no involve a significant hazards consideration.

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

*NRC Project Director:* Daniel R. Muller

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois**

*Date of application for amendment request:* June 20, 1988

*Description of amendment request:* The amendment would make changes to the Dresden Nuclear Power Station Units 2 and 3 Technical Specifications to reflect instrumentation enhancements for post-accident monitoring completed by the licensee as per guidance contained in Regulatory Guide 1.97 and NUREG-0737 Supplement 1 requirements.

The proposed revision to the Technical Specifications for Dresden Units 2 and 3 involves changing ranges and panel locations for various types of instrumentation associated with post-accident and containment monitoring. The changes which are described below, primarily affect Tables 3.2.6, 4.2.1 and 4.2.4 and also Sections 3.7/4.7 of the Technical Specifications.

(1) The drywell temperature readout location is changed from a back panel to a front panel in the control room.

(2) The drywell pressure range for the +70 mid-range pressure transmitter is changed from "0-75 psig" to "-5 to 70 psig".

(3) A redundant wide range reactor vessel pressure indicator has been added on panel 902(3)-3.

(4) A wide range reactor vessel level pen indicator has been placed on a 902(3)-5 recorder which receives its input from one of the existing wide range level channels.

(5) The torus water level sight glass range is changed from "18" to "40" inches. Also the two narrow ranges "-25 to +25 inches" and "-7 to +3 inches" are being combined to form one range, "20 to +20 inches".

In addition several administrative changes have been included in the requested amendment.

*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; (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 changes do not involve a significant increase in the probability or consequence of an accident previously evaluated because the changes reflect the addition of instrumentation which serves similar purposes as existing instrumentation. Where ranges have been slightly modified, the parameter will continue to be monitored in a range that covers its design operating span. Panel locations for the instruments are listed in the Technical Specification tables for informational purposes so that updating the list to reflect additions or relocations (which increase redundancy or serve to enhance visibility for the operator, respectively) has no detrimental impact on accident probability or consequences. Similarly, clarifications or corrections of typographical errors are administrative changes which improve Technical Specification reliability and therefore can have no detrimental impact.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because changing the Technical Specifications to reflect improved instrument ranges, redundancy, or visibility does not affect or change design operating limits or protective setpoints. The new ranges and panel changes continue to allow the parameters to be monitored during a post-accident situation or during normal operation. No new or different modes of operation are allowed by these changes or the proposed administrative changes. Nor will they affect any systems or equipment which could initiate an accident.

(3) The proposed changes do not involve a significant reduction in a margin of safety because in no instance do these range changes, panel changes or administrative changes affect the Technical Specification safety limits.

The design operating limits and/or set points are sufficiently contained within the new ranges. Additionally, the range changes have no effect on the functional test or calibration frequencies required by these Technical Specification tables. All parameters will continue to be monitored as currently required.

The staff has reviewed the licensee's no significant hazards analysis given above. Based on this review, 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:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

*NRC Project Director:* Daniel R. Muller

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of amendment request:* June 24, 1988

*Description of amendment request:* This proposed license amendment would modify the Fermi-2 Technical Specifications (TSs) to remove the organization charts following the guidance provided in the Commission's Generic Letter 88-06. The proposed amendment would also make various administrative changes to Section 6.0 of the TSs.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a). The Commission's staff has reviewed the licensee's evaluation and agrees with it. The licensee concluded that:

(1) The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because, as stated in Generic Letter 88-06, those requirements necessary for safe operation have been retained in the TSs. The changes do not eliminate or alter the functions previously reviewed.

(2) The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the plant operation and design are not affected by the change. The changes create no new accident mode.

(3) The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because, as stated in Generic Letter 88-06 and in (1) above, requirements necessary for safe plant operation have been retained in the TSs. Further, the changes are consistent with the requirements established in previous organizational evaluations.

*Local Public Document Room location:* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

*Attorney for licensee:* John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

*NRC Project Director:* Martin J. Virgilio.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* May 9, 1988

*Description of amendment request:* The proposed amendments would make five changes to the Technical Specifications (TS) related to the determination of reactor trip setpoints for Overtemperature delta-T and Overpower delta-T. Change 1 would restate the equation in Note (1) of Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints" in an algebraically equivalent form to express the Overtemperature delta-T setpoint condition in terms of the percent of full power delta-T rather than in terms of the absolute value of the indicated delta-T between the hot and cold legs. Change 2 would be a similar restatement of the equation in Note (2) of Table 2.2-1 for the Overpower delta-T. Change 3 would revise Surveillance Requirement 4.2.3.5 to state that the RCS total flow rate shall be determined by precision heat balance measurement at the beginning of each fuel cycle rather than at least once per 18 months. Change 4 would add Note (15) pertaining to the Overtemperature delta-T and Overpower delta-T items in Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements." Note (15) would state: "Overtemperature setpoint, overpower setpoint, and Tavg channels require an 18 months channel calibration. Calibration of the delta-T channels is required at the beginning of each cycle upon completion of the precision heat balance of Surveillance 4.2.3.5. RCS loop delta-T values shall be determined by precision heat balance measurement at the beginning of each cycle in conjunction with Surveillance 4.2.3.5." Change 5 would change action Statement 7 in Table 3.3-1, "Reactor Trip System Instrumentation," from "Delete" to "Deleted."

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Changes 1 and 2 restate the setpoint equations for Overtemperature delta-T and Overpower delta-T, but do not involve any technical changes to the equations themselves (i.e., both sides of the equations are divided by the same factor, delta-$T_o$). The changes make it clearer that the reactor trip setpoints are expressed in terms relative to the delta-T values at full power (i.e., delta-$T_o$), so as to be consistent with the manner in which delta-T is indicated by the plant instrumentation. Since these amendments involve no changes to plant equipment, setpoints, operating limits, or procedures, they have no adverse effect on any accident or safety margins, and they meet the three 10 CFR 50.92(c) standards stated above.

Proposed Change 3 requires the determination of RCS total flow rate and delta-T at full power by precision heat balance measurements at the beginning of each fuel cycle. The licensee has observed that actual values of RCS flow and delta-T differ from one fuel cycle to the next. It is, therefore, desirable to perform the precision heat balance measurements as soon as possible after reaching full power in a new fuel cycle, rather than performing them every 18 months as presently required. Because the time interval between measurements is shortened, the revised TS is more restrictive. Until the cycle-specific full power value for each loop's delta-T is

determined, the licensee ensures the conservative overprediction of reactor power by setting the full power delta-T reading to be 1° F lower than for the previous cycle.

The proposed Change 3 is more appropriate because it requires the performance of the precision heat balance measurements at a time (beginning of a cycle) when they would be most likely to detect a change in RCS flow and full power delta-T. There are no changes to plant procedures or hardware. Therefore, Change 3 does not involve a significant increase in the probability or consequences of an accident previously evaluated, nor create the possibility of a new or different accident from any accident previously evaluated. Change 3 also does not involve a significant reduction in a margin of safety because it does not relax existing requirements; rather, it is more conservative and restrictive, because the current specifications do not specifically require rescaling at the beginning of each fuel cycle or if more than one cycle occurs within an 18 month span.

Change 4 requires the period for calibration of all of the delta-T instrumentation channels to be at the beginning of each cycle after completion of the precision heat balance measurements. As with the Change 3 measurements, it is desirable to perform these calibrations at the beginning of a cycle, rather than every 18 months as presently required, because actual values of delta-T at full power have been observed to differ from one cycle to the next. The channel calibrations and the precision heat balance measurements at the beginning of a cycle ensure that the assumptions in the safety analysis remain valid. Calibration of the delta-T channels to the new full power values should only be necessary at the beginning of each cycle, as the licensee expects that all drifts and fluctuations over the course of a cycle should remain within the allowances assumed in the safety analysis for that cycle.

Like Change 3, proposed Change 4 is more appropriate and more conservative, and meets the three standards of 10 CFR 50.92(c) for the same reasons as given above for Change 3.

Change 5 is intended to correct Action Statement 7 to state that it has been "deleted" from Table 3.3-1. This change is purely administrative and involves no safety concerns. The Commission has provided examples of amendments likely to involve no significant hazards considerations (51 FR 7144). One example of this type is (i), "A purely administrative change to Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature." This example applies to the proposed Change 5.

On the basis of the above considerations the Commission proposes to determine that the proposed amendments would involve no significant hazards considerations.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**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:* June 24, 1988

*Description of amendment request:* The proposed amendments would revise the Technical Specifications (TS) by deleting inappropriate surveillance requirements 4.4.3.3 and 4.4.4.3 which regard manual transfer from normal to emergency power supplies for the pressurizer heaters, the power-operated relief valves (PORVs), and the PORV block valves.

*Basis for proposed no significant hazards consideration determination:* TS 4.4.3.3 requires the emergency power supply for the pressurizer heaters to be demonstrated operable periodically by manually transferring power from the normal to the emergency power supply and energizing the heaters. Similarly, TS 4.4.4.3 requires the emergency power supply for the PORVs and block valves to be demonstrated operable periodically by manually transferring motive and control power from the normal to the emergency power supply and operating the valves through a complete cycle of full travel. These requirements are unnecessary and inappropriate because each of these components is permanently connected to an emergency power source. The NRC has previously reviewed the designs for power supply to these components and has found them to be acceptable.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Because the components are permanently connected to essential power, the function of these components is unaffected by deletion of the surveillance requirement, and the change, therefore, 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. Accordingly, the Commission proposes to determine that the proposed amendments would involve no significant hazards considerations.

Additional changes proposed by the licensee's letter of June 24, 1988, are outside the scope of this notice.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania**

*Date of amendment request:* June 22, 1988

*Description of amendment request:* The proposed amendment would revise the allowable pressurizer and main steam safety valve setpoint tolerance from ±1% to +1%, -3%. The current ±1% safety valve tolerance will be retained for valve testing and adjusting; however a tolerance of +1%, -3% would allow more flexibility during plant operation and potentially reduce the number of licensee event reports (LERs) that result when valve setpoints are found outside of the tolerance. The new tolerances would provide a wider allowable range to accommodate setpoint drift without compromising the analyzed safety valve relief capability. The proposed changes would be similar to those approved in Amendment No. 115 for Beaver Valley Unit 1.

The essential function of the safety valves is the protection of the primary and secondary systems from

overpressure. If the proposed amendment is issued, the safety margin would remain unchanged since the upper limit (+1%) where the valve will open would remain unchanged. The reduced limit of the lower tolerance, however, would reduce the frequency of valves found outside the specified range, thus resulting in reduced worker radiological exposure associated with valve testing and adjusting.

*Basis for proposed no significant hazards consideration determination:* The primary and secondary coolant overpressure limits are not changed by the proposed amendment since the upper limits of pressure will still be maintained by safety valve settings of +1%. Furthermore, during testing, the valves will be adjusted to a tolerance of ±1%. The less restrictive tolerance of +1%, -3% mainly serves to provide operational flexibility and to reduce the number of LERs. Since parameters that could affect safety would not be changed, the proposed amendment would not increase the probability of occurrence or the consequences of accidents previously evaluated. Since no hardware modifications or changes in operation procedures would be made, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. The safety margin is controlled by the upper tolerance limit, which is not changed; therefore, there is no decrease in the safety margin.

On the basis of the above discussion, the staff proposes to determine that the amendment involves no significant hazard consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of amendment request:* June 22, 1988

*Description of amendment request:* The proposed amendment would revise the source range channels surveillance requirements of Table 4.3-1 for both the Unit 1 and Unit 2 Technical Specifications. As currently written, an inconsistency exists between Table 3.3-1 and Table 4.3-1. Table 3.3-1 requires the source range trip channels to be operable in Modes 2, 3, 4 and 5. However, Table 4.3-1 only requires source range trip channels surveillance in Mode 2, and Modes 3, 4 and 5 with the reactor trip breakers closed. This erroneously implies that no surveillance is required on the source range channels with the reactor trip breakers open. The proposed amendment would correct the error in both units' Technical Specifications, and is thus a purely administrative change.

The proposed amendment also corrects typographical errors in Table 3.3.1 in the Unit 2 Technical Specifications.

*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 7751). One of these, Example (i), involving no significant hazards considerations is "A purely administrative change to technical specifications." The requested amendment involves changes that all match this example. Accordingly, the staff proposes to determine that this change does not involve a significant hazards consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of amendment request:* June 27, 1988

*Description of amendment request:* The proposed amendment would result in the following changes to the Technical Specifications (TS):

(a) The Unit 1 surveillance frequency for Table 4.3-1 Item 19, Safety Injection Input from ESF, would be changed from monthly to every refueling for clarification of the required instrumentation testing frequency. The current TS already specifies such frequency but in an indirect way. The proposed change would only clarify an existing requirement, and is not a change in substance.

(b) Table 3.3-3, 3.3-4, 3.3-5 and 4.3-2 of both units' TS would be modified to delete one of the auxiliary feedwater actuation signals (turbine-driven pump discharge pressure low with steam valve open). The current TSs provide an exhaustive listing of all the actuation signals for the auxiliary feedwater system. The licensee stated that the subject signal only serves as backup and has not been credited in safety analyses, and proposes to delete its requirements from the above tables.

(c) Surveillance requirement 4.4.1.3.1 of both units' TS would be revised to eliminate the requirement to test the residual heat removal (RHR) pumps on recirculation. The requirements of pump testing under normal system configuration in accordance with Specification 4.0.5 would remain and should serve to assure operability of the RHR pumps. The licensee stated that testing the pumps on recirculation causes high vibration levels and therefore unnecessary pump degradation.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, of (3) involve a significant reduction in a margin of safety.

As stated above, the proposed amendment affects only certain surveillance, and testing requirements of the units. These changes do not adversely affect the current capability of the plant systems. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed amendment does not lead to or follow any equipment or design change. Thus, no adverse safety considerations are introduced by the change. Therefore, the probability of an accident or a malfunction of a different type than previously evaluated would not be created.

This proposed amendment will not affect the assumptions or consequences of any safety analysis presented in the FSAR. Therefore, the change will not involve a significant reduction in a margin of safety.

Accordingly, the staff proposes to determine that this change does not involve a significant hazards consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library,

663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of amendment requests:* June 23, 1988

*Description of amendment requests:* The St. Lucie Plant Technical Specifications (TS) currently require the Florida Power and Light Company (the licensee) to determine containment leakage rates by using the methodology and provisions of ANSI N45.4-1972 (TS 4.6.1.2). This standard provides for one of two acceptable methods for leakage rate testing: the Total Time method and the Point-to-Point method. Advances in leakage rate testing subsequent to the issuance of ANSI N45.4-1972 have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. The Mass Point method is described in ANSI/ANS 56.8-1981, "Containment System Leakage Testing Requirements," and is considered to be more accurate in determining containment leakage rates.

The proposed amendments would modify TS 4.6.1.2, "Containment Leakage" for the St. Lucie Plant, Unit Nos. 1 and 2. The requirement to use ANSI N45.4-1972 would be deleted, and the use of the Mass-Point method would be authorized. In addition, the Bases statements would be changed accordingly.

*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 has evaluated the proposed amendments against the standards provided above and has made the following determination:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Removing the reference to ANSI Standard N45.4-1972 will allow more current methods to be used in determining the manner in which the leakage rate test data are analyzed and evaluated. Since the acceptability of the containment leakage rate data will continue to be analyzed by the use of accepted methodologies, and since no change in acceptance criteria is proposed, the probability or consequences of an accident previously evaluated will not increase.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No changes to plant operation or surveillance acceptance criteria are requested in this proposed license amendment. The acceptability of leakage rate test data results will remain unchanged. NRC-approved methods of leakage rate testing are satisfactory methods and the Mass Point method is recognized as an improved alternate method of calculating containment leakage rates.

There are no new failure modes associated with this change and therefore, the possibility of a new or different kind of accident will not be created.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

This proposed amendment includes Surveillance Requirement methodology changes and there is no impact on the reactor containment or leakage rate acceptability limits. The improved analytical methodology provides an additional method for verifying that the containment integrity and containment design leakage rates would be maintained under accident conditions. Therefore, there is no reduction in a margin of safety as a result of this proposed license amendment.

Based on the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has made a preliminary review of the licensee's analyses of the proposed changes and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazard consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia**

*Date of amendment request:* June 20, 1988

*Description of amendment request:* The amendment would modify the Technical Specifications (TS) for Hatch Unit 1 to: (1) add Average Planar Linear Heat Generation Rate (APLHGR) limits for new General Electric (GE) GE 8x8EB fuel and Advanced Nuclear Fuels (ANF) 9x9 Lead Fuel Assemblies (LFAs); (2) add a Linear Heat Generation Rate (LHGR) limit for the GE 8x8 EB fuel; and (3) revise the Minimum Critical Power Ratio (MCPR) and flow-dependent APLHGR limit multiplier ($MAPFAC_F$) figures to show their applicability to the new fuel types and to remove obsolete information regarding fuel types that are no longer used at the plant.

*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 states that:

The proposed APLHGR and LHGR limits for GE8x8EB fuel type BD296A were evaluated by GE using NRC-approved methods documented in the "General Electric Standard Application for Reactor Fuel," NEDE-24011-P-A-8 (GESTAR-II). Compliance with those limits will ensure that BD296A fuel meets specified acceptable fuel design limits in the Unit 1 reactor. All fuel safety design bases in the Plant Hatch Unit 1 Final Safety Analysis Report (FSAR) are met by GE8x8EB fuel. The proposed APLHGR limit for BD 296 A fuel were calculated using SAFER/GESTR-LOCA which demonstrated that the power level of GE8x8EB fuel types operating in the Unit 1 core will not be limited by LOCA considerations so long as approved LHGR limits are met. The proposed LHGR limit for the GE8x8EB

fuel in conjunction with the proposed APLHGR limit will ensure that the specified acceptable fuel mechanical design limits given in GESTAR-II are met.

The 9x9 lead fuel assemblies have been evaluated by ANF for use in the Hatch reactors. These fuel assemblies were designed to be neutronically similar to the GE B/P8DRB284H fuel such that the existing APLHGR limit (when properly adjusted to account for the different number of rods) and MCPR thermal limits for B/P8DRB284H fuel will be applicable to them as well. The ANF 9x9 fuel assemblies were previously approved by the NRC for use in Hatch Unit 2.

A revision to the existing $MAPFAC_F$ figure (Figure 3.11-1, Sheet 8) is proposed to indicate that the limits are applicable to all fuel types in use at Plant Hatch, as well as the proposed GE8x8EB fuel and the 9x9 LFAs. Coefficients on Figure 3.11-1, Sheet 8 which refer to the older 7x7, 8x8, and 8x8R fuel types are deleted because these fuel types are no longer in use at Plant Hatch. Therefore, to simplify the Technical Specifications, all fuel type labels will be deleted from the $MAPFAC_F$ figure.

Since the 7x7 fuel type is no longer in use at Plant Hatch, references to this older fuel type are deleted in Specifications 3/4 11.B, 3/4 11.C, and the corresponding Bases. Figures 3.11-2 and 3.11-5, which apply specifically to 7x7 fuel, are also deleted.

The proposed changes do not involve a significant hazards consideration for the following reasons:

1. Use of GE8x8EB fuel and ANF 9x9 LFAs does not involve a significant increase in the probability of an accident previously evaluated, because no significant changes in plant design or procedures will occur as a result of this change. Any future core designs made possible by the proposed change either have been or will be evaluated, using NRC-approved methods, and shown to meet the approved acceptance criteria for analysis of the limiting accidents previously evaluated. Therefore, the consequences of an accident would not be significantly increased as a result of the use of the new fuel types.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed, because no change in plant design or operation is involved, except for relatively minor changes in the fuel design.

The GE and ANF fuel types proposed for use in Unit 1 have been generically reviewed and approved by the USNRC. The impact of the new fuel types has been evaluated against the relevant safety analyses on a generic and Plant Hatch-specific basis. In addition, the specific nuclear designs addressed by the proposed change are sufficiently similar to approved nuclear designs being used at other BWR-4 plants. The possibility of a new kind of accident is not created.

3. The proposed change does not involve a significant reduction in the margin of safety for the same reasons stated in Item 1 above.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendment meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* David B. Matthews

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia**

*Date of amendment request:* July 11, 1988

*Description of amendment request:* This amendment would modify the Technical Specification (TS) requirements regarding the secondary containment boundary, as follows: (1) A normal secondary containment boundary as now specified in the TS would be maintained during most plant conditions, but a modified secondary containment boundary would be authorized while the unit is shutdown, provided certain conditions are met; and (2) the change also would make several editorial corrections to the 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 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 provided the following information in support of the requested changes:

*Proposed Change 1:*

Planning and scheduling maintenance work during Unit 1 refueling outages is a difficult task due to the inability to perform simultaneous work on the Unit 1 main steam isolation valves (MSIVs) and the Unit 1 turbine stop valves without breaching secondary containment integrity. The normal Unit 1 secondary containment boundary includes the Unit 1 reactor building area below the refueling floor and the common Units 1 and 2 area above the refueling floor. Therefore, simultaneous work on both groups of valves could introduce a leakage path through the reactor building, and consequently, secondary containment. This change will revise the Plant Hatch Unit 1 Technical Specifications pertaining to secondary containment boundary requirements. The change will establish two modes of secondary containment to facilitate activities during outage situations. A "normal" secondary containment mode will be maintained during most plant conditions, and a "modified" secondary containment configuration may be established if certain conditions are met while the unit is shutdown. Specifically, this proposed change will modify Limiting Conditions for Operation Specifications 3.7.C.1 and 3.7.C.2, the associated surveillance requirements (Specifications 4.7.C.1 and 4.7.C.2), the Design Features Section 5.0.D.2 and the applicable bases.

Similar temporary changes were approved by the Nuclear Regulatory Commission (NRC) with the issuance of Amendment 91 to the Unit 1 Technical Specifications. That amendment provided a temporary revision to the secondary containment related Technical Specifications during the 1982 refueling outage to permit major modification work associated with the Mark I Containment Long-Term Program. The intent of the change described herein is to permanently implement the temporary changes contained in Amendment 91.

Proposed Change 1 does not involve a significant hazards consideration for the following reasons:

1. It does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the basic function of the Unit 1 secondary containment

system, which is to maintain a 1/4-inch negative pressure on the common Unit 1 and Unit 2 area above the refueling floor, remains unchanged in the modified configuration. Therefore, refueling activities and Unit 2 reactor operation are permitted to continue without invoking a limiting condition for operation (LCO).

2. It does not create the possibility of a new or different kind of accident from any previously evaluated, because the modified configuration will exclude the Unit 1 reactor building area below the refueling floor and Standby Gas Treatment System (SGTS) suction to that area so that secondary containment integrity in the common area above the refueling floor can be maintained. This condition is permissible only under conditions specified by 3.7.C.2, since Unit 1 activities that may lead to a postulated release of radioactivity during a Unit 1 refueling outage will be confined to the common refueling floor area. Therefore, under certain conditions, SGTS service is not required in the Unit 1 reactor building area below the refueling floor.

3. The proposed change does not involve a reduction in the margin of safety, because secondary containment integrity for the modified configuration will continue to maintain the capability to obtain a 1/4-inch water gauge negative pressure in secondary containment. Therefore, the radiological consequences to the environment following a postulated refueling accident are not increased.

*Proposed Change 2*

Existing Technical Specifications 4.7.C.1.a and 4.7.C.2.a require that a preoperational secondary containment capability test be conducted. The word "preoperational" conveys a preoperating license condition carry-over which is not intended. By deleting the word "preoperational" from both specifications, confusion will be eliminated.

Specification 4.7.C.1.b, page 3.7-13, should be deleted since the identical material is stated on page 3.7-12.

Specifications 3.7.C.2 and 4.7.C.2, page 3.7-13, are numbered incorrectly. They should be numbered 3.7.C.3 and 4.7.C.3, respectively, since Specifications 3.7.C.2 and 4.7.C.2 are properly located on page 3.7-12a. These numbering errors were inadvertently introduced when the Plant Hatch Unit 1 Technical Specifications Amendment No. 100 was issued.

Since these changes are editorial in nature, they do not involve a significant increase in the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident from any previously evaluated, nor involve a reduction in the margin of safety.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* David B. Matthews

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of amendment request:* May 13, 1988

*Description of amendment request:* The amendment would modify the Technical Specifications (TS) for Units 1 and 2 as follows: (1) For each unit, the existing requirements to maintain suppression pool temperature at or below 95° F, to initiate pool cooling if the temperature exceeds 95° F, and to shut down the reactor if the pool temperature cannot be restored to 95° F within a 24-hour period would be deleted and replaced by a requirement that suppression pool cooling be initiated if the pool temperature reaches 100° F. The existing TS requirements to scram the reactor when the pool temperature reaches 110° F and to depressurize the reactor vessel when the pool temperature reaches 120° F remain unchanged. (2) The Unit 2 TS would be modified to delete references to the water volume in the suppression pool.

*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's May 13, 1988, submittal provided an evaluation of the proposed changes with respect to these three standards.

*Basis for Proposed Change 1:*

Historically, the suppression pool temperature limit has been chosen based upon the maximum expected service water temperature. For most BWRs, this limit is in the range of 90° F to 95° F. For Plant Hatch, the limit is 95° F. Many licensing analyses use this pool temperature as the initial condition. Generic evaluations performed for the Boiling Water Reactor Owners Group (BWROG) suppression pool temperature limit (SPTL) Committee show that the normal suppression pool temperature limit for BWRs with Mark I containments can be raised to 110° F with no adverse impact on plant safety. A proprietary General Electric report, EAS-19-0388, provided as an enclosure to the licensee's May 13, 1988 submittal, discusses the impact of raising the pool temperature on the existing Plant Hatch safety analyses. These evaluations include assessment of Anticipated Transients Without Scram (ATWS) events and Emergency Procedure Guidelines (EPGs), even though these areas are beyond the historical design basis of the plant.

The GE report, EAS-19-0388, details the results of the Plant Hatch evaluations and provides the technical bases for the proposed Technical Specification changes. The evaluations consider the effect of the proposed changes on safety relief valve (SRV) loads, containment response, and emergency core cooling system (ECCS) performance and show that the changes are acceptable.

1. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, because applicable accident analyses that could be impacted by raising the suppression pool operating limit have been examined and found to be acceptable. The scram and depressurization limits are unchanged.

2. The possibility of a different kind of accident from any analyzed previously is not created by these changes, since the proposed changes would only revise an operating limit on permissible pool temperature. This change does not involve the potential for a new accident type, since plant design and function are unchanged.

3. Margins of safety are not significantly reduced by these changes.

because the impact of the proposed pool temperature has been evaluated relative to safety analyses (GE report EAS-19-0888), and margins have been shown to be insignificantly impacted. Sufficient heat capacity remains in the suppression pool for complete condensation of decay and sensible heat following an accident or reactor shutdown.

*Basis for Proposed Change 2:*

The proposed change to the Unit 2 Technical Specifications deleting references to suppression pool water volume is editorial, since water level monitoring will still be required. Obviously, the actual volume of water was never monitored; required water levels correspond to a fixed water volume unless substantial modifications to the submerged portion of the torus are performed. When such modifications are performed (e.g. the Mark I Containment Long Term Program), the impact of the changes on relevant safety evaluations are assessed.

The deletion of the references to the suppression pool water volume are editorial in nature and have no impact on plant safety. The required suppression pool water levels remain unchanged. The deletion is consistent with the "Examples of Amendments that are considered Not Likely to Involve Significant Hazards Considerations," listed on page 14870 of the April 16, 1983, issue of the **Federal Register.**

The staff has considered the proposed changes and agrees with the license's evaluations with respect to the three standards.

On this basis, the Commission has determined that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* David B. Matthews

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of amendment request:* June 20, 1988

*Description of amendment request:* The amendments would modify the Technical Specifications for both Unit 1 and Unit 2 to delete all references to the main control room (MCR) chlorine detectors and to automatic isolation of the main control room environmental control system (MCRECS) on high chlorine level.

*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's June 20, 1988 submittal provided the following evaluation of the proposed changes with respect to these three standards:

*Bases for Proposed Change:*

The MCRECS for Units 1 and 2 limits the amount of chlorine entering the common MCR in the event of a chlorine tank rupture (Reference the Unit 2 Final Safety Analysis Report). The current Plant Hatch design basis includes the tank rupture of two 1-ton cylinders of chlorine gas. The current design basis of the chlorine detectors is to provide a signal for the automatic isolation of the MCR outside air intake dampers before the concentration of chlorine reaches a hazardous level inside the MCR.

A Plant Design Change Request is being prepared to: (1) remove all chlorine cylinders from the site, (2) replace the present chlorination system with a sodium hypochlorination system, and (3) eliminate the automatic isolation mode of the MCRECS, including the MCR chlorine detectors. Once all the chlorine tanks have been emptied, the threat to MCR habitability, resulting from chlorine release, will be eliminated.

Following the proposed change, no gaseous chlorine will be stored or used on site. Both the circulating water (CW) and the residual heat removal service water (RHRSW)/plant service water (PSW) systems will be treated with sodium hypochlorite. Likewise, the sanitary water and plant sewage systems will be treated by an alternative method.

The proposed change to delete the onsite storage of gaseous chlorine effectively eliminates the need for automatic isolation of the MCR, since the isolation process is actuated only by chlorine detection. Therefore, there is no need for the MCR chlorine detectors to remain in service.

*Basis for No Significant Hazards Consideration Determination:*

The proposed amendment does not involve a significant hazards consideration for the following reasons:

1. The change does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated, because removal of chlorine cylinders presently stored on site will eliminate the risk of a chlorine release to MCR operators.

2. The change does not create the possibility of a new or different kind of accident from any previously evaluated, because the removal of onsite chlorine eliminates the need for automatic isolation of the MCR due to chlorine release. The sodium hypochlorite tanks will be located in a safety dike in the chlorination building. Even in the event of tank rupture, no toxic vapors will be released, and consequently, a threat to MCR operators will not exist.

3. The margin of safety is not reduced significantly by the proposed change since the proposed change obviates a potential accident scenario.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* David B. Matthews

**Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., (the licensees), Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* February 23, 1988, as supplemented March 30, 1988

*Description of amendment request:* This proposed amendment would revise Technical Specification Figure 6.2.2-1 and Sections 6.3.1 and 6.5.1.2 concerning the Clinton Power Station onsite

organizational structure. The proposed changes are the result of a proposed organizational restructuring by the licensee.

This amendment includes proposed changes to Figure 6.2.2-1, "Unit Onsite Organization," Specification 6.3.1, "Unit Staff Qualifications," and Specification 6.5.1.2, "Facility Review Group (FRG) Composition." The following changes are proposed to the onsite organizational structure:

—The position of Technical Advisor to the Plant Manager is no longer justified and should be deleted.
—The position of Director-Plant Radiation Protection should be retitled Assistant Manager-Plant Radiation Protection.
—The position of Director-Plant Technical should be retitled Assistant Manager-Plant Technical.
—The positions of Supervisor-Chemistry and Supervisor-Radwaste should report to the Assistant Manager-Plant Technical.
—The positions of Supervisor-Computer and Supervisor-Systems should be transferred to the Nuclear Station Engineering department and are no longer a part of the Unit Onsite Organization.
—The position of Assistant Supervisor-Plant Support Services should be established and the position of Administrative Supervisor should be deleted.
—The position of Supervisor-Industrial Safety should report to the Supervisor-Plant Support Services.
—A note should be added to the position of Assistant Manager - Plant Operations to indicate that this position requires the individual to have had a CPS SRO license.

The position of Director-Plant Radiation Protection should be changed to Assistant Manager-Plant Radiation Protection in Specification 6.3.1. The positions of Director-Plant Technical and Director-Plant Radiation Protection should be changed to Assistant Manager-Plant Technical and Assistant Manager-Plant Radiation Protection in Specification 6.5.1.2.

*Basis for Proposed No Significant Hazards Consideration Determination:* The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the 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 does not involve a significant increase in the probability or consequences of an accident previously evaluated. This is an administrative change that does not affect current accident analyses.

The proposed changes to Figure 6.2.2-1 and Sections 6.3.1 and 6.5.1.2 are administrative changes that clarify but do not change the intent of the Specifications. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes are administrative changes only and thus do not involve any design changes, new requirements, or new modes of operation.

The proposed changes do not involve a significant reduction in a margin of safety. The intent of the existing Technical Specification requirements would remain unchanged. The proposed changes to Figure 6.2.2-1 and Sections 6.3.1 and 6.5.1.2 are administrative changes that do not affect a margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

*Local Public Document Room location:* Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

*Attorney for licensee:* Sheldon Zabel, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

*NRC Project Director:* Daniel R. Muller

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* July 1, 1988

*Description of amendment request:* The proposed amendment would revise *Facility Operating License No.* NPF-38 for Waterford 3 to authorize Systems Energy Resources, Incorporated (SERI) to act on behalf of Louisiana Power and Light (LP&L), with responsibility for and control over the physical construction, operation, and maintenance of the facility. This action is proposed in conjunction with SERI becoming the operator of Arkansas Nuclear One, Units 1 and 2 as well as continuing as operator and owner of Grand Gulf Units, 1 and 2.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, (3) involve a significant reduction in a margin of safety. LP&L has evaluated the proposed change to Facility Operating License NPF-38 and has determined the following.

SERI presently owns and operates Grand Gulf. The employees of LP&L presently engaged in the operation of Waterford 3 will become employees of SERI. The organizational structure of SERI will provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility.

As a result of the proposed amendment, there will not be physical changes to the facility, and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. With the exception of administrative changes to reflect the role of SERI, the quality assurance program, security plan, and training program are unaffected. With regard to emergency plans, certain physical and personnel resources, limited to support in administrative areas but not inclusive of decision making authority, will continue to be provided by LP&L in support of these activities. The licensee states that decisional responsibilities related to accident recognition and classification, mitigation and corrective actions, radiological assessment and protective action recommendations and coordination with state and local authorities will rest with SERI personnel. LP&L corporate management will provide direction to other non-nuclear LP&L facilities for support to Waterford 3. Operating agreements will ensure continued compliance with among others, General Design Criterion 17 of Appendix A to 10 CFR Part 50 on Electrical Power Systems. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The design and design bases of Waterford 3 remain the same. Therefore, the current plant safety analyses remain complete and accurate in addressing the

licensing basis events and analyzing plant response and consequences. The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits are not affected by the proposed amendment. With the exception of administrative changes to reflect the role of SERI, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed are still valid. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

Plant safety margins are established for and reflected in Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these or any other margins. The proposed amendment therefore will not involve a reduction in a margin of safety.

The staff has reviewed the licensee's evaluation and agrees with the conclusions. Therefore, based on the above, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

*Local Public Document Room Location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

*Attorney for licensee:* Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

*NRC Project Director:* 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:* July 18, 1988

*Description of amendment request:* The proposed amendment would change the Technical Specifications to allow 4.10 weight percent U-235 enriched fuel to be stored in the spent fuel pool, new fuel storage vault, and containment temporary storage racks. This request relates directly to the previous request dated June 24, 1986 as noticed on September 11, 1986 (51 FR 32381).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee's June 24, 1986 request included, among other things, increasing the level of enrichment for the fuel storage areas to 4.10 weight percent U-235. The licensee was requested at that time to accept an enrichment of 4.0 weight percent because the assessment of the generic environmental impact of increased enrichments on the fuel cycle and fuel transportation outlined in Tables S-3 of 10 CFR Part 51 and S-4 of 10 CFR Part 52 was not complete. The June 24, 1986 request was therefore noticed on September 11, 1986 (51 FR 32381) with a limit of 4.0 weight percent U-235.

The notice published in the **Federal Register** on February 29, 1988 (53 FR 6054), states that the NRC environmental assessment of extended burnup fuel is complete and that environmental impacts summarized in Tables S-3 of 10 CFR Part 51 and S-4 of 10 CFR Part 52 bound the corresponding impacts for burnup levels up to 60 Gwd/MtU and enrichments up to 5.0 weight percent U-235. This bounds the licensee's request for enrichments up to 4.1 weight percent U-235 for burnups up to 60 Gwd/MtU. As such, the licensee is requesting their original request and analyses be accepted.

In license amendment number 7 issued on October 16, 1986, the NRC performed a safety evaluation for increasing the level of enrichment for the fuel storage areas to 4.10 weight percent U-235 and found all analyses and proposed changes acceptable. The amendment was issued at 4.0 weight percent but the findings of 4.10 weight percent remain valid and support the following determination of no significant hazards consideration.

The calculated K-eff values, including uncertainties, indicate that the fuel storage configurations are substantially sub-critical, and the probability of a criticality event in these areas is not significantly increased. No physical change is being made to the storage areas. Since a criticality event is demonstrated to be unfeasible, there is no increased consequences for such a postulated event. The change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not introduce any physical changes being made to the facility and will not change how the facility is operated. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The licensee's June 1986 request resulted in the approval to raise the fuel enrichment level from 3.7 to 4.0 weight percent but the evaluation for that change found that 4.10 weight percent was acceptable and within the established criteria. The licensee's current request is to amend the Technical Specification to the previous acceptable level of 4.10 weight percent. The decrease in safety margin from 3.7 to 4.0 weight percent was previously found not to be significant and this is borne out by the NRC safety evaluation to 4.10 weight percent. The proposed change does not involve a significant reduction in a margin of safety.

Based on the above considerations, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

*Local Public Document Room Location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

*Attorney for licensee:* Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

*NRC Project Director:* Jose A. Calvo

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* June 21, 1988

*Description of amendment request:* The amendment would eliminate daily functional tests of the rod pattern control system setpoints, retaining the tests to be performed monthly during operation and prior to startup. Additionally, the applicable operational conditions would be changed for the high power setpoint (HPSP) from operational condition 1 to the time when thermal power is at or above the low power setpoint (LPSP).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

System Energy Resources, Inc. (SERI) has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change.

a. The functional tests performed since commercial operation, approximately 735 for each channel [(greater than] 2900 total surveillances), were reviewed with no identified as found failures. Additionally, as found trip setpoints were reviewed for drift and were found to show negligible drive over a three month period between channel calibrations. This confirms the reliability of the LPSP and HPSP trip units and supports the change to their frequency of functional testing to 31 days consistent with other identical trip units. The reliability of the system is adequately assured by the performance of the Channel Functional Tests prior to startup and monthly thereafter for the LPSP and HPSP. Other Rosemount Trip units are surveyed at a monthly frequency with acceptable performance results. SERI has addressed the effect on reliability of channel functional testing frequency for identical trip units in the Reactor Protection System. Specifically, it has been demonstrated that there is no change in the Reactor Protection System reliability when the testing of these trip units is performed more frequently than monthly.

This change does not involve a design change or physical change to the plant. Therefore, the revised surveillance frequency will not effect (sic) the consequences of an accident previously analyzed. Failure of these instruments due to the revised frequency of surveillance (which is not postulated) would have no effect on the probability of an uncoupled rod drop or an operator error leading to a rod withdrawal error. No other safety analyses as discussed in UFSAR Chapters 6 and 15 would be affected.

b. The change to the mode applicability of the HPSP is based on actual system design. Below 70% power, the HPSP does not function and is not required to function. Eliminating operability and surveillance requirements for the HPSP below the Low Power Setpoint cannot pose any changes in accident assumptions or sequence of events.

c. Thus, there is no increase in the probability or consequences of any accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. The function of the system is unaffected by the elimination of daily functional tests. There have been no as found failures in the previous 2900+ functional tests of these channels' trip units and negligible observed trip setpoint drift over the surveillance intervals being proposed. Proper system operation will be assured by monthly functional tests consistent with testing frequencies for identical trip units in other applications required by Technical Specifications. Additionally, this change does not involve a design change or physical change and therefore, does not change the system function or operation as previously described in the GGNS UFSAR.

b. The change to the mode applicability of the HPSP is consistent with system design and function. The HPSP actuates at or before 70% power and functions to implement more stringent controls on rod withdrawal than operation below the HPSP but above the LPSP. Requiring HPSP operability prior to reaching or exceeding the Low Power Setpoint ensures proper functioning when required without unnecessary restrictions, therefore maintaining the overall system operation as assumed in the UFSAR.

c. Thus, no new or different accident scenario is introduced by this revised frequency of surveillance and clarification of applicability.

3. This change would not involve a significant reduction in the margin of safety.

a. The margin of safety remains unaffected by the elimination of the daily functional test. The LPSP and HPSP setpoints remain unchanged, there have been no as found failures in the previous 2900+ functional tests of these channels' trip units and negligible observed drift over the surveillance intervals being proposed. The reliability of the system will be adequately assured by the performance of the Channel Functional Tests prior to startup and monthly thereafter. This is consistent with the proven reliabilities of identical trip units in other applications required by Technical Specifications.

b. The change to the applicability of the HPSP will still ensure it is required to be operable prior to its assumed operation in UFSAR analyses.

c. Thus, the margin of safety is not significantly reduced.

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:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Elinor G. Adensam

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* July 12, 1988

*Description of amendment request:* The amendment would delete a shower and drying area room from Technical Specification (TS) Table 3.3.7.9-1, "Fire Detection Instrumentation" because the control building locker room will be enlarged by removing the walls separating the two rooms.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

System Energy Resources, Inc. (SERI) has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. Removal of non-fire rated interior masonry walls to incorporate Room OC506 in to Room OC514 does not alter any of the precursors of any fires previously evaluated for the affected rooms. The proposed change does not alter any plant fire protection features or functions.

b. The locker room enlargement does not result in the addition, removal or relocation of any fire detection instrumentation for detection Zone 1-19 or any fire rated barriers. The level of smoke detection capability will not be reduced by the design change. Also, since the walls being removed are not fire rated, there will be no change in any existing fire rated barriers when Rooms OC506 and OC505 are incorporated into Room OC514. The room modifications do not affect any fire area boundaries as described in the Fire Hazards Analysis. This proposed Technical

Specification change assigns a new room number to existing plant space.

c. Therefore, there is no increase in the probability or consequences of a previously analyzed accident due to this change.

2. This change would not create the possibility of a new or different kind of accident from any previously evaluated.

a. No new equipment is introduced into the plant and no changes to setpoints or operating modes are proposed. This change involves the assignment of a new room number to existing plant space due to the removal of non-fire walls incorporating Room OC506 into Room OC514. The walls to be removed only serve to divide living space and provide no other function.

b. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

a. This change assigns a new room number to existing plant space. There are no changes to plant equipment or operational setpoints. The room modifications do not affect any fire area boundaries. The minimum number of smoke detection instruments required to be operable will not be reduced and no building spaces previously provided with detection will have detection capability reduced.

b. Therefore, this proposed change will not reduce the margin of safety.

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:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Elinor G. Adensam

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* July 15, 1988

*Description of amendment request:* The amendment would change the Technical Specifications by changing the position of one of the nine members on the Plant Safety Review Committee (PSRC) from Technical Support Superintendent to Manager, Performance and System Engineering. This change is necessitated by a change of the unit organization to consolidate certain engineering personnel and functions.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

System Energy Resources, Inc. (SERI) has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. This realignment of the plant staff engineering groups will have no negative effect on plant design or operation because P&SE [Performance & System Engineering] will actively look for ways to improve the performance of specific systems and components, as well as overall plant performance. With responsibility and accountability being assigned for designated plant systems, components, and programs, the knowledge of specific systems will be enhanced. The same level of expertise applied to the PSRC review function will exist with the approval of the proposed change. Since essentially the same representation will exist there will be no loss in PSRC effectiveness.

b. Therefore, there is no increase in the probability or consequences of previously analyzed accidents due to the proposed change.

2. This change would not create the possibility of a new or different kind of accident from any previously evaluated.

a. Since there is no loss in PSRC effectiveness, the proposed change is administrative in nature. No physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. The same level and quality of PSRC review is maintained and unaltered by this proposed change.

b. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

a. There will be no physical changes to the plant equipment, setpoints or operating modes as a result of the proposed change. This administrative change maintains the level and quality of PSRC review by maintaining essentially the same level of expertise applied to the PSRC review function.

b. Therefore, this proposed 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. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Elinor G. Adensam

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* June 21, 1988

*Description of amendment request:* The proposed amendment would change Millstone Unit 3 Technical Specification (TS) 3/4.7.14, "Air Temperature Monitoring," to redefine the temperature zones inside containment and establish temperature limits for these zones.

*Basis for proposed no significant hazards consideration determination:* License condition 2.C(3) in the Millstone Unit 3 Operating License NPF-49 requires that, "Prior to start-up following the first refueling outage, the qualified life of electrical equipment within the scope of 10 CFR 50.49 located inside containment shall be recalculated based on the actual temperature monitored inside containment during the first cycle of operation." License Condition 2.C(3) was satisfied by the licensee by submittal of a report dated January 21, 1988. The June 21, 1988 application would incorporate the conclusion of the January 21, 1988 report into TS 3/4.7.14 which contains temperature limits, and associated remedial requirements, and Surveillance Requirements, for various plant areas that contain temperature sensitive, safety related, electrical equipment. Exceeding the temperature limits of TS 3/4.7.14 could affect the qualified lifetime of safety-related electrical equipment as defined in 10 CFR 50.49, "Environmental qualification

of electric equipment important to safety for nuclear power plants."

At the present time, TS 3/4.7.14 defines two temperature zones within containment: (1) Zone C-01, "Inside Crane Wall - All Elevations," and (2) Zone C-02, "Outside Crane Wall - All Elevations." Both C-01 and C-02 have temperature limits of 120° F. The proposed change to TS 3/4.7.14 would establish four containment temperature zones, containing equipment presently located in Zones C-01 and C-02, as follows:

- CS-01, "Inside Crane Wall - all elevations except CS-03 and CS-04"
- CS-02, "Outside Crane Wall - all elevations"
- CS-03, "Pressurizer Cubicle - all elevations"
- CS-04, "Inside Crane Wall - elevation 51' 4" except CS-03 and steam generator enclosures"

Temperature limits for Zones C-01, C-02, and C-04 would be 120° F. The temperature limit for Zone C-03 would be 130° F. The licensee has recalculated the qualified lifetime of safety related electrical equipment in Zone C-03 with acceptable results as described in the licensee's submittal dated January 21, 1988.

The proposed change to TS 3/4.7.14 would not involve a significant increase in the probability of an accident previously evaluated since no change in plant equipment or operating modes are being undertaken. With regard to the consequences of accidents previously evaluated, the licensee's calculations show that the proposed temperature limits for proposed Zones C-01 through C-04 will assure continued reliability for electrical equipment which is credited for operation in existing safety analyses. In addition, since safety related equipment in proposed Zones C-01 through C-04 will continue to operate reliably, no new or different kind of accident will be credited. Finally, since no changes in the safety analyses will result from the proposed change to the TS, no reduction in safety margins will occur.

Accordingly, based upon the above evaluation, the NRC staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania**

*Date of amendment request:* December 15, 1987

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications reflecting revision to the load profiles for 250 V DC battery banks 1D650 and 1D660.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its December 15, 1987 submittal:

The proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. FSAR Section 8.3.2.1.1.4 states the station batteries have sufficient capacity without the charger, to independently supply the required loads for four hours. The Technical Specifications require the batteries be surveilled to dummy loads which are greater than the design loads. A calculation has been performed by our engineering department which verifies the batteries have adequate capacity to power the actual loads on the 250V DC system with all required margin accounted for;

(2) Create the possibility of a new or different kind of accident from any previously evaluated. As stated in Part (1), the batteries have sufficient capacity to power the actual battery loads thus enabling them to perform their intended function. Any postulated accident resulting from this change is bounded by previous analysis (Therefore, no new accidents of concern are created); (and)

(3) Involve a significant reduction in the margin of safety. In accordance with IEEE-485, the rated battery capacity included the margin which allows replacement of the battery when its capacity has decreased to 80% of its rated capacity (100% design load). This margin is maintained and was factored into the calculation referred to in Part (1). There is a decrease in the margin between the Technical Specification load profile and the actual battery capacity due to this proposal. However, this change is insignificant because it has not reached the point where it impacts the margin between actual battery capacity and rated capacity.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania**

*Date of amendment request:* June 3, 1988

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications requirements for the Reactor Vessel Material Surveillance Withdrawal Schedule, and Material Surveillance Lead Factor Ratio. The changes to Reactor Vessel Material Surveillance Withdrawal Schedule reflect compliance with the latest revision of 10 CFR 50, Appendix H and ASTM Standard E-185-82. The revision to the Lead Factor Ratio conforms to the SSES Unit 2 Technical Specifications requirements.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's revised request and concurs with the following basis and conclusion provided by the licensee in its June 3, 1988 submittal.

The proposed changes do not:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated. Both the revised lead factor and surveillance capsule withdrawal schedule are used only to monitor station operation and do not impact on station accidents. Also, the location of the capsules and analyses performed on them will remain the same with this proposed Tech Spec change;

II. Create the possibility of a new or different kind of accident from any accident previously evaluated. These changes only affect withdrawal schedule and the lead factor and do not propose any physical changes to the reactor vessel wall. Also, the location of the capsules and attachment to the vessel wall will remain the same with this Tech Spec change; (and)

III. Reduce the margin of plant safety. The lead factor now falls within the acceptable range stated in ASTM E-185-82 and the revised capsule withdrawal schedule is more conservative (than) the original schedule. Based on this, no significant reduction in any safety margin will occur due to this change.

Accordingly, the Commission has determined that the proposed amendments involve no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**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 amendment request:* December 18, 1987

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Units 1 and 2 Technical Specifications as follows:

1. correction of errors in the nomenclature to make the Technical Specifications consistent with the facility drawings;

2. deletion of redundant information which was introduced in the Technical Specification due to an error in the Unit 1 Amendment No. 55; and

3. a change in the organizational nomenclature to reflect the realignment of the licensee's licensing organization.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and finds that the proposed changes:

(1) Do not involve a significant increase in the probability or consequences of an accident previously evaluated because all changes listed in the description of the request are either corrections of nomenclature errors, deletion of redundant information, or administrative changes reflecting organizational realignment. They have no impact on the previously evaluated accidents;

(2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated because the changes will have no impact on the operation of the facility as it relates to potential accidents; and

(3) Do not involve a significant reduction in a margin of safety because the changes do not affect the safety margins of the plant and its systems.

Based on the above review, the staff concludes that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**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 amendment request:* February 24, 1988 as revised June 10, 1988

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Units 1 and 2 Technical Specifications by removing the onsite and offsite organization charts from the administrative control requirements in accordance with the guidance of the NRC Generic Letter 88-01, and make some changes to the nomenclature of Section 6.8.2.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The staff has reviewed the licensee's February 24, 1988 submittal as revised by letter dated June 10, 1988 and the staff finds that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i) the applicant's organizational structure is required to be included in the Final Safety Analysis Report. Chapter 13 of the Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR. Appendix B to 10 CFR 50 and 10 CFR 50.54(a)(3) governs changes to organization described in the Quality Assurance Program. Some of these organizational changes require prior NRC approval. Also, it is the licensee's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation. The proposed changes to Section 6.8.2 are changes of nomenclature only.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes are administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because the licensee, through its Quality Assurance programs, its commitment to maintain only

qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization charts from the Technical Specifications and changes in the nomenclature of Section 6.8.2 will not affect the margin of safety.

Accordingly, the Commission proposes to determine that the proposed changes involve a no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado**

*Date of amendment request:* February 5, 1988 as supplemented June 23, 1988.

*Description of amendment request:* The amendment would make certain changes to Section 7 of the Technical Specifications, concerning Administrative Controls. The proposed changes reflect organizational changes to the NRC, the licensee, and the Plant Operations Review Committee.

*Basis for proposed no significant hazards consideration determination:* The licensee has analyzed the proposed amendment request for significant hazards consideration using the standards in Title 10, Code of Federal Regulation, Part 50.92. The licensee has concluded that the proposed amendment request involves no significant hazards consideration, based on the following analysis:

The proposed changes to Section 7 and Figures 7.1-1 and 7.1-2 are evaluated as follows:

The position of Superintendent of Training has been eliminated. The Nuclear Training Organization will now report to the new position of Nuclear Training Manager who will report directly to the Vice President of Nuclear Operations. This change is administrative only and the Training Program will continue to meet or exceed the requirements of Section 5.5 of ANSI 18.1 - 1971 and Appendix "A" of 10 CFR Part 55.

Specification AC 7.1.2.1 (PORC Membership). The proposed changes to this section will eliminate four persons from membership of the PORC. This action is in response to the NRC's request for additional information, NRC letter Heitner to Williams, dated December 5, 1986. In addition to lowering committee membership from the existing 14 members to the proposed 10 members, the following steps have been taken to ensure that continuity of members is retained from one meeting to the next meeting:

1. Fewer PORC meetings - one per week versus one per day or three per week.
2. A training program for all PORC members (including alternates) has been instituted.
3. All PORC members (including alternates) have successfully completed the training program.
4. Only those personnel designated by name (PSC Interoffice Memo) are eligible to serve on the PORC.
5. 90% of all PORC meetings are chaired by the Chairman.

Specification AC 7.1.2.1 (PORC Membership). The title of Shift Supervisor Administration has been changed to Administrative Shift Supervisor. There is no significant change to the responsibilities/functions associated with this position.

Specification AC 7.1.2.2 (Alternates) has been revised to clarify that no more than two alternate members shall participate "as voting members" in PORC activities at any one time. The proposed change is consistent with the guidance provided in the Standard Technical Specifications (STS).

Specification AC 7.1.2.3 (Meeting Frequency) has been revised to allow the "designated alternate" PORC Chairman to convene PORC meetings. The proposed change is consistent with the guidance provided in the STS.

Specification AC 7.1.2.5.a (Responsibilities) has been revised to add Specification "7.4(d)" which was inadvertently omitted in a previous Technical Specification submittal. The proposed change is consistent with procedure reviews presently performed by PORC.

Specification AC 7.1.3.2 (NFSC Membership) has been revised to indicate that consultants will be appointed "in writing by the Vice President, Nuclear Operations". This clarification is consistent with Specification AC 7.1.3.3 and 7.1.3.4 for appointing Alternate Members and Chairman/Alternate Chairman, respectively.

Figures 7.1-1 and 7.1-2 have been updated to reflect the above described organization and the words "Fort St. Vrain" eliminated for consistency.

Specification AC 7.4.a.1 is revised to delete an incorrect reference to Regulatory Guide 1.33 and add Safety Guide 33, November 1972. Regulatory Guide 1.33 did not exist in November 1972.

Specifications AC 7.4.b and 7.4.c have been revised to allow for certain procedure reviews to be performed by the PORC, "or a subcommittee thereof", prior to the PORC review required in Specification AC 7.1.2.5.a. This proposed change will relieve the PORC of some of the in-depth procedure reviews and allow more time to be spent on other issues, thereby enhancing overall PORC continuity while maintaining the quality of procedure reviews. The procedure will then be approved by the "appropriate management" personnel (previously, "appropriate Manager"). The PSC management structure is such that the appropriate approver may be a vice president, manager, or superintendent. This change is for clarification only and will have no affect on the level of review the procedure receives.

The proposed change to Specification AC 7.5.1.c (Monthly Operations Report) updates the address in accordance with NUREG-0325, dated February 6, 1987. Reference to the Director, Office of Inspection and Enforcement has been eliminated to reflect recent USNRC organizational changes.

Based on the above, Public Service Company of Colorado concludes the operation of Fort St. Vrain in accordance with the proposed changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Therefore, this change will not create an undue risk to the health and safety of the public.

Based on the above evaluation, the licensee has concluded that operation of Fort St. Vrain in accordance with the proposed changes will involve no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado

*Attorney for licensee:* Byrant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201-0840

*NRC Project Director:* Jose A. Calvo

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina**

*Dates of amendment request:* July 6, 1987, as supplemented May 16, 1988

*Description of amendment request:* The July 6, 1987 submittal proposed to revise Technical Specification (TS) Sections 6.2, "Organization," and 6.4, "Training." This revision proposed to delete the organization charts from the Technical Specifications and to revise the retraining and replacement program. The July 6, 1987 submittal was noticed in the **Federal Register** on September 9, 1987 (52 FR 34019). On March 22, 1988 Generic Letter 88-06, "Removal of Organization Charts from Technical Specifications Administrative Control Requirements," was issued by the Commission. As a result of the issuance of this Generic Letter the licensee

modified their proposed amendment request in their May 16, 1988 submittal. Specifically, a new section, 6.2.1 "Offsite and Onsite Organizations", was added.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the addition of the "Onsite and Offsite Organization" Section to the Technical Specifications does not affect the Significant Hazards Determination presented in the July 6, 1987 submittal.

The staff has reviewed the May 16, 1988 submittal and has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because addition of the Onsite and Offsite Organization to the Technical Specification does not affect plant operation in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The addition of the Onsite and Offsite Organization Section to the Technical Specification provides additional support to safety by defining the lines of authority, responsibility and communication. The proposed amendment does not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards consideration.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

*NRC Project Director:* Elinor G. Adensam

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina**

*Dates of amendment request:* May 20, 1988; June 20, 1988; and July 8, 1988.

*Description of amendment request:* On May 20, 1988, the licensee proposed an amendment to revise numerous sections of the Technical Specifications (TS) in support of refueling and operating the Virgil C. Summer Nuclear Station, Unit No. 1 (Summer Station or VCSNS) with the VANTAGE 5 (V-5) improved fuel design. Presently, the Summer Station is operating with a Westinghouse 17X17 low parasitic fuel core. On June 20, 1988, the licensee modified their May 20, 1988 submittal to reflect an average coolant temperature ($T_{ave}$) of 587.4° F. The Technical Specifications affected by this change, TS Figures 2.1-1 and 3.2-2 and TS Tables 2.1-1, 2.2-1, and 3.2-1, were replaced in the June 20, 1988 submittal. On July 8, 1988, the licensee revised the May 20, 1988 submittal of TS 3.1.2.6 and proposed a new change to TS 3.1.2.5, "Borated Water Services-Shutdown." The July 8, 1988 changes were proposed to make allowances for the amount of borated water which is unavailable for injection and which was not accounted for in the May 20, 1988 submittal.

The proposed amendment would change the Technical Specifications to support the Cycle 5 core reload to permit operation with the V-5 fuel assemblies, in addition to the Westinghouse Low Parasitic (LOPAR) assemblies remaining in the core from Cycle 4 and subsequent operating cycles with up to a full core of V-5 fuel. Design features of the V-5 fuel include assemblies with up to approximately 4.25 weight percent U-235, axial blankets, integral fuel burnable absorbers, intermediate flow mixers, reconstitutable top nozzles, and extended burnup capability. A debris filter bottom nozzle (DFBN) will be introduced to replace the standard V-5 bottom nozzle to reduce the possibility of fuel rod damage due to debris-induced fretting. Changes to the Technical Specifications are required due to the use of the V-5 fuel and use of the following analytical methods and assumptions:

(1) The Improved Thermal Design Procedure (ITDP);

(2) The WRB-1 and WRB-2 departure from nucleate boiling (DNB) correlations;

(3) The BASH large break loss-of-coolant accident (LOCA) model;

(4) The NOTRUMP small break LOCA model;

(5) The ANSI/ANS 5.1-1979 decay heat model for non-LOCA accidents and transients;

(6) Relaxed Axial Offset Control (RAOC);

(7) $F_Q(z)$ Surveillance; and

(8) Analysis baseline changes as outlined in the May 20, 1988 submittal.

As a result of the above, changes to the following Technical Specifications are proposed:

(1) Core Safety Limits (TS 2.1.1, Figure 2.1-1);

(2) Reactor Coolant Flow Allowable Values (TS 3/4.2.3);

(3) Overtemperature delta T Reactor Trip Setpoints (Table 2.2-1);

(4) Overpower delta T Reactor Trip Setpoints (Table 2.2-1);

(5) Shutdown Margin for Modes 3, 4, and 5 (Figure 3.1-3);

(6) Moderator Temperature Coefficient (TS 3/4.1.1.3);

(7) Rod Drop Time (TS 3.1.3.4);

(8) Axial Flux Difference (TS 3/4.2.1);

(9) Heat Flux Hot Channel Factor - $F_Q(z)$ (TS 3/4.2.2, Figure 3.2-2, TS 4.10.2);

(10) Nuclear Enthalpy Rise Hot Channel Factor - $F_{delta\ H}$ (TS 3/4.2.3, Figure 3.2-3);

(11) DNB Parameters (Table 3.2-1);

(12) Reactor Trip(s) Response Time (Table 3.3-2);

(13) ECCS Accumulator Water Volume Range (TS 3.5.1);

(14) Borated Water Sources-Shutdown (TS 3.1.2.5);

(15) Borated Water Sources for Modes 1-4 (TS 3.1.2.6);

(16) Reactor Trip System Instrumentation (Table 2.2-1);

(17) Allowances for Determination of Operability (Table 2.2-1); and

(18) Charging Pump Flow Balance Surveillance (TS 4.5.2).

Also, Figure 3.2-1, Axial Flux Limits as a Function of Rated Thermal Power is proposed to be deleted.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes associated with the

transition to V-5 fuel against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. The licensee has concluded that the proposed changes do not involve any significant hazard because:

a. The probability or consequences of an accident previously evaluated is not significantly increased.

The V-5 reload fuel assemblies are mechanically and hydraulically compatible with the current LOPAR fuel assemblies, control rods and reactor internals interfaces. Also, implementation of V-5 does not cause a significant change in the physics characteristics of the VCSNS cores beyond the normal range of variation seen from cycle to cycle. Thus, both fuel types satisfy the design basis for the VCSNS as proposed for this amendment.

Thimble plug removal has a negligible impact on the system and component structural adequacy but does cause core bypass flow to increase. The revised core thermal-hydraulic design and safety analysis, however, show that the DNB penalty due to removal of the thimble plug is more than offset by the increase in DNB margin resulting from the use of the ITDP and V-5 fuel.

The proposed changes have been assessed from a core design and safety analysis standpoint. No increase in the probability of occurrence of any accident was identified but an extensive reanalysis, as described in the Transition Safety Evaluation, was required to demonstrate compliance to the revised VCSNS Technical Specifications. These reanalyses applied methods which have been previously found acceptable by the NRC. The results, which include transition core effects, show changes in consequences of accidents previously analyzed. However, the results are all clearly within pertinent acceptance criteria and demonstrate the plant's capability to operate safely at 100% power. Thus, it is concluded that there is no significant increase in the consequences of an accident previously evaluated.

b. The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not created.

These proposed changes do not significantly effect the overall method and manner of VCSNS operation and can be accommodated without compromising the performance or qualification of safety-related equipment. Thus, the creation of a new or different kind of accident from any previously evaluated accident is not considered a possibility.

c. The margins (sic) of safety as defined in the bases for Technical Specifications is not significantly reduced.

The evaluations and analyses described herein show some changes in the consequences of previously analyzed accidents. In some cases, an increase in event consequences occurs and may reduce margin. However, in all cases, the results of the changes are clearly within all pertinent design and safety acceptance criteria. Thus, there is no significant reduction in the margin of safety as a result of the proposed changes.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. The staff has concluded that while the margins have been reduced and event consequences have been increased, these impacts are insignificant because: (1) the core reload uses V-5 fuel which is not significantly different from previous cores at the Summer Station; (2) the changes to the Technical Specifications are as a result of the core reload and not because of any significant change made to the acceptance criteria for Technical Specifications; and (3) the analytical methods used in the required reload analysis have been previously found acceptable by the NRC. Therefore, the staff agrees with the conclusion of the licensee's determination. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

*NRC Project Director:* Elinor G. Adensam

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment requests:* May 31, 1988 (TS 240)

*Description of amendment requests:* The proposed amendment would modify the Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 Technical Specifications (TS), by revising the following TS definitions:

1. Definitions 1.0.M, 1.0.M.1, 1.0.M.2, 1.0.M.3, and 1.0.M.4, Mode of Operation, are changed to:

a. Directly link the mode of operation to the position of the reactor mode switch.

b. Permit the position of the reactor mode switch to be temporarily changed for performance of a test or other operation while the unit does not change its mode of operation.

c. Make these definitions applicable only when there is fuel in the reactor. The unit would be considered not to be in any defined mode of operation or operational condition without fuel in the reactor vessel.

d. Delete extraneous information which describes the selection functions of the reactor mode switch. Specify exceptions to the definitions of modes of operation and operational conditions relative to the reactor mode switch position.

2. Definition 1.0.S, Core Alterations, is changed to:

a. Specify the specific core components whose addition, removal, relocation, or movement within the reactor vessel constitutes a core alteration.

b. Specify that handling of these core components only constitutes core alteration when there is fuel in the reactor vessel.

c. Permit a core alteration to be completed as necessary to leave the unit in a safe, conservative condition when suspension of the core alteration is required.

3. Definitions 1.0.H, 1.0.I, 1.0.J, 1.0.K, 1.0.L, and 1.0.X are changed to make these definitions consistent with the definitions of 1.0.M., 1.0.M.1, 1.0.M.2, 1.0.M.3, and 1.0.M.4 which link the mode of operation directly to the reactor mode switch position, and improve the clarity and consistency of these definitions.

a. A new definition is added which defines startup as "The withdrawing of control rods to make the reactor critical."

b. Administrative changes are made to the limiting conditions and surveillance requirements to invoke the terms defined in a concise manner.

*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 significant hazards consideration 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 an accident previously evaluated or (3) involve a significant reduction in a margin of safety.

1. The proposed changes do not result in a change in the plant configuration. Rather they attempt to apply a cohesive set of definitions and reference them throughout the body of the technical specifications. Since the proposed change does not affect the manner in which the plant was designed to operate,

there is not an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not affect normal or emergency operating procedures for the plant. These changes are mostly administrative in nature and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes actually increase the overall safety of the plant by explicitly defining phrases in the technical specifications that were previously open to interpretation.

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:* 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:* Suzanne Black

**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 14, 1987 (TS 87-38)

*Description of amendment requests:* The Tennessee Valley Authority (TVA) proposes to change Table 3.3-5 of the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS). The proposed change will add requirements to the response time test of the containment ventilation isolation function when initiated by a high containment pressure signal or a low pressurizer pressure signal.

*Basis for proposed no significant hazards consideration determination:* In its submittal, TVA provided the following reason for the proposed change:

Section 15.4.1.1.5 of the SQN Final Safety Analysis Report (FSAR) describes the effect of containment purging on the Loss of Coolant Accident (LOCA) analysis. This analysis assumes that containment purge is isolated 5.5 seconds after the postulated break. The analysis also assumes 6.5 seconds for the isolation of the upper and lower containment air radiation monitors. These assumptions are currently verified by response time testing, but not as a requirement of Technical Specification [TS] 3.3.2.1.

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 in its application the following analysis:

TVA has evaluated the proposed TS change and determined that it does not represent a significant hazards consideration based on the the criteria established in 10 CFR 50.92c. 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 proposed change adds requirements for response time testing of the containment ventilation isolation function. This testing is currently performed, but not as a requirement of TS 3.3.2.1. By requiring the response time testing of the isolation function, the plant is ensured of being bounded by the accident analysis.

2. Create the possibility of a new or different kind of accident from any accident previously evaulated. The addition of the requirement for response time testing of the containment ventilation isolation ensures that SQN is bounded by its FSAR accident analysis. Since the response time testing is presently performed, the requirement does not change the function or operation of the equipment.

3. Involve a significant reduction in a margin of safety. The proposed testing requirement will be used to ensure that the testing presently performed continues to be conducted. By performing the response time test of the containmemt ventilation isolation function, the current margins of safety for the plant are verified.

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:* Suzanne Black

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendments requests:* July 25, 1988 (TS 88-09)

*Description of amendment requests:* The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Unit 1 Technical Specifications (TS). The change is to revise Table 3.6-1, "Bypass Leakage Paths to the Auxiliary Building," to add four potential bypass leakage paths associated with the penetrations for the hydrogen analyzer system.

*Basis for proposed no significant hazards consideration determination:* In its amendment request, TVA provided the following discussion on the proposed change:

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 with respect to containment isolation.

This proposed technical specification change is needed for unit 1 to identify the bypass leakage paths to the Auxiliary Building. Inclusion of these potential leakage paths in table 3.6-1 of the unit 1 technical specifications ensures that these bypass leakage paths are tested in accordance with 10 CFR 50, Appendix J, and specification 3.6.1.2. This change is similar to a previously approved technical specification change (87-46) for unit 2 that was submitted to NRC on March 1, 1988.

Modifications to the unit 1 hydrogen analyzer system are being performed to eliminate the potential bypass leakage to the environment. In order to comply with specification 3.6.4.1 for operable hydrogen analyzers, the unit 1 modifications will be completed before entering mode 2. These deficiencies were also reported to NRC in Licensee Event Report (LER) 327/87077.

The Commission has provided Standards for determining whether a significant hazards determination exists 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 technical specification change and has determined that it does not represent 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 [TS] 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 [post-Loss-of-Coolant Accident] information to the operator in

compliance with NUREG-0737. The hydrogen analyzer system does not contribute to the probability of leakage paths from containment to the environment. The remaining potential bypass leakage paths are into the ABSCE [Auxiliary Building Secondary Containment Enclosure] 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 probability or consequences of previously evaluated accidents has not been altered.

(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; 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 ABGTS [Auxiliary Building Gas Treatment System]. 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 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:* Suzanne Black

## 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.

**Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.**

*Date of application for amendments:* May 10, 1988, superceded May 26, 1988.

*Description of amendments:* The amendments revise the corporate management position title from Senior Vice President to Vice President-Nuclear throughout Section 6, Administrative Contols. It also deletes the requirement to forward certain items to the Senior Vice President, now the Vice President-Nuclear.

*Date of issuance:* July 18, 1988

*Effective date:* July 18, 1988

*Amendment Nos.:* 78, 70

*Facility Operating License Nos. NPF-2 and NPF-8.* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22398) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois**

*Date of application for amendments:* June 22, 1988, supplemented July 14, 1988 and July 18, 1988.

*Brief description of amendments:* These amendments revise 3.7.5.e.(2) of the Technical Specification Action Statement concerning the ultimate heat sink to state that the provisions of Technical Specification 3.0.4 are not applicable.

*Date of issuance:* July 21, 1988

*Effective date:* July 21, 1988

*Amendment Nos.:* 20, 20

*Facility Operating License Nos. NPF-37 and NPF-66.* Amendments revised the Technical Specification.

*Public comments requested as to proposed no significant hazards consideration:* Yes

*Date of initial notice in* **Federal Register:** July 8, 1988 (53 FR 25710). The initial **Federal Register** notice provided a 30-day opportunity for requests for hearing on the amendment and for public comments on the Commission's proposed no significant hazards consideration determination. It noted that if emergency circumstances

occurred, the Commission may issue the amendment before the expiration of the 30-day period, provided it made a final no significant hazards consideration determination. Such circumstances have occurred and the Commission has made such a final determination and has issued the amendment. If any requests for hearing submitted before August 8, 1988 are granted, the hearing will be held after issuance of the amendment. August 8, 1988 is the end of the 30-day period provided in the initial notice for submission of hearing requests.

*Comments Received:* No

The Commission's related evaluation of the amendment, finding of emergency circumstances, final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 21, 1988.

*Attorney for licensee:* Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

**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:* January 18, 1988

*Brief description of amendments:* These amendments revise the Technical Specifications to: (1) change the shutdown and reporting requirements resulting from high specific activity of the reactor coolant; (2) change the curve on page 3/4 4-40 to more conservative cold overpressure protection systems setpoints; (3) allow other indications, in addition to the absence of alarms, to be used to verify accumulator borated water level and nitrogen cover pressure; (4) correct typographical errors on Byron pages 3/4 6-23 and 3/4 7-14; (5) make Table 5.7-1 consistent with the FSAR and Section XI of the ASME code; and (6) correct and update the titles of various management personnel, and clarify the authority of some Quality Assurance personnel.

*Date of issuance:* July 27, 1988

*Effective Date:* July 27, 1988

*Amendment Nos.:* 21, 21 for Byron, 10, 10 Braidwood

*Facility Operating Licenses Nos. NPF-37, NPF-66, NPF-72, and NPF-77* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 6, 1988 (53 FR 11367). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 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 Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units No. 2 and 3, Grundy County, Illinois**

*Date of application for amendments:* November 26, 1986 and January 14, 1988

*Brief description of amendments:* This amendment modified paragraph 3.I of Provisional Operating License DPR-19 for Dresden Unit 2 and paragraph 3.H of Facility Operating License DPR-25 for Dresden Unit 3 to require compliance with the revised Physical Security Plan. This plan was updated to conform to the latest 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:* July 22, 1988

*Effective date:* July 22, 1988

*Amendment Nos.:* 99, 95

*Provisional Operating License No. DPR-19 and Facility Operating License No. DPR-25:* This amendment revised the license.

*Date of initial notice in* **Federal Register:** May 4, 1988 (53 FR 15907). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1988

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of application for amendment:* November 19, 1987

*Brief description of amendment:* This amendment revises the Fermi-2 Technical Specifications to correct errors in Section 3/4.8.4.5, "Standby Liquid Control System Associated Isolation Devices," by deleting from Table 3.8.4.5-1 the specification of two circuit breaker positions that do not exist in the plant. The breakers that perform the isolation function are still in the Table.

*Date of issuance:* July 27, 1988

*Effective date:* July 27, 1988

*Amendment No.:* 22

*Facility Operating License No. NPF-43.* The amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 9, 1988 (53 FR 7589) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 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, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* June 29, 1987, as supplemented December 4, 1987, and April 1, 1988.

*Brief description of amendments:* The amendments modified Technical Specification Table 4.3-1 "Reactor Trip System Instrumentation Surveillance Requirements" to delete the requirements to test the reactor coolant flow rate in the bypass loops in which Resistance Temperature Detectors are installed to measure the hot leg and cold leg temperatures.

*Date of issuance:* July 27, 1988

*Effective date:* July 27, 1988

*Amendment Nos.:* 49 and 42

*Facility Operating License Nos. NPF-35 and NPF-52.* Amendments revised the Technical Specifications.

*Dates of initial notices in* **Federal Register:** December 30, 1987 (52 FR 49223) and May 18, 1988 (53 FR 17788) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* February 15, 1988

*Brief description of amendments:* The amendments modified the Technical Specifications to permit separation of the diesel generator 24 hour test run and the hot restart with Full Engineered Safety features load test.

*Date of issuance:* July 28, 1988

*Effective date:* July 28, 1988

*Amendment Nos.:* 51 and 44

*Facility Operating License Nos. NPF-35 and NPF-52.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 18, 1988 (53 FR 17789) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* May 6, 1988

*Brief description of amendments:* The amendments changed the Technical Specifications by extending application of "F-star" steam generator tube plugging criterion for the life of the plants.

*Date of issuance:* July 19, 1988

*Effective date:* July 19, 1988

*Amendment Nos.:* 89 and 70

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22400) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 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, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of application of amendments:* February 22, 1988

*Brief description of amendments:* The amendments changed Technical Specifications (TS) 3.0.4, 4.0.3, 4.0.4, and 3.0/4.0 bases statements in response to the Commission's Generic Letter No. 87-09 on this subject entitled, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The amendments also upgraded the Unit 1 TS for TS 3.0.1, 3.0.2, and 3.0.3 to STS content.

*Date of Issuance:* July 19, 1988

*Effective Date:* July 19, 1988

*Amendment Nos.:* 98 and 33

*Facility Operating License Nos. DPR-67 and NPF-16:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 23, 1988 (53 FR 9503) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1988

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

**Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida**

*Date of application for amendments:* January 16, 1987, as superseded April 5, 1988

*Brief description of amendments:* The amendments revised the refueling shutdown margin from 10 to 5 percent (delta k)/k, corrected a typographical error and made an administrative change to the Turkey Point Technical Specifications.

*Date of issuance:* July 18, 1988

*Effective date:* July 18, 1988

*Amendment Nos.* 132 and 126

*Facility Operating Licenses Nos. DPR-31 and DPR-41:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22401) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1988.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

**Illinois Power Company, Soyland Power Cooperative, Inc., and Illinois Power Cooperative, Inc. Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* December 1, 1986, October 1, 1987, and November 30, 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:* July 26, 1988

*Effective date:* July 26, 1988

*Amendment No.:* 3

*Facility Operating License No. NPF-62.* This amendment revised the license.

*Date of initial notice in* **Federal Register:** May 4, 1988 (53 FR 15919) The Commission's related evaluation of the amendment is contained in a letter to the Illinois Power Company, et al. dated July 26, 1988 and a Safeguards Evaluation Report dated July 26, 1988

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**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 as supplemented May 20, 1988

*Brief description of amendment:* The amendment revised the Technical Specifications by deleting the operability and surveillance requirements for the Log Power Channels at power levels above 1.0E-4% of Rated Thermal Power and adds the requirement to perform surveillance requirements and operability upon reinstatement of the Log Power Level Trip.

*Date of issuance:* July 19, 1988

*Effective date:* July 19, 1988

*Amendment No.:* 40

*Facility Operating License No. NPF-38.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22402) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 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:* May 20, 1988.

*Brief description of amendment:* The amendment revised the Technical Specifications by removing the organizational charts from Section 6 in accordance with the guidance provided in Generic Letter 88-06 dated March 22, 1988. This action supersedes the licensee's request dated December 23, 1987 and as noticed on April 6, 1988 (53 FR 11373).

*Date of issuance:* July 19, 1988
*Effective date:* July 19, 1988
*Amendment No.:* 41
*Facility Operating License No. NPF-38.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22404). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 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.

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Dates of application for amendment:* May 2, 1988, as revised June 3, 1988
*Brief description of amendment:* The amendment changes the Technical Specifications by replacing Figure 6.2.2-1, "Offsite Organization," and Figure 6.2.2-1, "Unit Organization," with requirements that capture the essential aspects of the organization structure that are defined by these figures.
*Date of issuance:* July 29, 1988
*Effective date:* July 29, 1988
*Amendment No.* 45
*Facility Operating License No. NPF-29.* This amendment revises the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 29, 1988 at 53 FR 24513. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1988.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Dates of application for amendment:* May 2, 1988, as revised June 3, 1988
*Brief description of amendment:* The amendment changes the Technical Specifications by replacing Figure 6.2.2-1, "Offsite Organization," and Figure 6.2.2-1, "Unit Organization," with requirements that capture the essential aspects of the organization structure that are defined by these figures.
*Date of issuance:* July 29, 1988
*Effective date:* July 29, 1988
*Amendment No.* 45
*Facility Operating License No. NPF-29.* This amendment revises the Technical Specifications and/or License.
*Date of initial notice in* **Federal Register:** June 29, 1988 at 53 FR 24513. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1988.
*No significant hazards consideration comments received:* No
*Local Public Document Room Location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York**

*Date of application for amendment:* April 28, 1988
*Brief description of amendment:* Revise Technical Specification Table 3.3.9-2 to reduce the allowable value for the Feedwater System/Main Turbine Trip System Reactor Water Level - High Level 8 from less than or equal to 209.3 inches to less than or equal to 203.8 inches.
*Date of issuance:* July 25, 1988
*Effective date:* July 25, 1988
*Amendment No.:* 7
*Facility Operating License No. NPF-69:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22403). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 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.

**Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* January 20, 1987 as supplemented on February 26, 1988.
*Brief description of amendments:* These amendments modified the Technical Specifications (TS) in the areas of: (a) the surveillance requirements for primary coolant sample analysis, and (b) the definition of surveillance frequency for the diesel generators.
*Date of issuance:* July 18, 1988
*Effective date:* July 18, 1988
*Amendments Nos.:* 133 and 136
*Facility Operating License Nos. DPR-44 and DPR-56:* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** March 25, 1987 (52 FR 9579) The supplemental letter provided supporting information requested by the staff and made no change to the original amendment request. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1988.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of application for amendments:* June 1, 1988 (TS 245-T)
*Brief description of amendments:* The amendments modify the technical specifications by changing the operability requirements for the Standby Gas Treatment System and the Control Room Emergency Ventilation System to allow system modifications and maintenance needed for restart to proceed in parallel with the fuel inspection and reconstitution program currently in progress.
*Date of issuance:* July 20, 1988
*Effective date:* July 20, 1988, and shall be implemented within 60 days
*Amendments Nos.:* 151, 147, 122
*Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68:* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22407) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 1988
*No significant hazards consideration comments received:* No
*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:* Suzanne Black

**The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of application for amendment:* October 2, 1987

*Brief description of amendment:* This amendment revised Section 4.2.1(2) of the EPP to reflect changes in the sampling procedure for *Corbicula* from areas adjacent to the Perry intake and discharge structures to sampling of sediments in the Perry raw water systems. The sampling procedures at the Eastlake Power Plant to determine the presence of *Corbicula* are also revised.

*Date of issuance:* July 20, 1988

*Effective date:* July 20, 1988

*Amendment No.* 15

*Facility Operating License No. NPF-58.* This amendment revised the Environmental Protection Plan, Appendix B to the license.

*Date of initial notice in* **Federal Register:** March 9, 1988 (53 FR 7604) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1988 and an Environmental Assessment dated July 8, 1988 (53 FR 27248 July 19, 1988).

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

**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:* September 17, 1987

*Brief description of amendment:* The amendment revised Technical Specification Figure 6.2-1 to reflect the removal of the Manager Nuclear Operations Support position and the name change of the Procurement and Materials Management Division in the Operating Corporation Organization, as well as the removal of unnecessary detail from Figure 6.2-1.

*Date of Issuance:* July 15, 1988

*Effective date:* July 15, 1988

*Amendment No.:* 17

*Facility Operating License No. NPF-42.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 4, 1987 (52 FR 42373) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1988.

*No significant hazards consideration comments received:* No.

*Local Public Document Room Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of 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 September 9, 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 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 (*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, 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).

**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:* July 15 and 19, 1988, as supplemented July 21, 1988

*Brief description of amendments:* The amendments corrected Technical Specification 4.8.1.1.2.e.6(c) to recognize that four, rather than three, diesel generator trips are not automatically bypassed during tests simulating a loss-of-offsite power in conjunction with an engineered safety features actuation test signal.

*Date of issuance:* July 22, 1988

*Effective date:* July 15, 1988

*Amendment Nos.:* 90 and 71

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* No

The Commission's related evaluation is contained in a Safety Evaluation dated July 22, 1988.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*NRC Project Director:* David B. Matthews

Dated at Rockville, Maryland, this 2nd day of August, 1988.

For the Nuclear Regulatory Commission

**Steven A. Varga,**

*Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.*

[Doc. 88-17938 Filed 8-9-88; 8:45 am]

BILLING CODE 7590-01-D

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**[Docket Nos. 50-327 And 50-328; License Nos. DPR-77 And DPR-79]**

**Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Issuance of Director's Decision**

Notice is hereby given that the Director, Office of Special Projects, has taken action with regard to Petition for Action under 10 CFR 2.206 received from Mr. Albert Bates, on behalf of certain named individuals, dated March 24, 1988, with respect to the Sequoyah Nuclear Plant. The Petition requested that the Commission issue an immediate emergency order suspending full power operation of the facility until remedial action can be taken. The Petition asserted as grounds for this request that the licensee has failed to meet the requirements of Regulatory Guides 1.9 and 1.108 with respect to the capacity margin and performance testing of the Emergency Diesel Generator (EDG) system.

By letter dated March 28, 1988, the Director of the Office of Special Projects denied the Petitioner's request for emergency action and notified the Petitioner that a decision would be issued regarding the Petitioner's technical concerns. The staff has now completed its evaluation of these

concerns and the Director of the Office of Special Projects has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Under 10 CFR § 2.206," (DD–88–12) which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's Regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 3rd day of August, 1988.

For the Nuclear Regulatory Commission.

**James G. Partlow,**

*Director, Office of Special Projects.*

[FR Doc. 88–18055 Filed 8–9–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–361 and 50–362]**

## Southern California Edison Co., et al.; Issuance of Amendments To Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 64 to Facility Operating License No. NPF–10 and Amendment No. 53 to Facility Operating License No. NPF–15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The amendment was effective as of the date of issuance.

These amendments revise a number of Technical Specifications (TS), and are in partial response to applications for amendments designated as PCN–231, 233 and 234. The Technical Specifications that are changed by each PCN are as follows: PCN–231—Figure 3.1–2 of TS 3/4.1.3.6, "Regulating CEA Insertion Limits"; PCN–233—TS 3/4.10.2, "Group Height, Insertion and Power Distribution Limits," and Tables 2.2–1 and 3.3–1; and PCN–234—TS 3/4.5.1, "Safety Injection Tanks."

The applications for the amendments comply 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 amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on March 31, 1988 (53 FR 10452). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The applications for amendments dated December 14, 1987 and supplemental letters dated April 14 and May 6, 1988, (2) Amendment No. 64 to License No. NPF–10 and Amendment No. 53 to License No. NPF–15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. 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 III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 3rd day of August 1988.

For The Nuclear Regulatory Commission.

**D.E. Hickman,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–18053 Filed 8–9–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–361/362]**

## Southern California Edison Co. et al; Partial Denial of Amendments to Facility Operating Licenses and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied part of a request by Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (licensees) for amendments to Facility Operating License Nos. NPF–10 and NPF–15, issued to the licensees, for operating of the San Onofre Nuclear Generating Stateion (SONGS), Units 2 and 3, located in San Diego County, California. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on March 31, 1988 >(53 FR 10452).

The amendments, as proposed by the licensees, would revise Technical Specification (TS) Surveillance Requirement 4.3.3.2(a) by changing the frequency of performance of the Incore Detection System Channel Chech from 7 days to 31 Effective Full Power Days. The proposed change would allow verification of incore detector operability to be performed in conjunction with other routine surveillances.

The staff finds that there are plant-unique characteristics of SONGS 2 or 3 which would justify deviation from the Incore Detection System Operability Requirements specified in the Standard Technical Specifications. In addition, the staff does not consider the reported error introduced by a single soft (undetected) detector failure to be insignificant. The degree of compromise to measurement quality which is acceptable is a judgment which should be considered generically.

By September 9, 1988, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary for 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.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, and Orrick, Herrington & Sutcliff, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

For further details with respect to this action, see: (1) The application for amendments dated December 14, 1987, and (2) the Commission's Notification of Denial forwarded to the licensees by letter dated April 19, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC,

and at the General Library, University of California at Irvine, Irvine, California 92713. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 3rd day of August 1988.

For the Nuclear Regulatory Commission.

**Donald E. Hickman,**

*Project Manager, Project Director V, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88-18054 Filed 8-9-88; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

*Agency Clearance Officer:* Kenneth A. Fogash (202) 272-2124.

*Upon Written Request, Copy Available From:* Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

*New*

Revised Proposed Rule 11a-3

File No. 270—321

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501, *et seq.* ], the Securities and Exchange Commission has submitted for OMB approval revised proposed Rule 11a-3 under the Investment Company Act of 1940 [15 U.S.C. 80a, *et seq.*].

Revised proposed Rule 11a-3 would allow certain open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same group of funds.

Revised proposed Rule 11a-3 would add an estimated annual burden of two hours per open-end investment company that chose to rely on the rule. If all open-end investment companies relied on the rule, then the total annual burden is estimated to be 4,900 hours. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Robert Neal at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-60004, and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

July 29, 1988.

[FR Doc. 88-18041 Filed 8-9-88; 8:45 am]

BILLING CODE 8010-01-M

**[Rel. No. IC-16515; 812-7040]**

### Imperial Portfolios, Inc.; Application

August 4, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicant:* Imperial Portfolios, Inc. (the "Fund").

*Relevant 1940 Act Sections:* Exemption requested under Section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1 promulgated thereunder.

*Summary of Application:* Applicant seeks an order to permit the Fund to impose a contingent deferred sales charge ("CDSC") on certain redemptions of shares of its High Yield Institutional Fund and other existing and subsequently created series of the Fund.

*Filing Date:* The application was filed on May 26, 1988. An amendment, the substance of which has been set forth in a letter to the Commission, dated August 3, 1988, and which thus is included herein, will be filed during the notice period.

*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 August 29, 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(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 9275 Sky Park Court, San Diego, California 92123, Attention: Robert W. Blanchard, Esq.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chretien-Dar, Law Clerk, (202) 272-3022 or Curtis R. Hilliard, Special Counsel at (202) 272-3030 (Division of Investment Management, Office of Investment 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 who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicant's Representations

1. The Fund is a series company registered as an open-end management investment company under the 1940 Act and is organized as a Maryland corporation. On April 12, 1988, the Fund filed a post-effective amendment to its registration statement under the Securities Act of 1933 and the Investment Company Act of 1940. The Fund proposes to commence a public offering of the shares of the High Yield Institutional Fund ("Institutional Fund") upon the effectiveness of a post-effective amendment amending such post-effective amendment. The Fund requests that the order, if granted, apply to any future series of the Fund that imposes a contingent deferred sales charge under the same circumstances described herein.

2. The Fund's principal underwriter and distributor is First Imperial Investor Services, Inc. ("Principal Underwriter"). Caywood-Christian Capital Management, Inc. is the Fund's investment adviser for the Institutional Fund.

3. Applicant proposes to offer the shares of the Institutional Fund with a maximum front-end sales charge ("FESC") of 1.25% of the offering price. In addition, a contingent deferred sales charge ("CDSC") will be imposed on certain redemptions of shares of the Institutional Fund. The amount of the CDSC imposed, if any, will depend on the period of time that the shares being redeemed have been held by the redeeming shareholder. The CDSC will be two percent of the amount redeemed for shares held less than six months; one percent for shares held less than a year; .75 percent for shares held less than two years; .50 percent for shares held less than three years; and .25 percent for shares held less than four years. No charge will be assessed on shares being redeemed after four years or on shares

acquired through the reinvestment of dividends or distributions. Furthermore, no charge will be imposed on the amount of redemption proceeds equal to the increase, if any, in the net asset value of the shares over the net asset value of the shares at the time of purchase. Shares redeemed will be first charged against: 1. shares held over four years; 2. shares acquired through the reinvestment of dividends or distributions; 3. shares representing any increase in net asset value over such value of the shares at time of purchase; and 4. shares purchased less than four years prior to the date of redemption. The proceeds of the CDSC will be paid to the Principal Underwriter.

4. The Fund does not propose to waive the CDSC under any circumstances, because the circumstances under which waivers typically are given to shareholders, such as (i) the death or disability of the shareholder or (ii) distributions from retirement plans, are not applicable to the institutional investors to whom shares of the Institutional Fund will be offered.

5. The fund proposes to finance distribution expenses for the Institutional Fund under a distribution plan adopted pursuant to Rule 12b–1 under the 1940 Act ("Plan"). The distribution fees will be paid to the Principal Underwriter to reimburse the Principal Underwriter for expenses directly or indirectly incurred in the distribution of shares and the administration of shareholder accounts. The Principal Underwriter may pay maintenance fees to selected dealers who have entered into a sales agreement with the Principal Underwriter. In the review of the Plan pursuant to 12b–1 under the 1940 Act, the board of directors of the Fund will consider the use by the Principal Underwriter of revenues raised by the CDSC and the front-end sales charge.

6. The FESC together with the CDSC and any maintenance fees paid under the Plan will not exceed the maximum sales charge permitted under the rules of the National Association of Securities Dealers.

**Applicant's Legal Conclusions**

1. The exemptions requested are appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Investors will have the advantages of reduced transaction costs on their investments in shares of the Institutional Fund as a result of the CDSC because the Fund will be able to charge a low FESC. The CDSC will permit more of the offering price to be invested in shares of the Institutional Fund.

2. In addition, the CDSC is appropriate as a means of compensating for maintenance fees and other expenses of distribution and shareholder account administration that would have been paid under the Plan had the early redemption of shares not occurred. The payment of maintenance fees permits the Fund to pay commissions over a four year period instead of a lump sum commission at the time of sale. However, the early redemption of shares precludes the Principal Underwriter or selected dealer who sold such shares from receiving such maintenance fees. The CDSC is intended to compensate the Principal Underwriter for the loss of such maintenance fees. All or a portion of the CDSC may be reallowed to the selected dealer who sold the shares redeemed. In addition to foreshortening the period for which maintenance fees are paid, the redemption of shares reduces the base on which the distribution fees of the Plan are calculated, and early redemption prevents the recovery of expenses through payments under the Plan. By imposing a lump sum payment in the form of a CDSC to the redeeming shareholder, these expenses can be recovered. The amount, computation and timing of the CDSC are designed to promote fair treatment of all shareholders.

**Applicant's Conditions**

If the requested order is granted, Applicant agrees to the following condition:

1. Applicant will comply with the provisions of Rule 12b–1 under the 1940 Act and as it may be amended from time to time.

2. In its periodic review of the Plan pursuant to Rule 12b–1 under the 1940 Act, the board of directors of the Fund will consider the use by the Principal Underwriter of revenues raised by the CDSC and FESC. In this regard, the board will consider the extent to which expenses incurred in the promotion of sales of shares have been offset through payments under such Plan and the receipt of CDSC and FESC.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–18088 Filed 8–9–88; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 35–24688]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 4, 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 August 29, 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 of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Northeast Utilities et al. (70–7304)**

Northeast Utilities ("Northeast"), a registered holding company, and its subsidiaries, Western Massachusetts Electric Company ("WMECO") and The Quinnehtuk Company ("Quinnehtuk"), each located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("NUSCO"), The Rocky River Realty Company ("Rocky River"), and Northeast Nuclear Energy Company ("NNECO"), each located at Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("Holyoke"), located at Canal Street, Holyoke, Massachusetts 01040, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) promulgated thereunder.

By order dated December 24, 1986 (HCAR No. 24282), Northeast, CL&P,

WMECO, Quinnetuk, NUSCO, Rocky River, and NNECO were authorized, in relevant part, to participate in the Northeast system money pool ("Money Pool") through December 31, 1988. Northeast was authorized to make short-term borrowings of up to $60 million aggregate amount at any one time outstanding to be evidenced by notes issued to banks or to a dealer in commercial paper, to make open account advances to its subsidiary companies and to participate in the Money Pool only insofar as it has funds available for lending through the Money Pool. Northeast now proposes to amend its application-declaration to permit it to effect external borrowings from commercial banks and other lending institutions for the additional purpose of providing funds through the Money Pool to certain Money Pool participants. Only NUSCO, NNECO, Rocky River and Quinnehtuk will be eligible to borrow through the Money Pool the proceeds of Northeast's external borrowings. The funds derived by Northeast from short-term borrowings authorized by the Commission will be applied, together with other funds available to Northeast, to the making of capital contributions or open account advances to its subsidiary companies, and for the purpose of providing excess funds to the Money Pool and of making loans through the Money Pool to NUSCO, NNECO, Rocky River and Quinnehtuk.

Loans from the proceeds of extenal borrowings by Northeast will bear interest at the same rate paid by Northeast on its borrowings, and no such loans may be prepaid if that would cause Northeast to incur additional costs, unless Northeast is made whole for such additional costs.

**Columbia Gas System, Inc., et al. (70–7437)**

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and certain of its subsidiaries, Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Kentucky, Inc., Columbia Gas of New York, Inc., Columbia Gas of Virginia, Inc., Columbia Gas of Maryland, Inc., and Lynchburg Gas Company ("Lynchburg"), all located at 200 Civic Center Drive, Columbua, Ohio 43215, and Columbia Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77027, Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77027, Columbia Gas Development of Canada LTD., 639–5th Avenue, SW., Calgary, Alberta, Canada T2P 0M9, and Commonwealth Gas Pipeline Corporation, Commonwealth Gas Services, Inc., Commonwealth Propane, Inc., all located at 800 Moorefield Park Drive, Richmond, Virginia 23236, and Columbia Gas System Service Corporation, Columbia LNG Corporation, Columbia Hydrocarbon Corporation, Columbia Alaskan Gas Transmission Corporation, Columbia Coal Gasification Corporation, The Inland Gas Company, Inc., Tristar Ventures Corporation, all located at 20 Montchanin Road, Wilmington, Delaware 19807, and Big Marsh Oil Company, Columbia Natural Resources, Inc., both located at 1700 MacCorkle Avenue, SW., Charleston, West Virginia 25314 ("Subsidiaries"), have filed a post-effective amendment to the application-declaration in this matter pursuant to sections 6(b), 9, 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By prior Commission order herein (HCAR No. 24541, December 23, 1987), Columbia was authorized to provide long and short-term financing to its Subsidiaries through the issuance of installment promissory notes and the sale of common stock by the Subsidiaries to Columbia, and through advances on open account or through an intrasystem money pool. By that same order, Columbia was authorized through December 31, 1989, among other things, to borrow up to $500 million from a group of commercial banks under a short-term credit agreement. Since that order, Columbia has acquired Lynchburg (HCAR No. 24599, March 15, 1988).

Columbia proposes to incorporate Lynchburg into its Subsidiary financing arrangements to provide Lynchburg with financing for the period of 1988–1989. To partially fund Lynchburg's $3,200,000 capital program, Columbia and Lynchburg proposes to purchase from Lynchburg up to $1 million principal amount of installment promissory notes. These loans would have the same terms and conditions as previously approved by the Commission for the other Subsidiaries. Lynchburg's short-term requirements through 1989 are estimated to be up to $3,500,000. Columbia and Lynchburg propose to fund these requirements, first, through open account advances, or second, through Intrasystem Money Pool borrowings both on the same terms and conditions previously approved for the other Subsidiaries.

Columbia also proposes to replace the existing $500 million short-term credit agreement with a new $500 million Credit Facility ("Facility"). The Facility will provide a form of note for the amount of each participating bank's commitment, including Morgan Guaranty Trust Company of New York, as agent, and will permit repayment and reborrowing throughout the renewable 365-day term of the agreement, expected to be executed on or about September 30, 1988. The notes will bear interest at Columbia's option at one of the following rates: the fluctuating Prime Rate; the Adjusted Certificate of Deposit Rate ("CD") plus ½%; or the Adjusted London Interbank Offered Rate ("LIBOR") plus ⅜%. The maturities on the notes will be: up to 30 days for Prime Rate loans; 30, 60, 90 or 180 days for CD loans; and 1, 2, 3 or 6 months on LIBOR loans. In addition, an annual commitment fee of ¼% times the amount of the undrawn portion of the commitment will be paid to the participating banks.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

**Jonathan G. Katz,**

*Secretary*

[FR Doc. 88–18040 Filed 8–9–88; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Government Income Fund Inc.
Common Stock, $.01 Par Value (File No. 7–3658)

Anchor Glass Container Corp.
Common Stock, $.01 Par Value (File No. 7–3659)

Angell Real Estate Co.
Common Stock, $01 Par Value (File No. 7–3660)

Atlanta Gas & Light Co.
Common Stock, $5 Par Value (File No 7–3661)

Blue Arrow PLC
American Depository Shares, No Par Value (File No. 7–3662)

Calfed Income Partners, L.P.
Depository Units, No Par Value (File No. 7–3663)

Crystal Oil Corp.
Common Stock, $.01 Par Value (File No. 7–3664)

Cyclops Corp.

Common Stock, $1 Par Value (File No. 7–3665)
Central Louisiana Electric, Inc.
Common Stock, $4 Par Value (File No. 7–3666)
CML Group Inc.
Common Stock, $.10 Par Value (File No. 7–3667)
CoastAmerica Corp.
Common Stock, $.01 Par Value (File No. 7–3668)
Convertible Holdings Inc.
Common Stock, $.10 Par Value (File No. 7–3669)
Davis Water & Waste Industries, Inc.
Common Stock, $1 Par Value (File No. 7–3670)
Fedders Corp.
$1.75 Cumulative Convertible Exchange Preferred $1 Par Value (File No. 3671)
First Fidelity Bancorp
$2.15 Cumulative Convertible B Preferred $1 Par Value (File No. 3672)
First Republic Bancorp
Class A, $1 Par Value (File No. 7–3673)
First Boston Strategic Income Fund Inc.
Common Stock, $.001 Par Value (File No. 7–3674)
Freeport McMoran Cooper Inc.
Class A, $.10 Par Value (File No. 7–3675)
Freeport McMoran Gold Co.
Common Stock, $.10 Par Value (File No. 7–3676)
Grace (W.R.) & Co. (Holding Co.)
Common Stock, $1 Par Value (File No. 7–3677)
Hills Department Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–3678)
Hanson Trust PLC
Warrants, Purchase 1 ADS at $18 (File No. 7–3679)
La-Z Boy Chair Co.
Common Stock, $1 Par Value (File No. 7–3680)
Lincoln National Convertible Securities Fund Inc.
Common Stock, $.001 Par Value (File No. 7–3681)
MAI Basic Four Inc.
Common Stock, $.25 Par Value (File No. 7–3682)
Michigan Consolidated Gas Co.
Common Stock, No Par Value (File No. 7–3683)
Monarch Capital Corp.
Common Stock, $1 Par Value (File No. 7–3684)
Morgan Products Ltd.
Common Stock, $.10 Par Value (File No. 7–3685)
National Fuel Gas Co., N.J.
Common Stock, No Par Value (File No. 7–3686)
Nuveen Municipal Income Fund
Common Stock, $.01 Par Value (File No. 7–3687)
National Heritage Inc.
Common Stock, $.01 Par Value (File No. 7–3688)
Nova Corp. of Alberta
Common Stock, No Par Value (File No. 7–3689)
Plains Petroleum Co.
Common Stock, $.01 Par Value (File No. 7–3690)
PSI Holdings Inc.
Common Stock, No Par Value (File No. 7–3691)
R.B. Industries Inc.
Common Stock, No Par Value (File No. 7–3692)
Sahara Casino Partners, L.P.
Depository Units, No Par Value (File No. 7–3693)
Savin Corp.
Convertible Preferred B, $.80 Par Value (File No. 7–3694)
Savis Corp.
Convertible Preferred D, $.10 Par Value (File No. 7–3695)
SCECORP (Holding Co.)
Common Stock, $4.16 Par Value (File No. 7–3696)
SCOR U.S. Corp.
Common Stock, $.30 Par Value (File No. 7–3697)
System Integrators Inc.
Common Stock, No Par Value (File No. 7–3698)
Texas Industries, Inc.
Common Stock, $1 Par Value (File No. 7–3699)
Thor Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–3700)
USG Corp.
Common Stock, $4 Par Value (File No. 7–3701)
American Shared Hospital Services
Common Stock, No Par Value (File No. 7–3702)
Arctic Alaska Fisheries Corp.
Common Stock, $.01 Par Value (File No. 7–3703)
First Wyoming Bankcorp.
Common Stock, No Par Value (File No. 7–3704)
Grangers Exploration Ltd.
Common Stock, No Par Value (File No. 7–3705)
Howtek Inc.
Common Stock, $.01 Par Value (File No. 7–3706)
Hudson Foods Corp.
Class A, $.01 Par Value (File No. 7–3707)
Pauley Petroleum Inc.
Common Stock, $1 Par Value (File No. 7–3708)
Pegasus Gold Inc.
Common Stock, No Par Value (File No. 7–3709)
Riser Foods Inc.
Class A, No Par Value (File No. 7–3710)
TRC Co., Inc.
Common Stock, $.10 Par Value (File No. 7–3711)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–18042 Filed 8–9–88; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Bond International Gold, Inc.
Ordinary Shares, $.01 Par Value (File No. 7–3721)
Wyse Technology
Common Stock, No Par Value (File No. 7–3722)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three

copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges prusuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-18043 Filed 8-9-88; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

CityTrust Bancorp, Inc.
Common Stock, $2.50 Par Value (File No. 7-3642)
Federal Home Loan Mortgage Corp.
Preferred Stock, $10 Par Value (File No. 7-3643)
Affiliated Publications, Inc.
Series A Common Stock, $.01 Par Value (File No. 7-3644)
Spring Industries, Inc.
Class A Common Stock, $.50 Par Value (File No. 7-3645)
Blackestone Income Trust (The)
Common Stock, $.01 Par Value (File No. 7-3646)
Colonial Intermediate High Income Fund
Shares of Beneficial Interest, No Par Value (File No. 7-3647)
Emerald Mortgage Investments Corporation
Common Stock, $.01 Par Value (File No. 7-3648)
Kemper Intermediate Government Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-3649)
MFS Multimarket Total Return Trust
Shares of Beneficial Interest, No Par Value (File No. 7-3650)
Nuveen Premium Income Municipal Fund Inc.
Common Stock, $.01 Par Value (File No. 7-3651)
Warner Computer Systems Inc.
Common Stock, $.01 Par Value (File No. 7-3652)
Amcast Industrial Corp.
Common Stock, No Par Value (File No. 7-3653)
Comprehensive Care Corp.
Common Stock, $.01 Par Value (File No. 7-3654)
Diagnostic Products Corp.
Common Stock, No Par Value (File No. 7-3655)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-18044 Filed 8-9-88; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Burlington Resources, Inc.
Common Stock, $.01 Par Value (File No. 7-3638)
Minnesota Power & Light Company
Common Stock, No Par Value (File No. 7-3639)
PAR Technology Corporation
Common Stock, $.02 Par Value (File No. 7-3640)
Spain Fund, Inc.
Common Stock, $1 Par Value (File No. 7-3641)
Comprehensive Care Corporation
Common Stock, $.10 Par Value (File No. 7-3656)
Oregon Steel Mills, Inc.
Common Stock, $.01 Par Value (File No. 7-3657)
Chaparral Steel Company
Common Stock, $.10 Par Value (File No. 7-3712)
Freeport-McMoran Copper Company, Inc.
Class A Common Stock, $.10 Par Value (File No. 7-3713)
Bank of New England Corporation
Common Stock, $5 Par Value (File No. 7-3714)
Dixon Ticonderoga Company
Common Stock, $1 Par Value (File No. 7-3715)
Hawaiian Electric Industries, Inc.
Common Stock, $3.33 ⅓ Par Value (File No. 7-3716)
Symbol Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7-3717)
Wheeling-Pittsburg Steel Corporation
$5 Cumulative Preferred (File No. 7-3718)
Wheeling-Pittsburg Steel Corporation
6% Prior Preferred (File No. 7-3719)
Wyse Technology
Common Stock, No Par Value (File No. 7-3720)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-18045 Filed 8-9-88; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATE:** Comments should be submitted on or before September 9, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416. Telephone: (202) 653-8538

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395-7340

*Title:* A Survey of Innovative Activity
*Form Nos.:* Survey
*Frequency:* On occasion
*Description of Respondents:* The survey provides information which will enable the Office of Advocacy to broaden its innovation base. It will be a random sampling distributed equally among five divisions: construction; manufacturing; transportation and utilities; finance, insurance and real estate; and services.
*Annual Responses:* 3,855
*Annual Burden Hours:* 767.5

*Title:* Business Development Publication Survey
*Form Nos.:* Questionnaire
*Frequency:* On occassion
*Description of Respondents:* The survey provides information that will allow the SBA to evaluate its Business Development Publications on a continuing basis.
*Annual Responses:* 24,000
*Annual Burden Hours:* 4,000

*Title:* Procurement Automated Source System Company
*Form No.:* SBA 1167
*Frequency:* On occasion
*Description of Respondents:* The Small Business Act, as amended, requires productive facilities of small business concerns and to coordinate the most effective utilization of their productive capacity.
*Annual Responses:* 40,000
*Annual Burden Hours:* 6,700.

**William A. Cline,**
*Chief, Administrative Information Branch.*

[FR Doc. 88-18014 Filed 8-9-88; 8:45 am]
BILLING CODE 8025-01-M

**[Application No. 04/04-7246]**

### Business Capital Investment Co., Inc.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Business Capital Investment Company, Inc., 327 South Road, High Point, North Carolina 27280 for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et. seq.*).

The proposed officers, directors and shareholders of the Applicant are as follows:

| Name | Title or relationship | Percentage of shares owned |
|---|---|---|
| John Chung-San Lee, 1903 Candelar Drive, High Point, North Carolina 27260 | President, Director | 100 |
| Judy Wang Lee, 1903 Candelar Drive, High Point, North Carolina 27260 | Vice President, Director | — |
| Wayne C. Curry, 604 Blanton Place, Greensboro, North Carolina | Secretary/Treasurer | — |
| Christopher S. Liu, 42 Saddle Rock Drive, Poughkeepsie, New York 12603 | General Manager | — |

The Applicant, a North Carolina corporation, will begin operations with $1,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the States of North Carolina and South Carolina.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice if further given that any person may not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the High Point, North Carolina area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 4, 1988.

**Robert G. Lineberry,**
*Deputy Associate Administrator for Investment.*

[FR Doc. 88-18056 Filed 8-9-88; 8:45 am]
BILLING CODE 8025-01-M

[Application No. 06/06-0297]

**UNCO Ventures, Inc.; Application for License to Operate as a Small Business Investment Co.**

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by UNCO Ventures, Inc. (Applicant), 7th Floor, 909 Fannin Street, Houston, Texas 77010-1060, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1988)).

The officers, directors and sole shareholders of the Applicant are:

*Name and Title*

John Gatti, 3678 Hidden Dr. #602, San Antonio, Texas 78217, President, Director

Kevin E. Moyles, 5010 Grove West Blvd., Stafford, Texas 77477, Vice President, Treasurer, Secretary

Harlon E. Martin, Jr., 1105 Wickersham, Houston, Texas 77042, Independent contractor

Larrie A. Weil, 4407 University Blvd., Dallas, Texas 75205, Director

Michael E. Gibbons, 18209 Sandy Grove, Nassau Bay, Texas 77058, Director

Underwood, Neuhaus & Co. Incorporated, 7th Floor, 909 Fannin Street, Houston, Texas 77010-1060, Sole Shareholder of Record

Underwood, Neuhaus, & Co. is a wholly-owned subsidiary of Franklin Financial Services, Inc., which is wholly-owned by Franklin Savings Association. Franklin Savings Corporation, One Franklin Plaza, Ottawa, Kansas 66067, owns 95 percent of Franklin Savings Association. The only more-than-ten percent shareholder of Franklin Savings Corporation is Ernest M. Fleischer, 1240 Huntington Road, Kansas City, Missouri 64113.

The Applicant, a Delaware corporation, will begin operations with a capitalization of $3,000,000 and will conduct its operations principally in the State of Texas.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in the Houston, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

Dated: August 3, 1988.

[FR Doc. 88-18015 Filed 8-9-88; 8:45 am]

BILLING CODE 8025-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Determination in Compliance With Section 109 of Public Law 100-202**

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative has made the following determination in compliance with the requirements of section 109 of the continuing resolution on the Fiscal Year 1988 budget, H.J. Res. 395 (P.L. 100-202, 101 Stat. 1329).

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Beverly Vaughan, Director for International Government Procurement Trade Policy, Office of the U.S. Trade Representative ("USTR)", (202) 395-7305. Written comments or submissions from interested parties or the public may be directed to the United States Trade Representative, 600 17th St. NW., Washington, DC 20506. Commenters should state the nature of their interest and should discuss the reasons and evidence for any proposed finding of discrimination. Business confidential material submitted in accordance with the provisions of 15 CFR 2003.6 will be accorded confidential treatment.

**Discussion:**

The continuing resolution of the Fiscal Year 1988 Budget, H.J. Res. 395, was signed and enacted as Pul. L. 100-202 on Dec. 22, 1987. Section 109(a) of Pub. L. 100-202 sets forth cetain requirements and prohibitions applicable to Federal public works procurement. Section 109(c) requires the USTR to maintain a list of certain foreign countries ("Section 109 List"). This list was published initially on December 30, 1987 (52 FR 49244). It included Japan, as required by section 109(a), but included no other countries at that time.

Section 109(b) provides that not later than 30 days after enactment of Pub. L. 100-202, the USTR shall determine whether other foreign countries deny fair and equitable market opportunities for products and services of the United States in bidding and procurement for certain construction projects. The relevant such projects are those that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country. If a foreign country is found to deny such opportunities, the USTR must then include that country on the Section 109 List.

In making his determination under section 109(b), the USTR is required to take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information or evidence as is available concerning discrimination in construction projects against United States products and services. The legislative history of section 109 directs the USTR to pay special attention to information which is supplied either informally or formally by U.S. architecture, construction, and engineering companies.

In compliance with the 30 day requirement described above, the USTR issued a second notice on January 21, 1988 (53 FR 2140) stating that on the basis of the information available to us in the short time between enactment of Pub. L. 100-202 and that date, including information submitted to us by construction industry associations and United States Construction companies active in international construction, sufficient information was not available to permit the USTR to make a board, formal determination with respect to any other foreign country that such country is denying such fair and equitable market opportunities. We also announced that the USTR will add to the Section 109 List at any time if sufficient information indicates that any country is denying such fair and equitable market opportunities.

Since the enactement of Pub. L. 100-202, we have gathered such information as is available and received public comment from interested parties on foreign government procurement practices in public construction projects in foreign countries. In the course of our review implementing this law, information concerning the legal framework for foreign government procurement policies in the construction field has been otbained. While it shows that many objectionable policies do exist within the legal framework of

other countries, comments received from interested parties concerning the real market experiences of U.S. suppliers within those frameworks in foreign countries have not produced any recommendation that action with regard to specific countries be taken under section 109(c). Therefore, the list published on December 30, 1987, at FR 49244 will remain in effect as the Section 109 List.

In our ongoing efforts to comply with the requirements of Pub. L. 100–202, the USTR will continue to review information submitted by interested parties regarding experiences in the market place which indicate that any specific foreign country should be reexamined for addition to the Section 109 List. Any further changes to the list will be published in the **Federal Register** as decisions are taken by the USTR.

**Sandra Kristoff,**

*Executive Director for Policy Coordination Chairwoman, Trade Policy Staff Committee.*

[FR Doc. 88–18027 Filed 8–9–88; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD 88–060]**

### Towing Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The subcommittee on Personnel Safety and Workplace Standards will meet on August 24, 1988 in Room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. The agenda for the meeting follows:

(a) Programs for Chemical Drug and Alcohol Testing for Commercial Vessel Personnel (as published in the **Federal Register** on July 8, 1988—FR 25–926).

Attendance is open to the public.

Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2420, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–0449.

Dated: August 4, 1988.

**R.J. Asaro,**

*Commander, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.*

[FR Doc. 88–18072 Filed 8–9–88; 8:45 am]

BILLING CODE 4910–14–M

### Maritime Administration

### Change of Name of Approved Trustee

Notice is hereby given that effective June 6, 1987, InterFirst Bank Houston, N.A., Houston, Texas, was merged with and into RepublicBank, Houston, Texas, under the Charter of the latter and under the title First Republic Bank Houston, N.A.

Dated: August 4, 1988.

By Order of the Maritime Administrator.

**James E. Saari,**

*Secretary.*

[FR Doc. 88–18117 Filed 8–9–88; 8:45 am]

BILLING CODE 4910–81–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 5, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number*: 1545–0173.

*Form Number*: 4563.

*Type of Review*: Revision.

*Title*: Exclusion of Income for Residents of American. Samoa.

*Description*: Used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.

*Respondents*: Individuals and households.

*Estimated Number of Respondents*: 100.

*Estimated Burden Hours Per Response*: 25 minutes.

*Frequency of Response*: Annually.

*Estimated Total Reporting Burden*: 41 hours.

*Clearance Officer*: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer*: Milo Sunderhauf, (202) 395–6880, Office of Mangement and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88–18085 Filed 8–9–88; 8:45 am]

BILLING CODE 4810–25–M

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**U.S. Customs Service**

*OMB Number:* 1515–0110.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Declaration by Person Who Processed Goods Abroad.

*Description:* This declaration is needed to insure duty free entry of articles which were exported for processing and brought back into the U.S.

*Estimated Number of Respondents:* 730.

*Estimated Burden Hours Per Response:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 2,260.

*Clearance Officer:* B.J. Simpson, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management

and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88-18086 Filed 8-9-88; 8:45 am]

BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* 1545-0960.
*Form Number:* 1041S.
*Type of Review:* Revision.
*Title:* U.S. Fiduciary Income Tax Return for Nontaxable Simple Trusts.
*Description:* Internal Revenue Code section 6012 requires that an annual income tax return be filed for trusts. Data is used to determine that the trusts and beneficiaries filed the proper returns and paid the correct tax.
*Respondents:* Individuals and households, Businesses or other for-profit.
*Estimated Number of Respondents:* 25,000.
*Estimated Burden Hours Per Response:* 48 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 20,083 hours.
*OMB Number:* 1545-0986.
*Form Number:* 1120-DF.
*Type of Review:* Revision.
*Title:* U.S. Income Tax Return for Designated Settlement Funds (Under section 468B).
*Description:* IRS uses Form 1120-DF to monitor the activities of designated settlement funds and to collect the tax on income under section 468B.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 10.
*Estimated Burden Hours Per Response:* 2 hours and 49 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 281 hours.
*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 88-18087 Filed 8-9-88; 8:45 am]

BILLING CODE 4810-25-M

### Internal Revenue Service

## Tax Counseling for the Elderly; Availability of Application Packages

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Availability of application packages.

**SUMMARY:** This document provides notice of the availability of Application Packages for the 1989 Tax Counseling for the Elderly Program.

**DATE:** Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1989 Tax Counseling for the Elderly Program is September 9, 1988.

**ADDRESS:** Application Packages may be requested by contacting: Internal Revenue Service, Tax Counseling for the Elderly Program, Taxpayer Service Division, TR:T:I, Room 7215, 1111 Constitution Ave., NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marion Butler, Taxpayer Service Division, TR:T:I, Room 7215, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 566-4904. This telephone number is not toll-free.

**SUPPLEMENTARY INFORMATION:** Authority for the Tax Counseling for the Elderly (TCE) Program is contained in section 163 of the Revenue Act of 1978 (92 Stat. 2810). Regulations were published in the **Federal Register** at 44 FR 72113 of December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private of public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Applications are being solicited before the FY 1989 budget has been approved and, therefore, cooperative agreeements will be entered into subject to funds being appropriated. Subject to funding, volunteers may receive reimbursement for expenses incurred in training and in providing tax return assistance, and sponsoring agencies and organizations may receive reimbursement for administrative expenses. The Tax Counseling for the Elderly Program is referenced in the Catalog of Federal Domestic Assistance in § 21.006.

**Neil Patton,**

*Chief, Taxpayer Information and Education Branch.*

[FR Doc. 88-18073 Filed 8-9-88; 8:45 am]

BILLING CODE 4830-01-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 154
Wednesday, August 10, 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).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** Tuesday, August 9, 1988, time—See Below*.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:**

**MATTERS TO BE CONSIDERED:**

**Open to the Public**

*1. Voluntary Standards Policy—Proposed Amendment*

The Commission will consider amendments to the Commission's regulations (16 CFR 1031 and 1032) concerning staff participation in voluntary standards activities.

*2. Hair Dryer Voluntary Standard*

The staff will brief the Commission on the monitoring of the hair dryer voluntary standard.

**Closed to the Public**

*3. Enforcement Matter OS #3926*

The staff will brief the Commission on issues related to enforcement matter OS #3926.

*This meeting will start at the conclusion of the Oral Presentation on the Lawn Darts Notice of Proposed Rulemaking. The oral presentation is scheduled to begin at 10:00 a.m.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301–492–6800.

**Sheldon D. Butts,**

*Deputy Secretary.*

August 2, 1988.

[FR Doc. 88–18199 Filed 8–8–88; 3:35 pm]

BILLING CODE 6355-01-M

**FEDERAL COMMUNICATIONS COMMISSION**

August 4, 1988.

**Deletion Of Agenda Item From August 4th Open Meeting**

The following item has been deleted from the list of agenda items scheduled for consideration at the August 4, 1988, Open Meeting and previously listed in the Commission's Notice of July 28, 1988.

**Agenda, Item No., and Subject**

Mass Media—5—Title: In the Matter of Advanced Television Systems and Their Impact on the Existing Television Broadcast Service; Review of Technical and Operational Requirements: Part 73–E, Television Broadcast Stations; Reevaluation of the UHF Television Channel and Distance Separation Requirements of Part 73 of the Commission's Rules. Summary: The Commission will consider further action in this proceeding on the technical, economic, legal, and policy issues relating to authorizing and establishing an advanced television system for terrestrial broadcasting.

Additional information concerning this item may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

Issued: August 4, 1988.

[FR Doc. 88–18097 Filed 8–5–88; 4:58 pm]

BILLING CODE 6712-01-M

**FEDERAL ELECTION COMMISSION**

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, August 11, 1988 10:00 a.m.

**THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:** FY 1990 Budget Discussion.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 88–18196 Filed 8–8–88; 3:13 pm]

BILLING CODE 6715-01-M

**FEDERAL HOME LOAN BANK BOARD**

**TIME AND DATE:** 4:00 p.m., August 9, 1988.

**PLACE:** 1700 G St., NW., Washington, DC, 6th Floor Board Room.

**STATUS:** Open Meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Martha Gravlee.

**MATTERS TO BE CONSIDERED:** Depositor Preference.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–18127 Filed 8–8–88; 10:40 pm]

BILLING CODE 6720-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 12:00 noon, Monday, August 15, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 5, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–18128 Filed 8–8–88; 11:20 am]

BILLING CODE 6210-01-M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Thursday, August 18, 1988 at 2:30 p.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:
   a. Certain Patented and Trademarked Chemiluminescent Compositions, Components Thereof and Methods of Using the Same (Docket Number 1457).
   b. Certain Track Lighting Systems and Components Thereof (Docket Number 1458).
5. Any items left over from previous agenda.

**CONTACT PERSONS FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252–1000.

**Kenneth R. Mason,**

*Secretary.*

August 5, 1988.

[FR Doc. 88–18119 Filed 8–8–88; 10:34 am]

BILLING CODE 7020-02-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 15, 1988.

A closed meeting will be held on Monday, August 15, 1988, at 1:00 p.m. An open meeting will be held on Monday, August 15, 1988, at 2:00 p.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the item listed for the closed meeting in closed session.

The subject matters of the closed meeting scheduled for Monday, August 15, 1988, at 1:00 p.m., will be:

FOIA Appeal
*Amicus* participation.

This subject matter of the open meeting scheduled for Monday, August 15, 1988, at 2:00 p.m., will be:

Consideration of whether to adopt Rule 10b–21 under the Securities Exchange Act of 1934. Rule 10b–21 prohibits a person who effects short sales of an equity security during the period beginning at the time that a registration statement or Form 1–A relating to the same class of equity securities is filed and ending at the time that sales may be made in the offering, from covering such short sales with offered securities purchased from an underwriter or broker or dealer participating in the offering of such securities. For further information, please contact Ivette Lopez at (202) 272–2848.

At times changes in Commission priorities require alteration in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272–2467.

**Jonathan G. Katz,**

*Secretary.*

August 5, 1988.

[FR Doc. 88–18155 Filed 8–8–88; 1:36 pm]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 53, No. 154
Wednesday, August 10, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 301

[LR-133-86]

### Proposed Rulemaking; Returns Relating to Persons Receiving Contracts From Federal Executive Agencies

*Correction*

In proposed rule document 88-17134 beginning on page 28669 in the issue of Friday, July 29, 1988, make the following corrections:

1. On page 28670, in the first column, in the eighth line from the bottom, "property" was misspelled".

**§ 1.6050M-1 [Corrected]**

2. On page 28671, in the first column, in § 1.6050M-1(a)(2), in the third line, "flies" should read "files".

3. On the same page, in the second column, in § 1.6050M-1(b)(2)(ii)(D), in the third line, "lessee" was misspelled.

4. On the same page, in the same column, in § 1.6050M-1(b)(2)(iii), after the eleventh line add "SBA and shall be treated as a contract of the".

5. On the same page, in the third column, in § 1.6050M-1(b)(2)(iv)(B), in the first line "automated" should read "Automated".

6. On the same page, in the same column, in § 1.6050M-1(b)(2)(iv)(C), in the second line after "by the Veterans Administration"the text beginning with "on" should be flushed to the left-hand margin.

7. On page 28672, in the first column, in § 1.6050M-1(d)(1), the fifth line should read "Federal executive agency entered into on or".

BILLING CODE 1505-01-D

federal register

Wednesday
August 10, 1988

Part II

# Department of Transportation

Office of the Secretary

48 CFR Part 1246

Use of Warranties in Major System Acquisitions; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**48 CFR Part 1246**

**[Docket 45415; Amendment No. 1246-1]**
**RIN 2105-AB16**

## Use of Warranties in Major System Acquisitions

**AGENCY:** Office of the Secretary, DOT.
**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final, the amendments to the Department's Transportation Acquisition Regulation (TAR) which were published as a proposed rulemaking in the Federal Register on February 4, 1988 (53 FR 3222). This rule amends the Department's TAR to include policy and procedures for use of warranties in major system acquisitions of the United States Coast Guard (USCG) and to provide additional guidance for use of warranties in all other Department of Transportation (DOT) contracts. The establishment of policy and procedures for use of warranties in major system acquisitions by the Coast Guard is required by the Department of Transportation Appropriation Act of 1986, (Pub. L. 99-190) (10 U.S.C. 2304 note), and would serve as additional guidance with respect to major system acquisitions for all other DOT administrations.

**EFFECTIVE DATE:** September 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jim McNulty at 400 Seventh Street SW., Room 9100, Washington, DC 20590, phone number (202) 366-4271.

**SUPPLEMENTARY INFORMATION:** Two parties submitted comments. As a result of these comments, this final rule incorporates a number of changes to the rule as published on February 4, 1988. The comments received and our response to each are discussed in detail below. Comments were received from Metro-Dade Transit Agency of Miami, Florida, and from the Chief, Procurement Management Division, U.S. Coast Guard. The comments are discussed in detail below.

### The Comments

*Comments From Metro-Dade Transit Agency*

1. TAR 1246.701, Definitions—Metro-Dade suggested that the definitions of "Acceptance", "Correction", and "Warranty" should be included in this subpart by reference to FAR 46.701.

*Response:* This suggestion was not adopted because these terms are defined at Federal Acquisition Regulation (FAR) section 46.701. Adoption would violate the Office of Management and Budget's (OMB) policy that the agency regulations for supplementing the FAR not duplicate information already contained in the FAR.

2. With respect to TAR 1246.703, Criteria for Use of Warranties—In the acquisition of most major systems, Metro-Dade stated: "There are several system components which are subject to normal trade warranties and cost involved will be the same regardless of whether or not a warranty is included. The contract language should ensure that the Government does not pay additional sums for these trade warranties and also does not reduce the coverage provided by including either specific or general warranty language applicable to those components. Since these trade warranties can extend far beyond the completion of the contract, the Government should make further provision to require the Contractor to have these warranties executed in writing for the benefit of the Government and/or that the Contractor will enforce all warranties for the benefit of the Government if directed by the Contracting Officer (see contract language in FAR 52.246-21(g))."

*Response:* This suggestion was not adopted because the proposed rule already covers this subject adequately at 1246.770-1(a), which states: "For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained (see FAR 46.703(d)), and the contractor shall warrant that all systems or components delivered under the contract will be free from defects in material and workmanship at the time of acceptance or delivery as specified in the contract." Metro-Dade's comment indicates that TAR section 1246.770, Use of warranties in major system acquisitions by Coast Guard, may require clarification if changes are made to 1246.703 as they suggest. The suggestions were not adopted, however, we are changing the second sentence of this section for clarifications purposes, to read: "Other administrations within the Department may use these procedures as guidelines for major system acquisitions."

No change was made with respect to the issue of paying excessive costs for commercial warranties because: (1) In a competitive situation the contract price will be driven by such competition and a contractor would have little motive to overcharge for warranties; and (2) in situations of other than full and open competition, the process of obtaining certified cost or pricing data and negotiating a fair and reasonable price is adequate to ensure that only reasonable warranty costs are paid.

Metro-Dade's recommendation to include language in the TAR to indicate that "the contract language set forth in FAR 52.246-21(g), may be used in any Major Systems Acquisition," was not incorporated because to do so would be redundant to the FAR, and violate the OMB policy which prohibits such redundancy.

3. Metro-Dade recommends that TAR 1246.706, Warranty Terms and Conditions, be changed to require that the "beginning" as well as the "end" of the warranty period be defined contractually. Metro-Dade believes that it is often more difficult to identify what begins the warranty period, and that the need to clarify the terms of the warranty on key equipment in long-term contracts with multiple completion milestones is essential. The commenter recommends that this section require definition of warranty start criteria, duration, ending, and cause for automatic extension.

*Response:* We concur with this recommendation, and have revised paragraph (a)(9) of TAR section 1246.706, Warranty Terms and Conditions, accordingly.

### Executive Order 12291

Under OMB Bulletin No. 85-7, the Director, Office of Management and Budget, withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This final rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared.

### Executive Order 12612

This rule does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment pursuant to Executive Order 12612.

**National Environmental Policy Act**

DOT has concluded that promulgation of this rule does not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq. 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

**Regulatory Flexibility Act**

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not significantly change the current procedures of FAR Subpart 46.7, which already authorize contracting officers to require warranties in contracts. The few small entities that are affected will be reimbursed for providing warranties as part of the contract price or cost considerations.

**Paperwork Reduction Act**

There are no requirements for collection of information contained in this rule.

**Administrative Procedure Act**

Section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) exempts rules relating to public contracts from the prior notice and comment procedures normally required for informal rulemaking. However, the FAR provides that views of agencies and non-government parties must be considered in formulating acquisition policies and procedures on proposed significant revisions (FAR Subpart 1.5). The Department has determined that this rule does not represent a significant rule; however, a 45-day comment period was provided, and all the comments received have been considered.

**List of Subjects in 48 CFR Part 46**

Government contracts, Federal Procurement Regulations.

This final rule is issued under the delegation of authority in 49 CFR 1.59 (q).

Issued in Washington, DC, on August 4, 1988.

**Melissa J. Allen,**

*(Acting) Assistant Secretary for Administration.*

Accordingly, 48 CFR Part 1246 is amended to read as follows:

## PART 1246—[AMENDED]

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

**Authority:** 40 U.S.C. 486(c); Pub. L. 99–190 (10 U.S.C. 2304 note); 48 CFR 1.301; 49 CFR 1.59.

2. Subpart 1246.7 is revised to read as follows:

**Subpart 1246.7—Warranties**



## Subpart 1246.7—Warranties

**1246.701 Definitions.**

"At no additional cost to the United States," as used in this subpart, means at no increase in price for firm-fixed-price contracts or at no increase in target or ceiling price for fixed price incentive contracts (see FAR 46.707) or at no increase in estimated cost/or fee for cost-reimbursement contracts.

"Defect," as used in this subpart, means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

"Design and manufacturing requirements," as used in this subpart, means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

"Major system," as used in this subpart, means a system or major subsystem used directly by the agency to carry out its mission(s), as defined by DOT Order 4200.14B, Major Systems Acquisition Review and Approval. This term does not include related support equipment, such as ground-handling equipment, training devices and accessories thereto; unless an effective warranty for the system would require inclusion of such items. This term does not include commercial items sold in substantial quantities to the general public as described in FAR 15.804–3(c).

"Performance requirements," as used in this subpart, means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

"Prime contractor," as used in this subpart, means a party that enters into an agreement directly with the United States to furnish a system or a major subsystem.

**1246.702 General.**

In addition to the considerations outlined in FAR 46.702, the following areas should be addressed by all DOT administrations in relation to the use of warranties in DOT contracts:

(a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by FAR Part 7 as implemented by DOT Order 4200.14B, Major Systems Acquisition Review and Approval.

(b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item.

(c) Each administration within DOT shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and accumulate data relative to warranty costs. Each administration shall make an annual report to the Director of Acquisition and Grant Management, on warranty related costs and enforcement experience, no later than 60 days after the end of each fiscal year.

**1246.703 Criteria for use of warranties.**

(a) Acquisition of warranties in the procurement of supplies that do not meet the definition of a major system (e.g., spare, repair, or replenishment parts) is governed by FAR 46.703 for all DOT administrations. Contracting officers should negotiate a warranty that meets or exceeds the requirements of section 1246.706 of this part where such warranty is advantageous and conforms to Departmental policy.

(b) The use of warranties in the procurement of major systems by the United States Coast Guard is mandatory, unless a waiver is authorized. The use of warranties in major system acquisitions by DOT administrations other than the Coast Guard is voluntary.

(c) Warranties should be obtained only when they are cost beneficial. In order to determine whether use of a warranty would be cost beneficial, an analysis must be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs, and the contract file documented accordingly. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing similar warranties for similar supplies or services.

**1246.704 Authority for use of warranties.**

(a) For any contract entered into by an operating administrations, other than a contract entered into by the Coast Guard for major system acquisitions, the contracting officer shall determine if a warranty clause is appropriate in accordance with 1246.703(c), prior to solicitation of a requirement. If a warranty is determined to be appropriate, he/she shall document the reason for inclusion of a warranty and identify the specific parts, subassemblies, assemblies, systems or contract line items to which a warranty should apply, and shall address why the warranty is appropriate under the criteria set forth in FAR 46.703. For DOT administration, other than the Coast Guard, the policy and procedures set forth in section 1246.770 of this part for use of warranties in major system acquisitions may be used as a guideline.

(b) Authority for use of warranties in the procurement of major systems by the Coast Guard is stated in section 1246.703 of this part. The policy and procedures on warranties set forth in section 1246.770 of this part are mandatory for Coast Guard. The Coast Guard shall use the procedure set forth in paragraph (a) above for including a warranty in procurements other than major system acquisitions.

**1246.705 Limitations.**

In addition to limitations set forth in FAR 46.705, the following restrictions are applicable to all DOT contracts:

(a) The Coast Guard is the only DOT administration which is authorized to include warranties in cost-reimbursement contracts for the production of major systems as required by 1246.770 of this part.

(b) Any written warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in section 1246.770–3 of this part.

(c) Any written warranty obtained shall specifically exclude coverage of combat damage.

**1246.706 Warranty terms and conditions.**

(a) In addition to those items set forth in FAR 46.706, the contracting officer, in developing the warranty terms and conditions, shall consider the following subjects, and where appropriate and cost beneficial shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to:

(i) An identified revision of a top-level drawing, and/or

(ii) An identified specification or revision thereof;

(3) Require that the system conforms with the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible.

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) In addition, any DOT contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor be paid at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

**1246.770 Use of warranties in major system acquisitions by Coast Guard.**

Subsections 1246.770–1 through 1246.770–3 set forth policy and procedures for the Coast Guard to use in obtaining warranties from prime contractors when contracting for the production of a major system. Other administrations within the Department may use these procedures as guidelines for major system acquisitions.

**1246.770–1 Policy.**

The Coast Guard shall include written warranties in all contracts with prime contractors for major system acquisitions. When drafting warranty provisions for major system acquisitions, the items listed at 1246.706 should be considered. The warranties shall meet the following requirements (as well as those specified at 1246.771):

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with FAR 46.703(d) and 46.710.

(b) For systems or components provided in accordance with either design or performance requirements as specified in the contract or any modification to that contract, a written warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) above shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the United States, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract,

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action, or

(3) Equitably reduce the contract price.

(d) Any written warranty shall specifically exclude coverage of combat damage.

**1246.770–2 Tailoring warranty terms and conditions.**

As the objectives and circumstances vary considerably among major system acquisition programs, contracting officers shall appropriately tailor the required warranties on a case-by-case basis, including remedies, exclusions, limitations and duration; provided such are consistent with the specific requirements of this section (see FAR 46.706). Contracting officers for major system acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties. Contracting officers are encouraged to structure broader and more comprehensive warranties where such are advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system). It is the Department's policy not to include in warranty clauses any terms that require contractor liability for loss, damage or injury to third parties.

**1246.770–3 Warranties on government-furnished property.**

A prime contractor for a major system acquisition shall not be required to provide the warranties specified in section 1246.770–2 of this part on any property furnished to that contractor by the United States except for defects in installation, and installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

**1246.771 Cost benefit analysis.**

It is the Department's policy to obtain warranties for a major system acquisition only when they are cost beneficial in accordance with 1246.703(c). If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated under section 1246.772 of this part.

**1246.772 Waiver and notification procedures.**

The Secretary of Transportation may waive the requirement for a written warranty for Coast Guard major acquisition systems when such waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. Waivers may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives are notified in writing of the Secretary's intention to waive the warranty requirement and the reasons supporting such a determination prior to granting the waiver. The written request for Secretarial waiver of the warranty requirement shall include, at a minimum:

(a) A brief description of the major system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(b) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(c) All documentation supporting the request for waiver, such as a cost-benefit analysis.

All waivers shall be forwarded via the Office of Acquisition and Grants Management for submission to the Secretary. The Coast Guard shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation, for use in answering inquiries.

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federal register

Wednesday
August 10, 1988

Part III

# Department of Education

34 CFR Part 675

College Work-Study and Job Location and Development Programs; Final Regulations

**DEPARTMENT OF EDUCATION**

**34 CFR Part 675**

## College Work-Study and Job Location and Development Programs

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations for the College Work-Study (CWS) program. This program is authorized by the Higher Education Act of 1965 (HEA). These regulations will reduce administrative burden and provide institutions with greater flexibility in administering the College Work-Study Program.

**EFFECTIVE DATE:** Section 675.19 (published December 1, 1987) as amended by this regulation takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Margaret O. Henry or Kathy S. Gause, U.S. Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, (Regional Office Building 3, Room 4018), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732–4490.

**SUPPLEMENTARY INFORMATION:** The General Accounting Office (GAO) conducted a review of the College Work-Study program from July through December of 1982. The purpose of the review was to assess how well the program was being administered at selected colleges and universities. The review involved five institutions. The GAO found three areas in which some of the schools did not administer the program effectively: Failure to monitor class and work schedule conflicts, failure to resolve deficiencies in CWS timekeeping and payroll practices, and instances where students were not productively employed or adequately supervised. As a result of their review, the GAO published a report entitled, "Review of Institutional Management of the Federal College Work-Study Program."

The Secretary believed it was necessary to emphasize the schools' need to increase their monitoring of students' reported work hours and improve the adequacy of timekeeping and payroll practices. The existing regulations required an institution to maintain a time record showing the cumulative hours each student worked. On February 27, 1985 the Secretary published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, 50 FR 8050–8086, that proposed to require institutions to maintain time records, for students paid on an hourly basis, which show the hours each student worked in clock time sequence. These records would show the specific times each student worked. Many of the commenters who responded expressed concern over the administrative burden associated with this proposal.

Based on comments received regarding the administrative burden associated with the proposal, the Secretary modified the provision in the final regulations published in the **Federal Register** of December 1, 1987, 52 FR 45738–45782. In order to complement existing payroll processes, the final regulations provided that the time record certification must contain, or be supported by, time records in clock time sequence. Institutions would not be required to implement a "punch in and out" procedure; however, time records must show the specific time each student worked each day.

While conducting a final review of the regulations for approval of recordkeeping and paperwork burden requirements, the Office of Management and Budget received additional public comments regarding the requirement that expressed concern over both the administrative burden associated with this provision and the need for it. OMB reviewed the GAO's report and concluded that the report was not extensive enough to warrant this mandatory change in institutional timekeeping practices. OMB also concluded that restricting an institution to only one method of maintaining its timekeeping and payroll records was burdensome and would adversely affect those institutions that would be required to reprogram payroll systems, thus leading to delays in the delivery of student aid. Based on its findings, OMB withheld approval of the burden and recordkeeping requirements contained in § 675.19 of the December 1, 1987 regulations. Consequently, when other sections of the regulations became effective on February 3, 1988, the Secretary agreed to modify § 675.19 and subsequently issue new regulations.

These final regulations amend § 675.19 of the December 1 regulations by incorporating the suggestion that institutions be allowed the option of maintaining time records in clock time sequence, or records which show the total hours worked per day. This revision is intended to reduce administrative burden and improve the timeliness of financial aid delivery without diminishing the effort to improve the adequacy of timekeeping and payroll practices. Although the Secretary is revising the regulations, the institution continues to be responsible for ensuring that CWS students work and earn the amount being paid, and that the work is performed in a satisfactory manner.

The public was invited to comment when the Notice of Proposed Rulemaking (NPRM) was published on February 26, 1985. The Office of Management and Budget did not approve § 675.19, therefore this section did not become effective on February 3, 1988 as did all other sections contained in the December 1, 1987 regulations. The publication of these amendments to § 675.19 as a final regulation is part of the same rulemaking process begun by the publication of the February 1985 NPRM for the College Work-Study program.

### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

### Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is also being gathered by other agencies or authorities of the United States.

### List of Subjects in 34 CFR Part 675

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: College Work-Study Program, 84.033)

Dated: June 29, 1988.

**William J. Bennett,**

*Secretary of Education.*

The Secretary amends Part 675 of Title 34 of the Code of Federal Regulations as follows:

## PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

1. The authority citation for Part 675 is revised to read as follows:

**Authority:** 42 U.S.C. 2751–2756a, unless otherwise noted.

2. Section 675.19 is amended by revising the last sentence of paragraph (b)(2)(i) to read as follows:

**§ 675.19 Fiscal procedures and records.**

* * * * *

(b) * * *

(2) * * *

(i) * * * The certification shall include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

* * * * *

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Part IV

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Parts 50, 58, 575 and 576**

**Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Parts 50, 58, 575 and 576**

**[Docket No. R-88-1359; FR-2387]**

## Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Emergency Shelter Grants Program established by the Stewart B. McKinney Homeless Assistance Act. The program authorizes HUD to make grants to States, units of general local government, and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, and for the payment of certain operating expenses and essential social service expenses in connection with emergency shelter for the homeless.

The purpose of the program is to help improve the quality of emergency shelters for the homeless, to make available additional emergency shelters, and to meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, so that these individuals have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance they need to improve their situations.

**EFFECTIVE DATE:** October 6, 1988.

**FOR FURTHER INFORMATION CONTACT:** James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States, James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. Hearing or speech impaired individuals may call HUD's TDD number: (202) 426-0015. (These are not toll-free telephone numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

On December 17, 1986, the Department published a proposed rule and program requirements (51 FR 45278) implementing the Emergency Shelter Grants ("ESG") program contained in Title V, Part C of HUD's appropriation act for the 1987 fiscal year (H.R. 5313).[1] A final rule published on October 19, 1987 (52 FR 38864) replaced the 1986 proposed rule and program requirements and continues to govern the use and reallocation of funds appropriated for the 1986 ESG program.

On July 22, 1987, President Reagan approved the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77) (the "McKinney Act") reauthorizing with amendment the Emergency Shelter Grants program.[2] A proposed rule for the 1987 ESG program was published on November 6, 1987 (52 FR 42664). Under section 416(a) of the McKinney Act, HUD is required to operate the 1987 ESG program (and, thereafter, the ongoing ESG program) in accordance with the 1986 requirements until this final rule takes effect.

However, because the Department perceived that certain McKinney Act provisions required immediate implementation, a series of notices was published in the **Federal Register**. On August 14, 1987, the Department published a notice (52 FR 30628) implementing the Comprehensive Plan requirements contained in Subtitle A of the McKinney Act. On September 4, 1987, the Department published a notice (52 FR 33790) identifying the McKinney Act provisions that it intended to implement immediately, as well as those that would take effect under the final rule. Finally, on October 19, 1987, the Department published a notice (52 FR 38864) implementing the authority to waive the 15% limitation on essential services by units of local government.

### Discussion of Public Comments and Changes Made in the Final Rule

The Department received six public comments in response to its November 6, 1987 proposed rule. There follows a discussion of these comments and a review of the changes made in the final rule, both in response to public comments and to internal departmental initiatives.

[1] Sec. 101(g), Pub. L. 99-500 (approved October 18, 1986), Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986). For ease of reference, this rule refers to the Emergency Shelter Grants program established by the Homeless Housing Act of 1986 as the "1986 ESG program."

[2] For ease of reference, this rule refers to the Emergency Shelter Grants program authorized by the McKinney Act as the "1987 ESG program."

#### *Restriction on the Use of Grant Amounts with Respect to Buildings Owned by Primarily Religious Organziations*

In the final rule for the 1986 ESG program published on October 19, 1987, HUD modified its original ban on the use of grant funds to "renovate, rehabilitate, or convert buildings owned by primarily religious organizations or entities." The Department determined that the use of ESG funds for such capital improvements would be constitutionally permissible under certain conditions. One of these conditions required that the building (or portion of the building) to be improved with ESG funds be leased to a wholly secular entity, although the lessee could enter into a management contract authorizing the lessor religious organization to operate the facility.

The Department believes that this construct strikes a careful balance between avoiding constitutionally impermissible assistance to religious entities on the one hand, and allowing Emergency Shelter Grant funds to be used to renovate, rehabilitate or convert buildings owned by primarily religious organizations. This belief is supported by the fact that only three comments were received when this approach to the issue was again used in the proposed McKinney Act ESG rule published on November 6, 1987.

Moreover, one of these commenters—the Baptist Joint Committee on Public Affairs (BJCPA)—*opposed* relaxing the provisions that now enable religious organizations to undertake capital improvements under the ESG program. The BJCPA was particularly critical of § 576.21(c)(2), which provides that grant amounts may be used for the rehabilitation or renovation of buildings owned by primarily religious organizations only if "the building (or portion thereof) that is to be improved with the grant amounts has been leased to an existing or newly established, wholly secular entity."

The BJCPA contends that the words "(or portion thereof)" authorize the use of Federal funds for capital improvements of mixed-use facilities. It asserts that while it might be constitutionally permissible to use public funds to renovate a separate building that is religiously owned but wholly dedicated to a secular purpose, a mixed-use facility with a lessor religious organization operating the shelter "makes a mockery of the First Amendment's prohibition against government programs which directly and immediately advance religion."

Conversely, New Castle County in the State of Delaware objected to the requirement contained in the proposed rule that a secular entity must be established before grant amounts can be used to renovate, rehabilitate or convert a building owned by a primarily religious organization. It argued that a secular entity is not constitutionally required, and that adequate First Amendment protection can be provided by requiring an agreement between the grantee or State recipient and the nonprofit recipient, stipulating that the premises are to be used solely for secular purposes.

The City of Indianapolis also criticized the proposed capital improvement restrictions as they pertain to primarily religious organizations. It urged that the restrictions be made "more flexible" to allow "more discretion on the part of local officials" to determine whether use of the funds by a religious organization violates the constitutional mandate for separation of Church and State.

As previously discussed, the Department has undertaken an exhaustive constitutional analysis regarding the proper nature and scope of the capital improvement restrictions contained in the ESG program. It is the Department's view that the requirements established in this rule provide sufficient safeguards against providing impermissible assistance to religious organizations (*e.g.*, through the establishment of a wholly secular entity to receive the benefit of the ESG capital improvement funds, with any residual value of improvements reverting back to the original grantee if the property is not maintained as an emergency shelter for at least the useful life of the improvements), while still enabling religious organizations to respond to the urgent need for homeless shelters. Consequently, the Department has adopted the proposed requirements of § 576.21(c)(2) without modification.

*Continued Use Requirements*

Three comments were received opposing the continued use requirements established under §576.73 of the proposed rule. The City of Portland objected to the proposed requirement that any building in which ESG amounts are used to undertake activities described at §576.21(a)(3) (*i.e.*, maintenance, operation costs, insurance, utilities, furnishings) must be maintained as a shelter for the homeless for not less than three years. This objection was based on the assertion that Federal subsidy programs have historically required continued use requirements only as a condition of capital expenditures, and not for purposes of operating subsidies.

A similar view was expressed by New Castle County, which commented that while the use of ESG funds for major rehabilitation or conversion should invoke the 10-year use requirement specified in §576.73, the activities listed at §576.21(a)(3) should not trigger any use requirement, since they do not constitute "a direct improvement to the shelter's physical plant." New Castle would require, instead, that the grantee provide comparable living space (either in the existing shelter or in some other facility) for the applicable regulatory period.

On the other hand, the Minnesota Department of Jobs and Training (MDJ&T) objected to such language when included at § 576.51(b)(2)(iv)(A) for emergency shelters located in commercial facilities. Under that provision, the grantee (or State or nonprofit recipient) is required to execute an agreement with the provider of the commercial space that comparable living space will be available for use as an emergency shelter in the facility for at least the applicable period specified in § 576.73. The MDJ&T contended that such a requirement is unreasonable, given the fluctuating demand for the housing, and should not be made applicable to commercial facilities.

Section 415(c) of the McKinney Act provides that:

> Each recipient shall certify to the Secretary that * * * it will *maintain any building for which assistance is used* under this subtitle as a shelter for homeless individuals for not less than a 3-year period or for not less than a 10-year period if such assistance is used for the major rehabilitation or conversion of such building * * * (Emphasis added).

Upon reconsideration, the Department has determined that this statutory language triggers a use requirement only for ESG activities that involve capital improvements to the shelter facility (*see* § 576.21(a)(1) of this final rule). Specifically, a statutory three-year use requirement would be imposed whenever ESG funds are used to renovate a building for use as an emergency shelter. A 10-year use requirement would apply whenever ESG grant funds are used to undertake the major rehabilitation or conversion of a building for use as an emergency shelter.

The Department will continue its policy to exempt from any use requirement the provision of essential services under § 576.21(a)(2).

While HUD has determined that the use requirements under the McKinney Act are limited to activities involving capital improvements, it is imposing a *regulatory* (rather than statutorily mandated) three-year use requirement on the leasing of commercial facilities to provide emergency shelter. Under § 576.51(a)(2)(iv), emergency shelters located in commercial facilities must be rented for a period of at least three years (either the identical space, or comparable rooms). In the event of a dramatic and unforeseen shortage in the availability of emergency shelters (i.e., in the case of a natural disaster), the grantee or recipient may apply to HUD for a waiver of the three-year use requirement. However, it should be noted that where ESG grant funds are used for the renovation, major rehabilitation or conversion of hotel or motel space to facilitate its use as an emergency shelter, the three- or ten-year (as applicable) *statutory* use requirement under § 576.73 continues to apply.

For activities under § 576.21(a)(3), other than the leasing of commercial facilities, the Department is imposing a *regulatory* one-year use requirement in place of the three-year requirement included under the proposed rule. The Department's intent in imposing this one-year requirement is to provide consistency and continuity in the provision of emergency shelter services to the homeless.

The MDJ&T commented that the definition of "emergency shelter" contained in the proposed rule—with its emphasis on providing temporary shelter for the homeless—is at odds with the practice in Minnesota of using ESG funds "to rehabilitate permanent housing." The Department believes that there is no inconsistency between the definition of emergency shelter provided in the proposed rule and the fact that permanent housing is being rehabilitated under the program. The ESG program is intended to provide temporary shelter for the homeless, without any requirement that the shelter itself be of a temporary nature. In fact, the continued use requirements established in this rule are designed to ensure a certain degree of continuity and permanency in the provision of shelter services to the homeless. As a result, the Department has retained the definition of "emergency shelter" without modification.

The MDJ&T also requested that the term "obligated" be clarified in the final rule to indicate that a grant award by a unit of local government to a private nonprofit organization under a written agreement *requires payment from the grant amount.* Since the proposed definition of "obligated" incorporated

similar language with respect to grantees and State recipients that undertake certain types of actions (*e.g.*, place orders, award contracts, etc.) the Department has made the requested clarification at § 576.3 of this final rule.

With regard to the limitation on units of local government to provide essential services (§ 576.21(a)(2)(i)(B)), MDJ&T requested a modification of the current standard. It contended that the proper standard should be whether there is a quantifiable increase in the level of a service beyond that provided by the unit of government during the 12 calendar months immediately before it received *initial* grant amounts. This modification was urged on the basis that it would be unreasonable to expect an increase in essential services above that attributable to ESG funding. The Department agrees with, and has adopted, this suggestion.

The New York State Department of Social Services (NYS) asserted that the rule is ambiguous as to whether the 15 percent limitation applies strictly to units of local government, or whether no more than 15 percent of the entire State allocation can be used to provide essential services without the State requesting a waiver. The Department wishes to clarify that the 15 percent limitation applies to the *total* of each grant amount provided to a unit of general local government. It is not necessary, in each instance, that an award by a unit of local government to a nonprofit recipient comply with the 15 percent limitation. Consequently, although there is no direct limitation on a nonprofit recipient's use of grant amounts for essential services, a unit of local government may have to impose such restrictions on one or more of its nonprofit recipients to ensure that the unit of local government is itself in compliance with the 15 percent limitation.

NYS also objected to the proposed rule's prohibition on the use of ESG funds for the acquisition or construction of emergency shelters, and urged that proposed new construction not exceeding a 25 percent increase in square footage be considered an eligible expense under the program. In light of the fact that the McKinney Act does not provide for ESG grant funds to be used for acquisition or construction expenses, the Department does not have the discretion to modify this aspect of the rule. However, it should be noted that the definition of "rehabilitation" (§ 576.3 of this final rule) includes additions to existing buildings when such additions are incidental to the rehabilitation of the building.

With regard to the requirement under § 576.23 that a State make available its ESG formula allocation to units of local government in the State, the MDJ&T commented that Minnesota has found it extremely difficult to carry out this obligation. It asserted that because of the scattered migrant and farmworker population across some 57 counties, Minnesota was experiencing considerable difficulty in making ESG funds available to this segment of the homeless population. MDJ&T requested a waiver of the requirement so that the State of Minnesota could contract directly with farmworker organizations. While the Department appreciates the additional burden involved where a State is required to deal with a highly dispersed homeless population, the requirement that a State make available its ESG allocation to units of local government is statutory and, as such, is not subject to waiver by HUD.

New Castle County urged the Department to require States to notify each unit of local government of the availability of ESG funds. The Department did not adopt this suggestion, since administrative funds are not provided under the ESG program to reimburse States for this expenditure. The Department is aware, however, that States have made substantial efforts to advertise the availability of ESG funds, and believes that discretionary activity of this kind should be encouraged.

New Castle County also suggested a modification of the proposed requirement at § 576.31(a)(2) that ESG reallocated funds can only be made available to units of local government that are non-formula cities and counties, and to private nonprofit organizations, if the jurisdiction in which the proposed activities are to be located has a Comprehensive Homeless Assistance Plan (CHAP). The suggested language would require a CHAP for "* * * the jurisdiction in which the proposed activities are to be located or the service area of the proposed location * * *".

The Department has instead adopted a modification of this suggested language. Under Subpart A of the McKinney Act (dealing with CHAP requirements), section 401(f) refers to a CHAP certification "* * * for the jurisdiction to be served by the proposed activities * * *". In this final rule, §§ 576.31(a)(2) and 576.51(b)(2)(i) have been modified to parallel this statutory language. This rule will require the following: (1) A State, formula city or county, or Territory that is applying for ESG funding for the proposed activities would provide the CHAP certification that the proposed activities are consistent with the Plan; (2) in the case of a formula city or county, there must be an additional certification that before any of the grant funds are used for an activity conducted outside the applicant's jurisdiction, the applicant will secure and provide to HUD a certification that the proposed activities are consistent with the CHAP submitted by one of the following: (i) If the activity is conducted within the boundaries of a city or urban county having its own CHAP, then a certification from the appropriate official of that jurisdiction; or (ii) if the activity is not conducted within a unit of local government having its own CHAP, a certification from the appropriate State official.

Another comment concerning the CHAP was NYS' request that all entities receiving direct entitlements under the ESG program be required to submit their CHAPS to the State for purposes of certifying consistency with the State CHAP. The Department has not adopted this suggestion. The emergency nature of the ESG program clearly dictates that funds be allocated as expeditiously as possible, as evidenced by McKinney's 30-day mandatory review period. To require formula cities and counties to submit their CHAPS for review to the State, as well as to the local HUD field office, would be inconsistent with the legislative intent reflected in the McKinney Act and, consequently, has not been adopted in this rule.

New Castle County suggested that certifications of CHAP consistency that are submitted to local HUD field offices under § 576.51(c) (substantial changes in the proposed use of ESG funds), provide for a 30-day review period. If, at the expiration of the 30-day review period, HUD fails to respond to the certification, it should be considered approved. The Department believes that this suggestion is consistent with the legislative intent to expedite the use of ESG funds and has made the necessary revisions in this final rule.

The MDJ&T objected to the requirement under § 576.51(b)(2)(ii) of the proposed rule that a State must describe the sources and amounts of matching supplemental funds in its interim report. Its objection was based on the fact that nonprofit recipients, which may provide supplemental matching funds, may not have "drawn down" available ESG funds at the time the State is required to submit its interim report. This comment misconstrues the matching supplemental funds requirement. Initially, it should be noted that it is not required under the ESG program that matching funds be provided by a nonprofit recipient. When

the grantee is a State, the matching funds may be provided by the State's own resources, or through funds provided by a State recipient. Matching funds can also include amounts spent on activities that are ineligible under the ESG program, such as expenditures for building acquisition or staff costs related to operating an emergency shelter. Consequently, it is not necessary that the nonprofit recipient have "drawn down" ESG grant funds at the time the State is required to submit its interim report and, accordingly, the Department has retained the proposed requirement without amendment.

The 65-day deadline for States to make ESG grant funds available to their State recipients (under § 576.55(a) of the proposed rule) was objected to by NYS on the basis that it failed to take into account the competitive application process used to obligate the funds. The Department disagrees. It is imperative that ESG funds be obligated as rapidly as possible. The Department's experience has been that the 65-day deadline is reasonable, and that most States are able to comply with it. If a situation arises in which a grantee believes that complying with the 65-day deadline is impossible, it should request a waiver of the requirement under § 576.5 of this final rule.

The MDJ&T requested that the criteria listed under § 576.55(a)(2) for determining when a State recipient has timely obligated ESG grant amounts should also be specified for ESG funds expended by a third party (*e.g.*, one other than the initial State recipient). The Department believes that this commenter has misconstrued the requirement to obligate grant funds under this provision. Section 576.55(a)(2) requires that *"[E]ach State recipient* must have all grant amounts obligated within 180 days of the date on which the State made the grant amounts available to it". (Emphasis added). The 180-day obligation deadline does not attach to third parties that receive ESG grant funds from the State recipient. Consequently, there is no need to specify criteria establishing when the third party has obligated its ESG grant funds.

New Castle County urged that lead based paint removal under § 576.76(c) of the proposed rule be considered an eligible expense, regardless of whether ESG funds are being used to otherwise renovate, rehabilitate, or convert a particular room. It bears noting that the Department has always considered the abatement of lead based paint to be an eligible rehabilitation activity under § 576.21(a)(1), so long as the relevant use requirements under § 576.73 are satisfied.

Section 576.83 of the proposed rule authorizes the payment to a grantee of an initial capital advance for 30 days' cash needs, or an advance of $5,000, whichever is greater. Thereafter, the grantee is reimbursed for the amount of its actual cash disbursement needs. NYS commented that because of the shortage of working capital (particularly in the case of nonprofits), each grantee should be given a 25 percent advance against which claims can be submitted when goods or services are received. This suggestion was not adopted because it would be inconsistent with the U.S. Treasury Department requirements (see Fiscal Requirements Manual § 6–2075.20) which normally require a working capital advance to cover cash requirements for a period not to exceed 30 days.

New Castle County expressed concern over the timing of the annual performance report (§ 576.85(b)(2)) which, under the proposed rule, must be submitted no later than 30 days after the December 31 cutoff date. This commenter cited two alternative reporting dates: (1) Allowing the ESG grant year to coincide with the local fiscal year; or (2) allowing the annual reporting period to coincide with the grantee's CDBG reporting period. The Department has not adopted either of these alternative dates for submission of the annual performance report. It is anticipated that the date established in the 1987 proposed rule will provide a uniform reporting cycle that will enable HUD to report to Congress on the progress of the ESG program in meeting the needs of the homeless.

Finally, the U.S. Department of Justice provided comments to HUD on rule provisions related to persons with handicaps. The phrases "handicapped individual" and "transitional housing for the mentally ill" have been revised in this final rule to read "individuals with a handicap" and "persons with mental illness", respectively.

**Other Regulatory Changes**

On its own initiative, the Department wishes to make the following clarifications or changes in this final rule implementing the 1987 ESG program.

Under § 576.21(c)(2), grant amounts may not be used to renovate, rehabilitate or convert buildings owned by primarily religious organizations unless the lessor of the building enters into a binding agreement requiring the lessee to retain the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements. In the event this requirement is not satisfied, the lessor is obligated to pay the lessee an amount equal to the residual value of the improvements. Under paragraph (vii) of this section, the lessee must remit this amount to the original grantee from which the ESG amounts were derived. The Department wishes to clarify that, following the close of the ESG grant period, these funds are to be used to alleviate homelessness in the original grantee's jurisdiction (i.e. to "further the objectives of this part"), but that it is not necessary that the grant funds be used in conformance with the requirements of the ESG program. This language has been included at § 576.21(c)(2)(vii) of the final rule.

The Department has modified the proposed requirement at § 576.43(b) that any allocation to a metropolitan city or urban county of less than .05 percent of the amounts appropriated for the ESG program *for any fiscal year*, would be added to the allocation for the State in which the city or county is located. The revised language provides that reallocation will occur whenever there is an allocation to a metropolitan city or urban county of less than .05 percent of each appropriation under the ESG program in any fiscal year. This revision more accurately reflects the actual allocation of ESG program funds, which is initiated upon the appropriation of funding under the program and *not* necessarily at the conclusion of the fiscal year.

In § 576.85, the Department has changed the period for a State to submit its interim performance report from 90 days from the date of a State's distribution of funds to its recipients, to 30 days. HUD does not believe that there is any advantage in providing an additional two months for the State to submit its interim report, and that it would be better to coincide the time allowed for submission of the interim performance report with that of the annual performance report under paragraph (b)(2).

In addition, while the Department retained the proposed timing for submission of the annual performance report under § 576.85(b)(2), the provision has been modified to state that the final report is to be submitted 90 days after all ESG funds are expended and all activities are completed.

This final rule includes clarifying language to indicate that staff costs related to providing essential services are eligible ESG expenses under § 576.21(a)(2). (It should be noted, however, that the regulation already provides that staff costs related to the

*operation* of the shelter under § 576.21(a)(3) are *not* eligible expenses.) This raises the issue whether a prorated portion of a staff member's salary can be considered an eligible expense if the staff member is providing an eligible activity, such as maintenance or an essential service. For example, if a shelter operator provides transportation for shelter residents by driving the shelter's van, can that portion of his or her time spent on this transportation service be considered an eligible expense? The answer to this question is "no". The payment of a shelter staff member's salary—whether or not a portion of the staff member's time is devoted to providing an eligible activity—should not be considered an eligible expense. Because the Department believes that, in most shelters, the operator typically provides a variety of services and functions, to determine otherwise would compromise the statutory prohibition.

Finally, for the sake of clarity, the Department is modifying the language of § 576.21(a)(2)(ii) relating to the 15 percent limitation on the provision of essential services by units of local government. Clarifying language has also been added to § 576.21(b)(i) relating to waiver of the 15 percent limitation. These clarifications are intended to reflect the following: No more than 15 percent of the *total* of each grant amount provided to a unit of local government can be used to provide essential services under the ESG program. However, a unit of local government is not required to comply with the 15 percent limitation with regard to each grant amount provided to a nonprofit recipient, so long as the limitation is observed for the total grant award. Furthermore, the 15 percent limitation may be waived if the unit of local government is able to demonstrate that:

(1) Activities other than essential services (*e.g.*, renovation, major rehabilitation and conversion activities under § 576.21(a)(1), and operating expenses under § 576.21(a)(3)) are already being adequately provided by the unit of government through private or public resources. These resources may include that portion of each ESG grant amount provided to the unit of local government under this part for which a waiver is not being requested; and

(2) The amount that the unit of local government proposes to use for essential services—and that exceeds the 15% limitation—cannot practicably be used for eligible ESG activities other than essential services.

The following example is illustrative: Assume that a unit of general local government has $100,000 in emergency shelter grant amounts and wishes to spend 20 percent of this amount ($20,000) on essential services. The unit of government is free under section 414(a)(2)(B) of the McKinney Act to spend 15 percent ($15,000) on essential services, so that this amount is automatically excluded from any waiver determination. To qualify for a waiver for the additional $5,000 that the unit of government proposes to use for essential services, it must demonstrate to HUD that:

Other shelter grant activities under § 576.21(a)(1) and (a)(3) are already adequately provided from public and private resources (which resources may include that portion of each ESG grant amount provided to a unit of local government under this part for which a waiver is not being requested—$85,000); and

(2) The $5,000 cannot practicably be expended for activities other than essential services.

Waiver requests from units of general local government receiving grant amounts from a State would first have to be forwarded to the State. The State would be required promptly to forward all such requests to HUD, together with any recommendations or other comments the State may have. This would give States an opportunity to give HUD the benefit of their views on their recipients' requests for waiver, while ensuring that State recipients' requests will receive full and prompt attention by the Department.

*Lead-Based Paint*

Section 566 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) amended the Lead-Based Paint Poisoning Prevention Act, and mandated that HUD publish a final rule amending the Department's lead-based paint standards at 24 CFR Part 35. On June 6, 1988, the Department published this final rule in accordance with the statutory mandate (53 FR 20790).

The primary changes resulting from the 1987 Housing Act are: (1) A uniform requirement that lead-based paint standards apply to all housing constructed before 1978; and (2) that the definition of "applicable surfaces" be uniformly expanded to include all interior and exterior surfaces.

The revised lead-based paint standards affect the 1986 and 1987 ESG programs in the following manner. For purposes of the 1986 ESG program, HUD's October 19, 1987 final rule (52 FR 38864) adopted, by cross-reference, the lead-based paint requirements contained in 24 CFR Part 35. As a result, the revised lead-based paint standards under Part 35 will apply automatically to all 1986 ESG program funds.

Similarly, the 1987 ESG program (and, thereafter, the ongoing ESG program) incorporates by cross-reference the lead-based paint provisions contained in Part 35, with two additional requirements (both of these requirements were contained in the Department's proposed 1987 ESG rule). These additional provisions relate to inspection and abatement of defective lead-based paint surfaces and require that the grantee (or in the case of States, the State recipient): (1) Undertake treatment of defective paint surfaces before final inspection and approval of any renovation, rehabilitation or conversion activity under the ESG program; and (2) take appropriate action to protect shelter occupants from the hazards associated with lead-based paint abatement procedures.

*Nondiscrimination*

Two of the nondiscrimination requirements with which use of emergency shelter grants must comply as provided in § 576.79(a) are Title VIII of the Civil Rights Act of 1968 and Executive Order 11063, which prohibit discrimination in housing on the basis of race, color, religion, sex, or national origin. It may well be that some emergency shelters assisted under this program are not actually covered under these authorities. The prohibitions against discrimination in Title VIII relate only to a "dwelling", which is defined in section 802(b) of that Act to mean, in part, "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families * * *" (the word "family" includes a single individual). Judicial interpretations (e.g., *United States* v. *Hughes Memorial Home*, 396 F. Supp. 544 (W.D. Va. 1975)) regarding whether a temporary residence is a "dwelling" within the meaning of Title VIII appear to turn on whether the occupant of a place intend to remain for a substantial period of time or whether the place is rather one of temporary sojourn or transit visit. A similar issue arises under Executive Order 11063, which covers certain "housing and related facilities". Since the operation and usage of emergency shelters may vary greatly across the nation, it seemed prudent to deem these authorities generally applicable to shelter assisted under this program.

In any event, under § 576.79(a), all such shelters are subject to the Federal statutory prohibitions against

discrimination with respect to race, color, national origin, age, sex and handicap in programs involving Federal financial assistance. Consistent with the statutory intent of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, the Department has included in this final rule a requirement at § 576.79(a)(6) that the ESG grantee (or in the case of a State, the State recipient) make known that emergency shelter facilities and services are available to all on a nondiscriminatory basis. Where the procedures that a grantee (or State recipient) intends to use are unlikely to reach persons of any particular race, color, religion, age, sex or national origin within its service area who may qualify for ESG services, the grantee (or recipient) is required to establish additional procedures to ensure that these persons are made aware of the availability of the facilities and services.

Under § 576.79(a)(2), all shelters covered by this part must comply with the prohibitions against discrimination against otherwise qualified individuals with a handicap under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations to be codified at 24 CFR Part 8 (53 FR 20215, June 12, 1988). Subpart C of 24 CFR Part 8 sets forth detailed program accessibility requirements for both housing and non-housing facilities. The Department believes that shelters are "housing facilities" within the meaning of 24 CFR Part 8. Accordingly, 24 CFR 8.22 (New Construction—housing facilities), § 8.23 (Alterations of existing housing facilities) and § 8.24 (Existing housing programs) apply to grantees in the emergency shelter grants program. Specifically, 24 CFR 8.22 and 8.23 require that a percentage of newly constructed and substantially altered "dwelling units" be readily accessible to and usable by individuals with handicaps. In addition, 24 CFR 8.23(b) requires that, to the maximum extent feasible, alterations to "dwelling units" be made readily accessible to, and usable by, individuals with handicaps. Since shelters may or may not be regarded as "dwelling units", the second sentence of § 576.79(a)(2) states that, for purposes of the ESG program, the term "dwelling units" in 24 CFR Part 8 includes sleeping accommodations. In addition, grantees (or the State recipient) under 24 CFR 8.6(d) must adopt and implement procedures to make available to interested persons information concerning the existence and location of services and facilities which are accessible to individuals with handicaps.

*Environmental Requirements and Site Selection*

Section 576.51(b)(2)(vi) of this final rule requires that HUD conduct an environmental review of the specific project activities proposed by an applicant before the grantee can be authorized to undertake these activities. On the basis of an application from a State or formula grantee, HUD will make a conditional grant. The "condition", while assuring the availability of funds to applicants, requires applicants to provide HUD with specific information on the nature and location of proposed activities. This information will assist HUD in conducting its environmental review, so that the Department can evaluate the effect of the grantee's proposed activities and to, thereafter, authorize the grantee to proceed with its proposed activities.

This requirement reflects the Department's determination that proposed program activities are subject to the National Environmental Policy Act (NEPA). The proposed ESG rule contemplated that the NEPA exemption provided by the Council on Environmental Quality (CEQ) for the ESG program under the Homeless Housing Act of 1986 would be continued. This exemption was approved by the CEQ on the basis of statutory conflict, since the 1986 Act imposed time limitations that precluded compliance with NEPA. HUD has determined that the restrictions imposed by the 1986 Homeless Housing Act on the ESG program no longer pertain. In the absence of statutory conflict, NEPA and CEQ's implementing regulations apply, and it is HUD's responsibility to conduct the required review in accordance with 24 CFR Part 50. The HUD review may rely on NEPA provisions for "categorical exclusions", although HUD must complete an "environmental assessment" for proposed activities that are not totally excluded, or otherwise present environmental site problems.

While this change in the environmental procedures for the Emergency Shelter Grant Program would appear to have the effect of delaying the provision of assistance, HUD does not expect that result will occur. The $8 million appropriated for FY 1988 for Emergency Shelter Grants has already been awarded and therefore will not be delayed by these procedures. Emergency Shelter Grants for FY 1989 are expected to be governed by revised environmental procedures included in both the pending House and Senate amendments to the McKinney Act. These amendments call for responsibility for environmental reviews to be delegated to the grantee, as provided in the Community Development Block Grant program. Such a delegation of responsibility would permit grantees to undertake most Emergency Shelter Grant program activities without delay.

Second, with respect to NEPA and program objectives, § 576.53(c)(2) provides that HUD will not approve funds for any program whose activities would result in significant impact on the human environment. Such approval would constitute a "major Federal action" and require HUD to prepare an environmental impact statement (EIS). HUD has determined that the length of time required to prepare an EIS would run counter to the objective of timely delivery of ESG Program services and activities. Where significant impact would result, HUD expects the applicant to select different activities or a different location that HUD may determine not to have such an impact. This assures the State or formula grantee of its fund allocation while assuring the environmental quality of its program.

Third, with respect to environmental authorities other than NEPA, HUD has determined that its environmental review must take into account all the related authorities cited at 24 CFR 50.4. This has led to the following changes in this final rule:

1. The final rule does not contain the provisions for an environmental assurance by applicants that was contained in the proposed ESG rule at § 576.51(b)(3)(i).

2. Under the environmental assurance, applicants certified to HUD that they would avoid sites with certain environmental problems (specifically, historic properties and floodplains) and that activities would not be inconsistent with the State's Coastal Zone Management Plan (where applicable). HUD has determined that the listed environmental resources included only the most common resources, but did not list all the resources and authorities cited in 24 CFR 50.4. Accordingly, the final rule contemplates that, in conducting its environmental review, HUD will take account of all the authorities cited under this provision.

3. The final rule deletes § 576.79(k) of the proposed rule, "Conformance with HUD environmental standards." These standards, issued under 24 CFR Part 51, are included in the authorities of 24 CFR 50.4 and so automatically are covered in HUD's environmental review. Separate

listing as an "other requirement" therefore is unnecessary.

These changes are predicated upon the Department's determination that environmental review, both under NEPA and the related authorities of Part 50.4, is a responsibility best retained under direct HUD control, and that these reviews should not be delegated to ESG grantees. Similarly, an asurance by an ESG applicant that it will avoid impact on certain environmental resources calls for a determination that HUD, not the applicant, should make under the applicable environmental regulations. Thus, the determination as to whether proposed activities will have a significant impact on the environment is a HUD determination, and the necessary changes are made in this final rule.

Fourth, HUD has deleted from the final rule the provisions that were contained in the proposed rule at § 576.53(f). The provision allowed HUD to authorize formula grantees and State recipients to incur costs at their own risk prior to HUD's approval of the grant. HUD has determined that such a provision would violate legal requirements for prior environmental review, and that preapproved activities and expenditures would limit the consideration of alternatives and entail the possibility of irreversible impacts on the environment even if HUD, after environmental review, decided not to approve the activities or their location.

Fifth, as part of this rule-making, HUD is amending for immediate effect its environmental regulations, 24 CFR Part 50 and 58. These changes simply add to the previous list of NEPA-related categorically excluded activities. The new exclusions reflect certain activities under the ESG program and other homeless assistance programs which HUD believes lack potential effect on the human environment. Specifically, these activities consist of such services as health, substance abuse and counseling services, the provision of meals and payment of rent, utility and maintenance costs, and similar activities that do not involve physical change to buildings or sites.

The amendment to Part 58 recognizes that many communities also invest their Community Development Block Grant funds in shelter activity. As the use of CDBG funds is subject to environmental review by the community under Part 58, this amendment will assure consistency with Part 50 while enabling communities to undertake and utilize Part 58 environmental reviews for the CDBG program which HUD may also accept for purposes of the ESG program. This is particularly advantageous to local planning efforts, and implicitly recognizes that under Part 50 HUD may accept a prior adequate environmental review undertaken in another program.

*Displacement*

An ESG grantee or State or nonprofit recipient is prohibited from expending grant funds for any activities that would result in the displacement of persons or businesses. The requirements of the Uniform Relocation Act (as proposed to be revised) will govern any unanticipated or unavoidable displacement occurring after initial approval of the ESG application.

**Other Matters**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

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

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities, because most statutorily eligible grantees and State recipients are relatively larger cities, urban counties, or States. In addition, the grant amounts to be made available to any ultimate user of a grant are relatively small.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502), and assigned OMB control number 2506–0089.

This rule was listed as item number 999 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13858) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number for the Emergency Shelter Grants Program is CFDA No. 14.231.

**List of Subjects**

*24 CFR Part 50*

Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

*24 CFR Part 58*

Environmental assessments, Environmental impact statements, Community Development Block Grant Program, Environmental policies and review procedures.

*24 CFR Part 575*

Grant programs—Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

*24 CFR Part 576*

Grant programs—Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Part 50 as follows:

## PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for 24 CFR Part 50 continues to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. Section 50.20 is revised by adding a new paragraph (o), to read as follows:

**§ 50.20 Categorical exclusions.**

* * * * *

(o) The following supportive services, maintenance and administrative activities *under all HUD programs which support shelter or housing for the homeless*: The provision of physical or mental health, substance abuse, social, educational or counseling services; the provision of meals or food; the payment of rent, utility, maintenance or administrative costs; and similar activities that do not involve physical change to buildings or sites.

## PART 58—ENVIRONMENTAL REVIEW PROCEDURES COMMUNITY DEVELOPMENT BLOCK GRANT, RENTAL REHABILITATION AND HOUSING DEVELOPMENT BLOCK GRANT PROGRAMS

3. The authority citation for 24 CFR Part 58 is revised to read as follows:

**Authority:** Sec. 7(d) of the Department of HUD Act (421 U.S.C. 3535(d)); sec. 104(g) of title I, Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) as amended; sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) as amended; secs. 17(i) (1) and (2) of the United States Housing Act of 1937 (42 U.S.C. 1437o(i) (1) and (2)); Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

4. Section 58.35 is amended by adding a new paragraph (a)(6), to read as follows:

**§ 58.35 Categorically excluded activities.**

(a) * * *

(6) The following service, maintenance and administrative activities, to the extent eligible, *which are undertaken to support housing and shelter programs for the homeless:* The provision of physical or mental health, substance abuse, social, educational, or counseling services; the provision of meals or food; the payment of rent, utility, maintenance or administrative costs; and similar activities that do not use grant funds for making physical changes to buildings or sites.

5. 24 CFR Part 575 is amended, and a new 24 CFR Part 576 is added to read as follows.

6. The part heading of 24 CFR Part 575 is revised to read as follows:

## PART 575—EMERGENCY SHELTER GRANTS PROGRAM: HOMELESS HOUSING ACT OF 1986

7. The authority citation for 24 CFR Part 575 is revised to read as follows:

**Authority:** Sec. 525(a) of the Homeless Housing Act of 1986 (sec. 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 575.1, paragraph (a) is revised to read as follows:

**§ 575.1 Applicability and purpose.**

(a) *General.* This part implements the Emergency Shelter Grants program contained in the Homeless Housing Act of 1986 (section 101(g), (Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986)). The program authorizes the Secretary of Housing and Urban Development to make grants to States, units of general local government, and private nonprofit organizations, for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, and for the payment of certain operating and social service expenses in connection with emergency shelter for the homeless. The Emergency Shelter Grants program authorized by Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act is contained in 24 CFR Part 576.

9. A new 24 CFR Part 576 is added, to read as follows:

## PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

### Subpart A—General

Sec.



### Subpart B—Eligible Activities



### Subpart C—Comprehensive Homeless Assistance Plan



### Subpart D—Allocations



### Subpart E—Award and Use of Grant Amounts



### Subpart F—Reallocations



### Subpart G—Program Requirements



### Subpart H—Grant Administration



**Authority:** Sec. 416 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

### Subpart A—General

**§ 576.1 Applicability and purpose.**

(a) *General.* This part implements the Emergency Shelter Grants program contained in Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987). The program authorizes the Secretary of Housing and Urban Development to make grants to States and units of general local government (and to private nonprofit organizations providing assistance to homeless individuals in the case of grants made with reallocated amounts) for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, and for the payment of certain operating and social service expenses in connection with emergency shelter for the homeless. The Emergency Shelter Grants program authorized by the Homeless Housing Act of 1986 is contained in 24 CFR Part 575.

(b) *Purpose.* The program is designed to help improve the quality of existing emergency shelters for the homeless, to help make available additional emergency shelters, and to help meet the costs of operating emergency shelters and of providing certain essential social services to homeless individuals, so that these persons have access not only to safe and sanitary shelter, but also to the supportive services and other kinds of assistance they need to improve their situations.

**§ 576.3 Definitions.**

*Comprehensive Homeless Assistance Plan* or *Comprehensive Plan* means the Comprehensive Homeless Assistance

Plan established by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987).

*Conversion* means a change in the use of a building to an emergency shelter for the homeless under this part, where the cost of conversion and any rehabilitation costs exceed 75 percent of the value of the building before conversion.

*Emergency shelter* means any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.

*Emergency shelter grant amounts* or *grant amounts* mean grant amounts made available under this part.

*Formula city or county* means a metropolitan city or urban county that is eligible to receive an allocation of grant amounts under § 576.43.

*Grantee* means the entity that executes a grant agreement with HUD under this part. For purposes of this part, grantee is (a) any State, metropolitan city, or urban county that receives a grant allocation under § 576.43; (b) any Territory that receives a grant allocation under § 576.45; and (c) any State, Territory, unit of general local government, or private nonprofit organization that receives a grant based on a reallocation under Subpart F.

*Homeless* means:

(a) An individual or family which lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family which has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for persons with mental illness);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State Law.

*HUD* means the Department of Housing and Urban Development.

*Major rehabilitation* means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

*Metropolitan city* means a city that was classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974 for the fiscal year immediately preceding the fical year for which emergency shelter grant amounts are made available.

*Nonprofit recipient* means any private nonprofit organization providing assistance to the homeless, to which a unit of general local government distributes emergency shelter grant amounts.

*Obligated* means that the grantee or State recipient, as appropriate, has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. Grant amounts that are awarded by a written agreement by a unit of general local government that require payment from the grant amount to a private nonprofit organization providing assistance to the homeless are obligated.

*Private nonprofit organization* means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 which (a) is exempt from taxation under Subtitle A of the Code; (b) has an accounting system and a voluntary board; and (c) practices nondiscrimination in the provision of assistance.

*Rehabilitation* means labor, materials, tools, and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

*Renovation* means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

*State* means each of the several States and the Commonwealth of Puerto Rico.

*Territory* means each of the following: The Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

*State recipient* means any unit of general local government to which a State makes available emergency shelter grant amounts.

*Unit of general local government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

*Urban county* means a county that was classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974 for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

*Value of the building* means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee or the State recipient.

### § 576.5 Waivers.

The Secretary of HUD may waive any requirement of this part that is not required by law, whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the purposes of the Emergency Shelter Grants Program under this part.

## Subpart B—Eligible Activities

### § 576.21 Eligible and ineligible activities.

(a) *Eligible activities.* Emergency shelter grant amounts may be used for one or more of the following activities relating to emergency shelter for the homeless.

(1) Renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless.

(2) Provision of essential services, including (but not limited to) services concerned with employment, physical health, mental health, substance abuse, education, or food, including the staff salary necessary to provide such services. Grant amounts provided to a unit of general local government may be used to provide an essential service only if—

(i) The service is:

(A) A new service or

(B) A quantifiable increase in the level of a service above that which the unit of general local government provided with local funds during the 12 calendar months immediately before it received initial grant amounts; and

(ii) Not more than 15 percent of the total of each grant amount provided to a unit of general local government is used for these services (whether or not the unit of local government provides some or all of these grant funds to a nonprofit recipient).

(3) Payment of maintenance, operation (including rent, but excluding staff), insurance, utilities, and furnishings.

(b) *Waiver of limit on essential services.* (1) HUD may waive the 15 percent limitation on the use of grant amounts for essential services in paragraph (a)(2)(ii) of this section, if the unit of general local government demonstrates to HUD that:

(i) Activities other than essential services are adequately provided from other private or public resources (which

resources may include that portion of each grant amount provided to the unit of government under this part for which a waiver is not being requested); and

(ii) The amount that is in excess of 15 percent of each grant amount that the unit of government proposes to use for essential services (and for which a waiver is requested), cannot practically be used for eligible activities other than essential services.

(2) Waiver requests from State recipients under this paragraph (b) must first be sent to the State. The State must promptly send the requests to HUD, together with any comments or recommendations the State may have on them.

(c) *Ineligible activities.* (1) Emergency shelter grant amounts may not be used for activities other than those authorized under paragraphs (a) and (b) of this section. For example, grant amounts may not be used for:

(i) Acquisition or construction of an emergency shelter for the homeless;

(ii) The costs of staff involved in operating the shelter; or

(iii) Rehabilitation services performed by the staff of a grantee or recipient, such as preparation of work specifications, loan processing, or inspections.

(2) Grant amounts may not be used to renovate, rehabilitate, or convert buildings owned by primary religious organizations or entities, unless the following conditions are met:

(i) The building (or portion thereof) that is to be improved with the grant amounts has been leased to an existing or newly established, wholly secular entity (which may be an entity established by the religious organization);

(ii) The HUD assistance is provided to the lessee (and not the lessor) to make the improvements;

(iii) The leased premises will be used exclusively for secular purposes, and will be available to all persons regardless of religion;

(iv) The lease payments do not exceed the fair market rent for the premises, as they were before the improvements are made;

(v) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to, and paid for by, the lessor; and

(vi) The lessor enters into a binding agreement that, unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements.

(vii) The lessee must remit the amount referred to in paragraph (c)(2)(vi) of this section to the original grantee from which the amounts used to renovate, rehabilitate, or convert the building under this paragraph (c)(2) were derived: *e.g.*, if the amounts used under this paragraph initially were made available to a State or to a unit of general local government as a formula allocation (§ 576.43) or a reallocation (Subpart F), the amount that the lessor provides to the lessee must be remitted to the State or unit of general local government, as appropriate. While the original grantee is expected to use this amount to alleviate homelessness in the original grantee's jurisdiction, there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part. If, however, a private nonprofit organization is the lessee as well as the grantee, the organization must remit the amount referred to in paragraph (c)(2)(vi) of this section to HUD.

(viii) The lessee may also enter into a management contract authorizing the lessor religious organization to operate the facility, including the provision of essential services, in carrying out the secular purpose. In such case, the religious organization must agree in the management contract to carry out its contractual responsibilities in a manner free from religious influences pursuant to conditions prescribed by HUD.

(Approved by the Office of Management and Budget under control 2506–0089.)

### § 576.23 Who may carry out eligible activities.

(a) *Grantees and State recipients.* All grantees (except States) and State recipients may carry out activities with emergency shelter grant amounts. All of a State's formula allocation must be made available to units of general local government in the State, which may include formula cities or counties, whether or not such cities or counties receive grant amounts directly from HUD.

(b) *Nonprofit recipients.* Units of general local government—both grantees and State recipients—may distribute all or part of their grant amounts to nonprofit recipients to be used for emergency shelter grant activities.

(Approved by the Office of Management and Budget under control number 2506–0089.)

## Subpart C—Comprehensive Homeless Assistance Plan

### § 576.31 Comprehensive Homeless Assistance Plan.

(a) *Prohibition of assistance.* (1) Grant amounts may be made available to the following jurisdictions, only if they have a HUD-approved Comprehensive Plan:

(i) States, for allocations under § 576.43 and reallocations under §§ 576.61, 576.63, and 576.67.

(ii) Formula cities and counties, for allocations under § 576.43 and reallocations under §§ 576.63 and 576.67; and

(iii) Territories, for allocations under § 576.45 and reallocations under §§ 576.65 and 576.67.

(2) Reallocation amounts may be made available under § 576.67 to units of general local government that are not formula cities and counties, and to private nonprofit organizations, only if the area that would be served by the proposed activities is covered by an approved Comprehensive Plan, as outlined below: For units of general local government, the State must have an approved Plan; for nonprofit organizations, if the proposed activities are to serve a formula city or county or Territory, the city, county or Territory must have an approved Plan; if the proposed activities are not to serve such city or county, the State or Territory must have an approved plan.

(3) Grant amounts may not be made available to, or within the jurisdiction of, any State or forumla city or county that does not annually—

(i) Review its progress in carrying out its Comprehensive Plan and

(ii) Report the results of the review to HUD.

(b) *Notification of Plan requirements.* HUD will publish the requirements that pertain to the Comprehensive Plan (including the progress review and report specified in paragraph (a)(3) of this section and Plan amendments referred to in § 576.53(c)) in the **Federal Register** as necessary. Prospective grantees should familiarize themselves with these requirements. HUD will also provide notice of the Plan's requirements when HUD notifies prospective grantees of their grant allocations under subpart D or the availability of reallocation amounts under subpart F.

(c) *Reallocations.* Sections 576.61, 576.63, and 576.65 govern the reallocation of grant amounts initially allocated to a State or a formula city or county under § 576.43, or to a Territory under § 576.45, if the jurisdiction does not obtain approval of its Plan within

the time periods specified in those sections.

## Subpart D—Allocations

### § 576.41 Overall allocation of grant amounts.

(a) *Territories.* HUD will set aside for allocation to the Territories under § 576.45 an amount equal to 0.2 percent of the total amount of each appropriation under this part in any fiscal year.

(b) *States, metropolitan cities and urban counties.* HUD will allocate the amounts that remain after the set-aside to Territories under paragraph (a) of this section to States, metropolitan cities, and urban counties under § 576.43.

### § 576.43 Allocation of grant amounts to States, metropolitan cities, and urban counties.

(a) *Calculation of allocations.* In determining the amount of the allocation for each State, metropolitan city, and urban county, HUD will provide that the percentage of the total amount available for allocation to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to such State, metropolitan city, or urban county.

(b) *Reallocation to State.* Except as othewise provided by law, if an allocation to a metropolitan city or urban county would be less than .05 percent of each appropriation under this part in any fiscal year, the amount is added to the allocation for the State in which the city or county is located.

(c) *Notification of allocation amount.* HUD will notify in writing each State, metropolitan city, and urban county that is eligible to receive an allocation under this section, of the amount of its allocation.

### § 576.45 Allocation of grant amounts to Territories.

(a) *Each Territory.* HUD will allocate amounts set aside for Territories under § 576.41 to each Territory, based upon its proportionate share of the total population of all Territories.

(b) *Notification of allocation amount.* HUD will notify each Territory of the amount of its allocation under this section.

## Subpart E—Award and Use of Grant Amounts

### § 576.51 Application requirements.

(a) *Application deadlines.* To receive grant amounts, a State or formula city or county that elects to receive an emergency shelter grant on the basis of an allocation under § 576.43, and a Territory that elects to receive an emergency shelter grant on the basis of an allocation under § 576.45, must submit an application that meets the requirements of paragraph (b) of this section. The application must be submitted to the responsible HUD field office, no later than 45 days after the date of the notification to the State, city or county, or the Territory, of its grant allocation, as provided by § 576.43(c) or § 576.45(b), respectively.

(b) *Application.* The application must contain:

(1) A Standard Form 424. Item (7) of Standard Form 424 must contain a description of the proposed use of the emergency shelter grant amounts. In the case of a formula city or county, or a Territory, the proposed use must be identified for each of the three categories of eligible activities under §§ 576.21 (a)(1), (a)(2), and (a)(3). In the case of a State, the proposed use must identify:

(i) How the State intends to implement the requirement in § 576.23(a) that the grant be made available to units of general local government in the State, or

(ii) The specific units of general local government in the State that will receive the grant.

(2) The following certifications and assurances:

(i) A certification by the public official responsible for submitting the Comprehensive Plan for the State, formula city or county, or Territory that is applying for ESG funding for the proposed activities that the activities are consistent with the Plan. In the case of a formula city or county, there must be an additional certification that before any of the grant funds are used for an activity conducted outside the applicant's jurisdiction, the applicant will secure and provide to HUD a certification that the activity is consistent with the CHAP submitted by the following jurisdiction, as applicable:

(A) If the activity is conducted within the boundaries of a city or urban county having its own CHAP, then a certification from its appropriate official of that jurisdiction; or

(B) If the activity is not conducted within a unit of local government having its own CHAP, then a certification from the appropriate State official.

(ii) A certification that the State, formula city or county, or Territory will provide the matching supplemental funds required by § 576.71. The certification must describe the sources and amounts of the supplemental funds. A State's matching supplemental funds certification is to be submitted with its interim performance report, as provided by § 576.85.

(iii) A certification that the formula city or county, or Territory, will comply, and that the State will ensure that its State recipients comply, with:

(A) The requirements of § 576.73 concerning the continued use of buildings, for which emergency shelter grant amounts are used, as emergency shelter for the homeless;

(B) The building standards requirements of § 576.75; and

(C) The requirements of § 576.77 concerning assistance to the homeless.

(iv) If grant amounts are proposed to be used to provide emergency shelter for the homeless in hotels or motels, or other commercial facilities providing transient housing, a certification from the State, metropolitan city, or urban county that:

(A) The grantee, or State recipient or nonprofit recipient (as appropriate), has executed (or will execute) an agreement with the provider of such housing that comparable living space (in terms of quality, available amenities, and square footage) will be rented in the facility for use as an emergency shelter for not less than a three-year period as calculated under § 576.73(b);

(B) Leases negotiated between the grantee, or State recipient or nonprofit recipient (as appropriate), and providers of such housing provide (or will provide) that the living space will be rented at substantially less than the daily room rate otherwise charged by the facility; and

(C) The grantee, or State recipient or nonprofit recipient (as appropriate), has considered using other facilities as emergency shelter, and has determined that use of the facilities referred to in this paragraph (b)(2)(iv) provides the most cost-effective means of providing emergency shelter for the homeless in its jurisdiction.

(v) A certification that the formula city or county, or Territory, will conduct its emergency shelter grant activities under this part, and that the State or unit of general local government (as appropriate) will ensure that State recipients or nonprofit recipients conduct their activities under this part, in conformity with the nondiscrimination and equal opportunity requirements contained in § 576.79(a) and the other requirements of this part and of other applicable Federal law.

(vi) An assurance by the State, formula city, county or Territory that neither the grantee nor recipient will undertake, or

commit funds to, any activities to be funded under this part until:

(A) The grantee transmits to HUD a description of the proposed activities and of any properties to be renovated, rehabilitated or converted, including their location, and an identification of any environmental conditions that may require particular consideration;

(B) HUD either completes an environmental review of the proposed activities, properties and locations or, pursuant to 24 CFR Part 50, accepts an adequate and relevant prior review completed for another HUD program or project under 24 CFR Parts 50 or 58, and thereafter authorizes the grantee to proceed, in accordance with any mitigation requirements; and

(C) An assurance by the State, formula city, county or Territory that if, subsequent to HUD authorization to proceed on the basis of environmental review and mitigation requirements, the nature or location of funded activities changes, HUD will be so advised in the same manner as provided in § 576.51(b)(2)(vi)(A).

(vii) A certification by the State, formula city or county, or Territory that the submission of the application required by this paragraph (b) is authorized under applicable provisions of law, and that the grantee possesses the legal authority to carry out emergency shelter grant activities in accordance with the provisions of this part.

(c) *Substantial change in proposed use of funds.* (1) If at any time after submission of an application under this section, there is a substantial change in the proposed use of funds, there must be submitted to the responsible HUD field office a certification (as required by paragraph (b)(2)(i) of this section) that the proposed use of funds is consistent with the applicable Comprehensive Homeless Assistance Plan. The certification will be approved as expeditiously as possible, and will be deemed approved 30 days after HUD receives it unless, notification is provided by HUD within that period that the certification is not approved, and the basis for the denial of approval. ESG funds may not be obligated by a grantee or by a nonprofit recipient for the revised proposed use of funds until HUD accepts the new certification;

(2) In the case of a State, a State may not obligate funds until the revised proposed use of grant funds has been approved by HUD; and

(3) Submission of the certification under this paragraph (c) may require amendment of the applicable Comprehensive Homeless Assistance Plan. Requirements for Plan amendments may be found in the notification that HUD provides for Plans. (See § 576.31(b)).

(Approved by the Office of Management and Budget under control number 2506–0089.)

**§ 576.53 Review and approval of applications.**

(a) *Time for approval.* An application from a State, formula city or county, or Territory will be processed and approved as expeditiously as possible, and will be deemed approved 30 days after HUD receives it, unless within that period HUD notifies the applicant that the application is not approved.

(b) *Review of applications.* HUD will approve an application, unless it determines that the application:

(1) Was not received or postmarked within the time period specified in § 576.51(a);

(2) Does not contain the items required by § 576.51(b); or

(3) Does not otherwise comply with the requirements of this part or of other Federal law.

(c) *Conditional grant.* HUD may make a conditional grant restricting the obligation and use of emergency shelter grant amounts. Conditional grants may be made:

(1) Where there is substantial evidence that there has been, or there will be, a failure to meet the requirements of this part. In such a case, the reason for the conditional grant, the action necessary to remove the condition, and the deadline for taking those actions will be specified. Failure to satisfy the condition may result in imposition of a sanction under § 576.89, or in any other action authorized under applicable Federal law.

(2) Where HUD determines that the application itself does not include evidence of an acceptable prior environmental review or specific descriptions, as defined at § 576.51(b)(2)(vi), HUD will condition the grant so that activities shall not commence until HUD completes environmental review requirements and, on the basis of such review and needed mitigation measures, authorizes the grantee to proceed.

(3) In no case will HUD authorize the use of grant funds for activities, properties or locations that would result in unavoidable significant impact on the human environment, as determined by HUD environmental review; but in the event of such a determination, HUD will advise the State or formula grantee so that the grantee may select an alternative that may be found after HUD review to be without significant impact.

(d) *Grant agreement.* The grant will be made by means of a grant agreeement executed by HUD and the grantee.

(e) *Reallocation amounts.* Any emergency shelter grant amounts that are under § 576.51(a) or (2) an application disapproval under paragraph (b) of this section will be reallocated under § 576.67.

**§ 576.55 Deadlines for using grant amounts.**

(a) *States and State recipients.* (1) Each State must make available to its State recipients all emergency shelter grant amounts that it was allocated under § 576.43, within 65 days of the date of the grant award by HUD.

(2) Each State recipient must have all its grant amounts obligated (as that term is defined at § 576.3) within 180 days of the date on which the State made the grant amounts available to it. Funds to be expended by the State recipient itself (not through a third party) for the provision of assistance to the homeless will be considered to have met this timing requirement, if the recipient:

(i) Budgets the funds for a stated eligible activity;

(ii) Makes initial expenditures for the eligible activity within 180 days of the date on which the State made the grant amounts available to the recipient; and

(iii) Expends all funds for the budgeted activity within one year of the date on which the State made the grant amounts available to the recipient.

(b) *Formula cities and counties, and Territories.* Each formula city and county, and each Territory, must have all grant amounts that it was allocated under § 576.43 or § 576.45 obligated by 180 days of the date of the grant award by HUD. Funds to be expended by the formula city or county, or Territory, itself (not through a third party) for the provision of assistance to the homeless will be considered to have met this timing requirement, if the jurisdiction:

(i) Budgets the funds for a stated eligible activity;

(ii) Makes initial expenditures within 180 days of the date of the grant award by HUD; and

(iii) Expends all funds for the budgeted activity within one year of the date of the grant award by HUD.

(c) *Reallocation amounts.* (1) Any emergency shelter grant amounts that are not made available or obligated within the time periods specified in paragraphs (a)(1) (State distributions to State recipients) or (b) (formula city or county or Territory allocation) of this section, respectively, will be reallocated under § 576.67.

(2) The State must recapture any grant amounts that a State recipient does not obligate within the time period specified in paragraph (a)(2) (State recipients) of this section. The State, at its option, must make these grant amounts and other amounts returned to the State (except amounts referred to in § 576.21(c)(2)(vii)) available as soon as practicable to other units of general local government for use within the time period specified in paragraph (a)(2) of this section, or to HUD for reallocation under § 576.67.

## Subpart F—Reallocations

### § 576.61 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; formula cities and counties.

(a) *Applicability.* This section applies where a formula city or county fails to obtain approval of its Comprehensive Plan within 90 days of the date upon which amounts under this part first become available for allocation under § 576.43 in any fiscal year.

(b) *Grantee.* HUD will make available the amounts that a city or county referred to in paragraph (a) of this section would have received to the State in which the city or county is located.

(c) *Notification of fund availability.* The responsible HUD field office will promptly notify the State of the availability of any reallocation amounts under this section.

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the State must:

(1) Execute a grant agreement with HUD to receive grant amounts allocated to the State under § 576.43 for the fiscal year for which the amounts to be reallocated were initially made available.

(2) If necessary, submit an amendment to its application for that fiscal year for the reallocation amounts it wishes to receive. The amendment must (to the extent necessary) meet the requirements of § 576.51(b), and must be submitted to the responsible HUD field office no later than 30 days after notification is given to the State under paragraph (c) of this section.

(e) *Review and approval.* (1) Section 576.53 (except paragraph (e)) governs the review and approval of application amendments under this section.

(2) HUD will endeavor to make grant awards within 30 days of the application amendment deadline, or as soon thereafter as practicable.

(f) *Deadlines for using reallocated grant amounts.* Section 576.55 governs the use of amounts reallocated under this section.

(g) *Amounts that cannot be reallocated.* Any grant amounts that cannot be reallocated to a State under this section will be reallocated to formula cities and counties located in the State and then to other States and Territories, as provided by § 576.63. Amounts that are reallocated under this section, but that are returned or unused, will be reallocated under § 576.67.

### § 576.63 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; States.

(a) *Applicability.* This section applies where:

(1) A State fails to obtain approval of its Comprehensive Plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year; or

(2) Grant amounts cannot be reallocated to a State under § 576.61.

(b) *Grantees.* HUD will reallocate the amounts that a State referred to in paragraph (a) of this section would have received, first, to formula cities and counties located in the State that demonstrate extraordinary need or large numbers of homeless individuals and if grant amount remain, then to other States and Territories that meet this criterion.

(c) *Notification of fund availability.* HUD will make reallocations under this section by direct notification or Federal Register Notice that will set forth the terms and conditions under which grant amounts under this section are to be reallocated and grant awards made.

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the formula city or county, or State or Territory, must:

(1) Submit an amendment to its application for that fiscal year for the reallocation amounts it wishes to receive. The amendment must meet—

(i) To the extent necessary, the requirements of § 576.51(b) and

(ii) Such additional requirements as HUD may specify in the notification under paragraph (c) of this section.

The amendment must be submitted to the responsible HUD field office no later than 30 days after such notification is given.

(2) Execute a grant agreement with HUD to receive grant amounts allocated under § 576.43 or § 576.45 (as appropriate) for the fiscal year for which the amounts to be reallocated were initially made available.

(e) *Review and approval.* (1) Section 576.53 (except paragraph (e)), and such additional requirements as HUD may specify in the notification under paragraph (c) of this section, govern the review and approval of application amendments under this section. HUD will rank the amendments and make grant awards under this section on the basis of the following factors:

(i) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(ii) The extent to which the proposed activities address this need; and

(iii) The ability of the grantee to carry out the proposed activities promptly.

(2) HUD will endeavor to make grant awards within 30 days of the application amendment deadline, or as soon thereafter as practicable.

(f) *Grant amounts.* HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application amendment, based on competing demand for grant amounts and the extent to which the respective activities address the needs of the homeless.

(g) *Deadlines for using reallocated grant amounts.* Section 576.55 governs the use of amounts reallocated under this section.

(h) *Amounts that are not reallocated.* Any grant amounts that are not reallocated under this section, or that are reallocated, but are unused, will be reallocated under § 576.67(d). Any amounts that are reallocated, but are returned, will be reallocated under § 576.67(c).

### § 576.65 Reallocation of grant amounts; lack of approved Comprehensive Homeless Assistance Plan; Territories.

(a) *Applicability.* This section applies where a Territory fails to obtain approval of its Comprehensive Plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year.

(b) *Grantees.* HUD will make available the amounts that a Territory referred to in paragraph (a) of this section would have received to other Territories that demonstrate extraordinary need or large numbers of homeless individuals.

(c) *Notification of fund availability.* The responsible HUD field office will promptly notify each Territory of the availability of any reallocation amounts under this section, and will indicate the terms and conditions under which such amounts are to be made available and grant awards made.

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the Territory must:

(1) Execute a grant agreement with HUD to receive grant amounts allocated under § 576.45 for the fiscal year for which the amounts to be reallocated were initially made available.

(2) If necessary, submit an amendment to its application for that fiscal year for the reallocation amounts it wishes to receive. The amendment must meet—

(i) To the extent necessary, the requirements of § 576.51(b) and

(ii) Such additional requirements as HUD may specify in the notification under paragraph (c) of this section.

The amendment must be submitted to the responsible HUD field office no later than 30 days after such notification is given.

(e) *Review and approval.* (1) Section 576.53 (except paragraph (e)) governs the review and approval of application amendments under this section. HUD will rank the amendments and make grant awards under this section on the basis of the following factors:

(i) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(ii) The extent to which the proposed activities address this need; and

(iii) The ability of the grantee to carry out the proposed activities promptly.

(2) HUD will endeavor to make grant awards within 30 days of the application amendment deadline or as soon thereafter as practicable.

(f) *Grant amounts.* HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application amendment, based on competing demand for grant amounts and the extent to which the respective activities address the needs of the homeless.

(g) *Deadlines for using reallocated grant amounts.* Section 576.55 governs the use of amounts reallocated under this section.

(h) *Amounts that are not reallocated.* Any grant amounts that are not reallocated under this section, or that are reallocated, but are unused, will be reallocated under § 576.67(d). Amounts that are allocated, but are returned, will be reallocated under § 576.67(c).

**§ 576.67 Reallocation of grant amounts; returned or unused amounts.**

(a) *General.* From time to time, HUD will reallocate emergency shelter grant amounts that are returned or unused, as those terms are defined in paragraph (f) of this section. HUD will make reallocations under this section by direct notification or Federal Register Notice that will set forth the terms and conditions under which the grant amounts are to be reallocated and grant awards are to be made.

(b) *FEMA boards.* HUD may use State and local boards established under the Emergency Food and Shelter Program administered by the Federal Emergency Management Agency, as a resource to identify potential applicants for reallocated grant amounts.

(c) *Reallocation—returned grant amounts.* (1) States and formula cities and counties. HUD will endeavor to reallocate returned emergency shelter grant amounts that were initially allocated under § 576.43 to a State or a formula city or county, for use within the same jurisdiction. Reallocation of these grant amounts is subject to the following requirements:

(i) Returned grant amounts that were allocated to a State will be made available (A) first, to units of general local government within the State and (B) if grant amounts remain, then to other States.

(ii) Returned grant amounts that were allocated to a formula city or county will be made available—

(A) First, for use in the city or county, to units of general local government that are authorized under applicable law to carry out activities serving the homeless in the jurisdiction;

(B) If grant amounts remain, then to the State in which the city or county is located;

(C) If grant amounts remain, to units of general local government in the State; and

(D) If grant amounts remain, to other States.

(2) *Territories.* Returned grant amounts that were allocated to a Territory will be made available—

(i) First, to other Territories and

(ii) If grant amounts remain, then to States.

(3) *Further reallocation: States, formula cities and counties, and Territories.* Any grant amounts that—

(i) Remain after applying the preceding provisions of this paragraph (c), or

(ii) Are returned to HUD after reallocation under such provisions, will be further reallocated under paragraph (d) of this section.

(4) *Other grantees.* Returned grant amounts that were initially made available to private nonprofit organizations, units of general local government and States under paragraph (d) of this section will be made available under that paragraph.

(5) The responsible HUD field office will announce the availability of returned grant amounts. The announcement will establish deadlines for submitting applications, and will set out other terms and conditions relating to grant awards, consistent with this part. The announcement will specify the application documents to be submitted, which include:

(i) A Standard Form 424;

(ii) Certifications required at § 576.51(b)(2)(iv); and

(iii) Other certifications and assurances similar to those required from a formula city or county, or a Territory, under §§ 576.51(b) (2), (3) and (4), as appropriate.

(6) The responsible HUD field office may establish maximum grant amounts, considering the grant amounts available, and will rank the applications using the criteria in paragraph (e) of this section.

(7) HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application, based on competing demands for grant amounts and the extent to which the respective activities address the needs of the homeless.

(8) HUD will endeavor to make grant awards within 30 days of the application deadline or as soon thereafter as practicable.

(d) *Reallocation—unused grant amounts.* Unused grant amounts will be available, in HUD's discretion, for reallocation from time to time to:

(1) Units of general local government and States demonstrating extraordinary need or large numbers of homeless individuals; and

(2) Private nonprofit organizations providing assistance to the homeless.

(e) *Selection criteria.* HUD will award grants under paragraphs (c) and (d) of this section based on consideration of the following criteria:

(1) The nature and extent of the unmet homeless need within the jurisdiction in which the grant amounts will be used;

(2) The extent to which the proposed activities address this need; and

(3) The ability of the grantee to carry out the proposed activities promptly.

(f) *When grant amounts are returned or unused.* (1) For purposes of this section, emergency shelter grant amounts are considered "returned" when they become available for reallocation because a grantee does not execute a grant agreement with HUD for them, *e.g.*, when a grantee for which an allocation is made under § 576.43 or § 576.45 fails to meet the application deadlines under § 576.51(a), or has its application disapproved under § 576.53(b), or approved with a reduced grant amount in accordance with §576.89.

(2) For purposes of this section, emergency shelter grant amounts are considered "unused" (i.e., Federal deobligation) when they become available for reallocation by HUD after

a grantee has executed a grant agreement with HUD for them: *e.g.*, where—

(i) A State fails to make its grant amounts available to State recipients within the time period specified in § 576.55(a)(1);

(ii) A formula city or county fails to obligate grant amounts within the time specified in § 576.55(b);

(iii) A State recaptures grant amounts from a State recipient and makes them available to HUD as provided in § 576.55(c)(2);

(iv) Grant amounts become available as a result of imposition of a sanction (other than a reduction of grant amounts) under § 576.89 or the close-out of a grant; or

(v) A grantee referred to in paragraph (b) of this section fails to obligate grant amounts within the time period specified in its grant agreement.

Amounts that remain after reallocation under § 576.63, § 576.65, or § 576.67(c) are considered unused for purposes of this section.

## Subpart G—Program Requirements

### § 576.71 Matching funds.

(a) *General.* Each grantee must supplement its emergency shelter grant amounts with an equal amount of funds from sources other than under this part. These funds must be provided after the date of the grant award to the grantee. Funds used to match a previous emergency shelter grant award may not be used to match a subseqyent grant award under this part. A grantee may comply with this requirement by providing the supplemental funds itself, or through supplemental funds or voluntary efforts provided by any State recipient or nonprofit recipient (as appropriate).

(b) *Calculating the matching amount.* In calculating the amount of supplemental funds, there may be included the value of any donated material or building; the value of any lease on a building; any salary paid to staff of the grantee or to any State recipient or nonprofit recipient (as appropriate) in carrying out the emergency shelter program; and the time and services contributed by volunteers to carry out the emergency shelter program, determined at the rate of $5 per hour. For purposes of this paragraph (b), the grantee will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish a fair market value.

### § 576.73 Use as an emergency shelter.

(a)(1) *General.* Any building for which emergency shelter grant amounts are used for one or more of the eligible activities described in §§ 576.21(a)(1) must be maintained as a shelter for the homeless for not less than a three-year period, or for not less than a 10-year period, if the grant amounts are used for major rehabilitation or conversion of the building.

(2) Using emergency shelter grant amounts for eligible activities described in § 576.21(a)(2) does not trigger either the three- or 10-year period.

(3) Using emergency shelter grant amounts for the leasing of commercial facilities under § 576.21(a)(3) to provide emergency shelter requires that the commercial facilities be maintained as a shelter for the homeless for not less than a three-year period.

(4) For all other eligible activities described at § 576.21(a)(3), the building for which ESG grant amounts are used must be maintained as a shelter for the homeless for not less than a one-year period.

(b) *Calculating the applicable period.* The one-, three- and 10-year periods referred to in paragraph (a) of this section begin to run:

(1) In the case of a building that was not operated as an emergency shelter for the homeless before receipt of grant amounts under this part, on the date of initial occupancy as an emergency shelter for the homeless.

(2) In the case of a building that was operated as an emergency shelter before receipt of grant amounts under this part, on the date that grant amounts are first obligated for the shelter.

### § 576.75 Building standards.

Any building for which emergency shelter grant amounts are used for renovation, conversion, or major rehabilitation must meet local government safety and sanitation standards.

### § 576.77 Assistance to the homeless.

Homeless individuals and families must be given assistance in obtaining:

(a) Appropriate supportive services, including permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(b) Other Federal, State, local, and private assistance available for such individuals.

### § 576.79 Other Federal requirements.

Use of emergency shelter grant amounts must comply with the following additional requirements:

(a) *Nondiscrimination and Equal Opportunity.* (1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146 and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8. For purposes of the emergency shelter grants program, the term "dwelling units" in 24 CFR Part 8 shall include sleeping accommodations.

(3) The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (see § 570.607(b) of this Chapter);

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this part; and

(6) The requirement that the grantee (or in the case of States, the State recipient) make known that use of the facilities and services is available to all on a nondiscriminatory basis. Where the procedures that a grantee or recipient intends to use to make known the availability of such facilities and services are unlikely to reach persons of any particular race, color, religion, sex, age or national origin within their service area who may qualify for them, the recipient or grantee must establish additional procedures that will ensure that these persons are made aware of the facilities and services. Grantees and recipients must also adopt and implement procedures designed to make available to interested persons information concerning the existence and location of services and facilities that are accessible to persons with a handicap.

(b) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of 24 CFR Part 85 (codified pursuant to OMB Circular No. A–102),

and OMB Circular No. A-87,[1] as they relate to the acceptance and use of emergency shelter grant amounts by States and units of general local government, and Nos. A-110 and A-122[1] as they relate to the acceptance and use of emergency shelter grant amounts by private nonprofit organizations.

(c) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35. In addition, the grantee (or in the case of States, the State recipient) must also meet the following requirements relating to inspection and abatement of defective lead-based paint surfaces:

(1) Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity under this part; and

(2) Appropriate action must be taken to protect shelter occupants from the hazards associated with lead-based paint abatement procedures.

(d) *Conflicts of interest.* In addition to conflicts of interest requirements in OMB Circulars A-102 and A-110,[1] no person-

(1)(i) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient ( or of any designated public agency) that receives emergency shelter grant amounts and

(ii) Who exercises or has exercised any functions or responsibilities with respect to assisted activities, or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a pesonal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter.

HUD may grant an exception to this exclusion as provided in §§ 570.611(d) and (e) of this chapter.

(e) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(f) *Flood Insurance.* No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part, other than by grant amounts allocated to States under § 576.43, may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1)(i) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or

(ii) Less than a year has passed since FEMA notification regarding such hazards; and

(2) The grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(g) *Coastal Barriers.* In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

(h) *Audit.* The financial management system used by a State or unit of general local government that is a grantee or State recipient must provide for audits in accordance with 24 CFR Part 44. A private nonprofit organization is subject to the audit requirements of OMB Circular A-110.[1]

(i) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR Part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3.

(j) *Displacement.* A grantee or State or nonprofit recipient may not expend ESG grant funds for any activities that would result in the displacement of persons or businesses.

## Subpart H—Grant Administration

### § 576.81 Responsibility for grant administration.

Grantees are responsible for ensuring that emergency shelter grant amounts are administered in accordance with the requirements of this part and other applicable laws. In the case of States making grant amounts available to State recipients, and in the case of units of general local government distributing grant amounts to nonprofit recipients, the States and the units of local government are responsible for ensuring that their respective recipients carry out the recipients' emergency shelter grant programs in compliance with all applicable requirements.

### § 576.83 Method of payment.

Payments are made to a grantee upon its request, and may include a working capital advance for 30 days' cash needs or an advance of $5,000, whichever is greater. Thereafter, the grantee will be reimbursed for the amount of its actual cash disbursement needs. If a grantee requests a working capital advance, it must base the request on a realistic, firm estimate of the amounts required to be disbursed over the 30-day period in payment of eligible activity costs. Payments with respect to grants of $120,000, or more, will be made by letter of credit, if the grantee meets the requirements of OMB Circular A-102.[1]

### § 576.85 Performance reports.

(a) *Interim performance report.*—(1) *Timing of report.* (i) A formula city or county, or Territory, must submit its interim performance report to HUD no later than 30 days after the end of the 180-day period allowed for the obligation of grant amounts under § 576.55(b), or 30 days after the date when all grant amounts are obligated, whichever comes first.

(ii) A State must submit its interim performance report not later than *30 days* from the date of the State's distribution of funds to its State recipients; except that where the responsible field office grants a State an extension of the 65-day deadline for obligating its grant funds under § 576.55(a)(1) a corresponding extension for filing of the interim report will automatically be granted.

(iii) A grantee referred to in § 576.67, Reallocation of funds, must submit its interim performance report to HUD within the period specified in its grant agreement.

(2) *Report content.* (i) In the case of a grantee other than a State, the interim performance report must contain information on the amount of funds obligated for each of the three categories of eligible activities described in §§ 576.21(a)(1), (2), and (3).

(ii) A State interim performance report must provide this information for each State recipient.

(3) *Matching funds certification.* A State must submit with its interim performance report the matching funds certification required by § 576.51(b)(2)(ii).

(b) *Annual performance report.*—(1) *Report content.* A grantee other than a State must provide HUD with an annual performance report on the obligation and expenditure of funds for each of the

[1] OMB Circulars referenced in this section are available at the Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

three categories of eligible activities described in §§ 576.21(a)(1), (2), and (3). A State must provide this information for each State recipient.

(2) *Timing of report.* The initial annual performance report is required for the period ending December 31 following the submission of the interim report, and is due no later than 30 days after December 31. A grantee must continue to submit this report annually until all emergency shelter grant amounts are reported as expended, except that the final report is to be submitted 90 days after all ESG funds are expended and all activities are completed.

(Approved by the Office of Management and Budget under control number 2506–0089.)

**§ 576.87 Recordkeeping.**

Each grantee must ensure that records are maintained as necessary to document compliance with the provisions of this part.

(Approved by the Office of Management and Budget under control number 2506–0089.)

**§ 576.89 Sanctions.**

(a) *HUD sanctions.* If HUD determines that a grantee is not complying with the requirements of this Part or of other applicable Federal law, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Condition a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance.

(b) *State sanctions.* If a State determines that a State recipient is not complying with the requirements of this Part or other applicable Federal laws, the State must take appropriate actions, which may include the actions described in paragraph (a) of this section. Any grant amounts that become available to a State as a result of a sanction under this section must, at the option of the State, be made available (as soon as practicable) to other units of general local government located in the State for use within the time periods specified in § 576.55(a)(2), or to HUD for reallocation under § 576.67(d).

(c) *Reallocations.* Any grant amounts that become available to HUD as a result of the imposition of a sanction under this section will be reallocated under § 576.67(d).

**Appendix to Part 576—Reallocation of Grant Funds**

| | Reallocating event | Reallocation grantee | Reallocated amounts not awarded | Reallocated amounts awarded, but returned [1] | Reallocated amounts awarded, but unused [2] |
|---|---|---|---|---|---|
| § 576.61 | Formula city or county fails to obtain CHAP approval. | State in which city or county located. | Reallocate to formula cities and counties and States and Territories under § 576.63. | Reallocate under § 576.67(c) | Reallocate under § 576.67(d). |
| § 576.63 | State fails to obtain CHAP approval. | First, formula cities and counties in State; and if grant amounts remain, other States and Territories. | Reallocate under § 576.67(d) | Reallocate under § 576.67(c) | Reallocate under § 576.67(d). |
| § 576.65 | Territory fails to obtain CHAP approval. | Other Territories | Reallocate under § 576.67(d) | Reallocate under § 576.67(c) | Reallocate under § 576.67(d). |
| § 576.67(c)(1)(i) | "Returned" amounts—State. | First, units of general local government in the State; if grant amounts remain, then other States. | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |

| | Reallocating event | Reallocation grantee | Reallocated amounts not awarded | Reallocated amounts awarded, but returned [1] | Reallocated amounts awarded, but unused [2] |
|---|---|---|---|---|---|
| § 576.67(c)(1)(ii) | "Returned" amounts—formula cities and counties. | First, units of general local government to carry out homeless activities in city or county; if amounts remain, then the State in which the city or county located; if amounts remain, then units of general local government in the States and if amounts remain, other States. | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |
| § 576.67(c)(2) | Returned amounts—Territories. | First, other Territories; if grants remain, then States. | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |
| § 576.67(c)(4) | Returned amounts—reallocation grantees under § 576.67(d). | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |
| § 576.67(d) | "Unused" amounts | Units of general local government, Sates and private nonprofits. | Reallocate under § 576.67(d) | Reallocate under § 576.67(d) | Reallocate under § 576.67(d). |

[1] As provided in § 576.67(f), emergency shelter grant amounts are considered "returned" when they become available for reallocation because a grantee does not execute a grant agreement with HUD for them, *e.g.*, when a grantee for which an allocation is made under § 576.43 fails to meet the application deadlines under § 576.51(a), or has its application disapproved under § 576.53(b) or approved with a reduced grant amount in accordance with § 576.89.

[2] As provided in §§ 576.67(d), grant amounts are considered "unused" when they become available for reallocation by HUD after a grantee has executed a grant agreement with HUD for them: *E.g.*, where (i) a State fails to make its grant amounts available to State recipients within the time period specified in § 576.55(a)(1); (ii) a formula city or county fails to obligate grant amounts within the time specified in § 576.55(b); (iii) a State recaptures grant amounts from a State recipient and makes them available to HUD as provided in § 576.55(c)(2); (iv) grant amounts become available as a result of imposition of a sanction (other than a reduction of grant amounts) under § 576.89 or the close-out of a grant; or (v) a grantee referred to in paragraph (b) of this section fails to obligate grant amounts within the time period specified in its grant agreement.

Date: July 18, 1988.

**Nancy C. Silvers,**

*Acting General Deputy Assistant Secretary for Community Planning and Development.*

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Part V

# Department of Housing and Urban Development

24 CFR Parts 905, 941, 965, and 968

Preemption of Certain State-Determined Prevailing Wage Rates Applicable to Public Housing Projects; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 905, 941, 965, and 968**

[Docket No. R-88-1353, FR -2231]

## Office of the Assistant Secretary for Public and Indian Housing; Preemption of Certain State-Determined Prevailing Wage Rates Applicable to Public Housing Projects

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule preempts any prevailing wage rate that is determined under State law and would otherwise be applicable to an employee in any trade employed on a public or Indian housing project whenever the State wage rate exceeds the corresponding Federally-determined prevailing wage rate. Specifically, the rule requires bid documents and contracts let by the HUD-assisted public housing agency or Indian housing authority for the project to contain a statement that any State rate that exceeds the corresponding Federal rate is inapplicable and shall not be enforced. In addition, the public housing agency or Indian housing authority shall not be required to pay the higher State wage rates to its own employees who may be engaged on the project. The rule prohibits enforcement of the State requirements regarding higher State rates on the project. The rule also preempts wage rates that are determined to be prevailing under Indian tribal law and exceed the applicable Federal wage rates. The rule will restrain the costs of operation of the public housing program and will enable the Federal government to make the most effective use of limited budget resources.

**EFFECTIVE DATE:** October 6, 1988.

**FOR FURTHER INFORMATION CONTACT:** Justin L. Logsdon, Assistant to the Secretary for Labor Relations, Room 7106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5370. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On October 21, 1987, HUD published in the **Federal Register** (52 FR 39233) a Notice of Proposed Rulemaking to amend portions of 24 CFR Parts 905, 941, 965, and 968. This rule proposed to preempt the application and enforcement of prevailing wage rates determined under State law on projects assisted by HUD under the United States Housing Act of 1937, as amended (USHA), whenever the State wage rate exceeded the corresponding Federally-determined prevailing wage rate for that trade. (Under section 12 of the USHA, the Federal prevailing wage rate is determined either by the U.S. Department of Labor pursuant to the Davis-Bacon Act, in the case of project development, or by HUD in the case of project operation). Under the proposal, a State or local wage rate would not apply to a project if the State- or locally-determined rate for a trade to be used on the project exceeded the corresponding Federally-determined rate. Any bid documents for project work that would otherwise be subject to State law requiring payment of State- or locally-determined prevailing wage rates would be required to contain a statement that whenever any State- or locally-determined rate exceeds the corresponding Federally-determined wage rate, the State- or locally-determined rate is inapplicable to the contract and shall not be enforced. In addition, the PHA or IHA would not be required to pay its own employees engaged on the project at higher State wage rates. The rule also proposed to prohibit enforcement of such rates against contractors or subcontractors and PHAs or IHAs. Because HUD-determined prevailing wage rates are limited in all cases to basic hourly rates without consideration of fringe benefits, the rule proposed to provide that fringe benefits determined under State law would be excluded from the comparison with the HUD-determined wage rate; in that situation, preemption of the entire State-determined rate (both fringe benefits and the basic hourly rate) would occur if the basic hourly rate determined under State law, exclusive of fringe benefits, exceeded the HUD-determined rate. The rule also proposed to apply to IHAs and to tribal prevailing wage laws.

### Discussion of Public Comments and Changes Made in the Final Rule

HUD received 81 comments in response to the proposed rule, including 55 comments generally supporting the issuance of a preemption rule, 23 opposing the rule, and 3 that did not express a clear position supporting or opposing the rule. The comments included 49 from housing authorities, 10 directly from labor organizations or their counsel (in addition to other labor organization comments forwarded with Congressional comments), 7 from Congressional representatives, 5 from States or State agencies or officials, and several from trade, redevelopment and other organizations.

### Cost Savings

A large number of comments concerned the question of whether the rule would result in cost savings in construction and rehabilitation and/or the ability to perform work on a greater number of units with the same amount of Federal funds. For example, one labor organization commented that it appeared HUD lacks any real evidence supporting its conclusion that it is necessary to preempt higher State-determined prevailing wage rates, since the fact that some State rates are higher does not prove that labor costs on such projects are higher or that the costs of such projects are higher than they might otherwise be. A state law department commented that evidence of higher State-determined wage rates alone does not lead logically to HUD's conclusion about the effect of these rates on the cost or number of lower income housing units. Another labor organization asserted that HUD ignored the findings of three of its own investigations, two by the Office of Inspector General finding a direct correlation between prevailing wage requirement violations and poor quality construction due to use of inexperienced and unskilled workers, and one by its Office of Program Planning and Evaluation finding a low correlation between average wage rates and average dwelling costs on a sample of Indian housing projects.

HUD rejects the notion that wage rates, which may constitute one-third or more of the total cost of rehabilitation work, can be increased as much as 50 to 100 percent (depending on location, job classifications, and nature of work), without affecting overall project cost or the amount of renovation work performed. Indirect confirmation of this is found in the comment of a labor organization, which objected to the proposed rule for the following reason:

> Where the federal Davis-Bacon or HUD rates are substantially lower than the wage rates contained in collective bargaining agreements contractors who are parties to such agreements would be competitively disadvantaged in obtaining work on federally funded housing projects. This will result in a deprivation of work for employees covered by collective bargaining agreements and will undermine the wage and benefit standards in the locality.

Moreover, at least 18 PHAs commented that the proposed rule preempting higher State wage rates would result in cost savings. For example, three California PHAs commented that the rule could, in some cases, reduce the cost of new construction and modernization under the Comprehensive Improvement

Assistance Program (CIAP) by 15 to 30 percent, and that cost savings in labor would directly translate into either more units being modernized or constructed within the same budget amounts or improvements in the materials used and a longer life for the units, with less operating costs. A PHA in New York State commented that:

> Our comparisons of State and Davis-Bacon wage rates as applicable to our rehabilitation, modernization and new development projects indicate that the State rates exceed the Federal rates by a substantial percentage and, in many cases, would have permitted us to accomplish only half of our original project scope. This would obviously undermine our efforts to meet the needs of the low-income and homeless people in our area. Furthermore, it would be counter productive to our attempts to stretch the ever-diminishing dollars we have to work with.
>
> Mandatory use of State wage rates would increase the overall cost of our competitively bid projects to the point of making them unfeasible within the limits of our budget. The end result would be diminished decent, safe and sanitary housing opportunities for the people we serve.

Another PHA in New York State noted that New York State rates had substantial impact on the PHA's "residential" work (generally, residential buildings of four stories or less) but very little impact on "commercial" (residential high rise) work. The authority cited a heating system replacement project which fit both HUD's and the State's respective definitions of "residential" work and was first bid with Federal "residential" rates; however, after a lawsuit in State court, the project was required to be rebid with State rates. Because of New York's methodology for determining wage rates, the new rates deemed applicable by the court and the State in the absence of a separate collectively bargained "residential" rate were actually the higher "commercial" rates, which were merely labeled as "residential". The PHA reported that the following changes were made in the project when it was rebid:

> The scope of project was then completely downgraded to offset the anticipated increase in labor costs. Some of the changes included the elimination of thermostatic valves on convectors, lesser quality convectors, a decrease from cast iron to copper piping, the encapsulation of asbestos rather than its complete removal, etc. An estimated $800,000 of work and product quality was cut from the project. The second bids totaled $4,667,000—an increase of $56,000—in spite of the cost containment measures. Thus, the wage rate issue cost the Housing Authority and HUD about 19% in lost improvements for public housing.

Nine PHAs commented that additional indirect cost savings would be achieved by eliminating administrative burdens associated with applying State rates to projects.

A trade association comment included examples of higher State wage rates leading to overall higher bid costs, including the statement of a member contractor in California, operating in the Sacramento, Los Angeles and San Francisco areas, that California State rates were 10 to 20 percent higher than Federal rates and that such wage differentials would increase the contractor's total job cost by 3 to 4 percent, which would be reflected in its bid prices.

Also, in recent Buffalo, New York federal court litigation challenging HUD's refusal to apply state rates, and expert witness for the plaintiff unions admitted, on the basis of certain HUD-verified assumptions, that HUD's annual Comprehensive Improvement Assistance Program (CIAP) costs in the State would increase by 28 percent or $30,200,000; HUD's witnesses calculated the amount at about $50,000,000. In other words, using all available funds, HUD's main program for rehabilitating public housing in New York would have to be slashed by more than one quarter if State rates are imposed on PHA projects there.

With respect to the labor organization comments concerning HUD's own studies, two HUD Inspector General reports (Internal Audit: Monitoring and Enforcement of Labor Standards, Region IX, 85-SF-179-0003, January 16, 1985; National Audit Report: Monitoring and Enforcement of Labor Standards, 86-TS-179-005, November 6, 1985) stated that there is a correlation between labor standards violations and construction deficiencies in the jurisdication of some Regional Offices. The contractors cited in these reports failed to pay federally-determined prevailing wage rates. The simple response is that these studies provide no support for the contention that poor quality construction is linked to failure to pay State-imposed wage rates that exceed federally required levels, since the reports concerned only violations of Federal labor standards.

The labor organization also mentioned a HUD Office of Program Planning and Evaluation study ("Evaluation of the High Cost of Indian Housing", December 1979), which it said indicated a low correlation between average wage rates and dwelling construction costs. This analysis involved wage rates for projects on 20 reservations. While this report did not find a correlation between wage rates and overall costs for those projects with the highest wage rates, it did find some correlation between wage rates and project costs for the remaining three quarters of the sample with lower wage rates. In any event, the sample—restricted to a few Indian Housing Authorities a decade ago—is wholly insufficient to support a conclusion that high wage rates do not affect construction costs in light of the recent, already recited evidence to the contrary.

Other comments relating to the overall cost of a project referred to HUD's suggestion that imposition of higher State rates could result in a cutback by contractors in the cost or quality of equipment and supplies, resulting in poorer quality work. One of the comments, received from a labor organization, suggested that HUD's hypothesis was without factual support and asserted that the quality of work is largely dependent on the workers' skill and training, which would be lacking at the wage rates applying after preemption of State rates. Another labor organization commented that the contract will specify the standards of materials required, precluding substitution of lesser quality by the contractor.

HUD's discussion, in the preamble to the proposed rule, of the possibility of cutbacks in the cost or quality of materials and supplies due to higher State wage rates indicated that this possibility was less likely than that higher bids must be accepted for the work. Nevertheless, HUD believes that the quality of the work is dependent on the skill and workmanship of the workers—*as well as* the quality of materials. The comment of the New York State PHA quoted above regarding cutbacks in quality of materials and quality of work to be performed is an example—albeit reflected in revised specifications rather than initiated by a contractor—of lesser quality work resulting from imposition of higher State wage rates. Moreover, the labor organizations' comments, along with two other comments asserting that preemption would result in shoddy workmanship due to substandard wages, essentially suggest that the Federally-determined wage rates (HUD-determined or Davis-Bacon rates), are insufficient to protect against unskilled "bargain basement" workers or resulting poor quality work, not only in the handful of States with higher applicable State rates, but also in the overwhelming majority of States where Federal rates exeed (or apply in the absence of) State-determined rates. HUD rejects this assertion as without foundation since the Federally-

determined rates are required by law to reflect rates prevailing in the locality.

**Accuracy of Federal and State Rates**

Other comments suggested that HUD and/or Davis-Bacon wage rates are inaccurate or too low. Two comments suggested that preemption of rates determined under State law would undermine the labor market; another comment suggested that the rule was not in the best interest of the worker and would result in workers on PHA projects becoming low-income earners. HUD rejects these comments because both types of Federal wage rates are required by law to reflect the wage rates prevailing in the locality. Moreover, appeal procedures are available to challenge Davis-Bacon rates determined by the Department of Labor for project development, as well as those determined by HUD for project operation. Workers and other interested persons, including contractors and labor organizations, may request that DOL reconsider a Davis-Bacon wage determination. Formal appeals may be submitted to the Administrator, Wage and Hour Division. 29 CFR 1.8. The Administrator's decisions may be appealed to the Department of Labor's Wage Appeals Board. 29 CFR 1.9. HUD-determined wage rates may also be appealed, first to the Regional or Field Office, and then to the Assistant to the Secretary for Labor Relations in Washington, DC.

On the other hand, comments from PHAs in New York and California stated that certain of the State determined wage rates were excessive and unrealistic.

HUD notes that State laws vary in their methodology for determining the "prevailing" wage rate. One recent study characterized that variation among these laws as follows:

> State prevailing wage laws are highly dissimilar. They are alike only in that all of them set some level of super-minimum wage rates for construction workers on public works. Even those state prevailing wage laws patterned on the federal Davis-Bacon Act usually contain concepts, definitions, procedures, or rules so changed from the original that no standard form can be said to exist. The thirty-five little Davis-Bacon acts (those of thirty-four states plus that of the District of Columbia) are all effectively different, tied together by little more than a common name. [A. Thieblot, Jr., *Prevailing Wage Legislation: The Davis-Bacon Act, State "Little Davis-Bacon" Acts, the Walsh-Healey Act, and The Service Contract Act* 137 (Labor Relations and Public Policy Series No. 27, University of Pennsylvania 1986).]

The methodology mandated by the New York State labor law, in particular, varies from the DOL methodology for determining Davis-Bacon wage rates in ways that tend to result in State-determined wage rates that are higher than the Davis-Bacon rates. As amended in 1983, section 220 of the New York State Labor Law defines "prevailing rate of wage" as:

> the rate of wage paid in the locality, as hereinafter defined, by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed. The prevailing rate of wage shall be annually determined * * * In the event that it is determined after a contest, as provided in subdivision six of this section, that less than thirty percent of the workers, laborers or mechanics in a particular trade or occupation in the locality where the work is being performed receive a collectively bargained rate of wage, then the average wage paid to such workers, laborers or mechanics in the same trade or occupation in the locality for the twelve-month period preceding the fiscal officer's annual determination shall be the prevailing rate of wage. Laborers, workers or mechanics for whom a prevailing rate of wage is to be determined shall not be considered in determining such prevailing wage. [NY Lab. law § 220, subdivision 5a (McKinney)]

Only employers may contest a wage determination:

> An employer may contest a determination by the fiscal officer under paragraphs a and c of subdivision five of this section. The employer must allege and prove by competent evidence, that the actual percentage of workers, laborers and mechanics is below the required thirty per centum and during the pendency of any such contest and until final determination thereof, the work in question shall proceed under the rate established by the fiscal officer. [*Id.* subdivision 6]

As a result of the 1983 amendments, the following differences in methodology between New York State and Davis-Bacon wage rates tend to result in higher State-determined wage rates:

1. New York State establishes as prevailing the rates paid to 30 percent of the workers in the trade in the locality if they are subject to collective bargaining agreements, although the remaining 70 percent of the workers may be receiving lower wage rates. In contrast, the majority of the workers in a trade must be paid at the same rate in order to establish that rate as prevailing for Federal Davis-Bacon purposes; if the same wage rate is not paid to a majority, the Davis-Bacon prevailing wage is the average of the wages paid, weighted by the total employed in the trade. 29 CFR 1.2(a)(1).

2. The New York law does not require a survey to determine whether the collective bargaining agreements considered by the State actually cover at least 30 percent of the workers in the trade, nor does it specify the methodology by which such a survey would be conducted; rather, it places the burden on employers to individually challenge wage determinations. Accordingly, it is likely that New York State determinations may represent collectively bargained wage rates paid to *less* than 30 percent of the employees in the locality.

3. In the absence of a separate collectively bargained wage rate for "residential" structures (apartment buildings of up to four stories) in areas where there is little or no union activity on this type of construction, the State will require payment of the higher collectively bargained "building" wage rates, although Davis-Bacon wage determinations, as a result of a survey of local rates and practices, would recognize separate "residential" wage rates as prevailing for such structures.

For these reasons, the New York statute mandates wages that bear little resemblance to rates determined by the Federal government to prevail in areas where a small percentage of workers in a given trade are subject to collective bargaining agreements.

HUD received two comments concerning Alaska, one suggesting that the preemption rule would have a devastating effect due to the high cost of living and high unemployment there, and the other requesting special consideration for Alaska because of its significantly higher cost of living and correspondingly higher State wage rates. As noted above, however, Federal wage rates are required by law to reflect the wage rates already prevailing in the locality. Accordingly, the final rule does not include any special provisions for Alaska.

The Massachusetts Secretary of Labor and Commissioner of Labor and Industries filed a comment opposing the proposed rule. However, the rule will have no effect upon Massachusetts, because that State's highest court has ruled that, in enacting the State prevailing wage law, the legislature did not intend that it apply to federally funded public housing projects. *Commissioner of Labor v. Boston Housing Authority*, 345 Mass. 406, 188 N.E.2d 150 (1963).

**Authority to Preempt**

Several comments addressed HUD's authority for preempting the application of State prevailing wage rates on HUD-

assisted PHA projects. A few comments suggested that there is no Congressional intent to preempt State prevailing wage laws or that there is Congressional intent not to preempt those laws. Several comments cited the provision in section 12 of the USHA requiring payment of "not less than" the Federal rates as evidence that the Federal rates are a minimum only; two comments suggested that an amendment to the USHA in 1949 that for the first time added the "not less than" language was significant in that it incorporated the "fundamental" Davis-Bacon concept that the Federal wages are a floor rather than a ceiling. These comments further suggest that the statutory purpose of the USHA is not frustrated by the imposition of higher State wage rates. Specifically, they state that nothing in the USHA suggests Congress intended its statutory purpose to be accomplished at the expense of locally prevailing wage standards; rather, Congress expressly provided that laborers and mechanics on HUD-assisted PHA development and operation are entitled to the local prevailing rate. The comments also refer to the States' long and deep statutory concern about payment of prevailing wages.

A discussion of the legal basis for preemption of higher State-determined prevailing wage rates on HUD-assisted PHA projects was set out in the preamble to the proposed rule and need not be repeated in detail here. HUD's determination to preempt higher State wage rates is made under its responsibility to carry out the Congressional purpose of the USHA as a whole, and is based on its determination that the imposition of higher State rates on public and Indian housing projects assisted under the Act conflicts with the Act. The overall purpose of HUD's assistance under the Act is to maintain the lower income character of public and Indian housing projects and assure that they continue to be available to serve lower income families. *See, e.g.*, USHA, sections 5, 9 and 14. The Act also declares that it is the policy of the United States to employ its funds and credit, as provided in the Act, to assist the States and their political subdivisions to "remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income" and, consistent with the objectives of the Act, to vest in local PHAs the maximum amount of responsibility in the administration of their housing programs. USHA, section 2. The imposition on a project of State wage rates that exceed the Federally-determined prevailing wage rates establishes an excessive wage floor, and these higher wage costs must ultimately be funded with HUD assistance through the acceptance of higher bids or proposals or payment of higher wages to PHA or IHA employees. Since Federal funds are limited, the number of lower income housing units to be constructed, maintained, modernized or repaired is lowered, thus frustrating the purpose of the Act. Another effect of the imposition of higher State wage rates can be to force a cutback in the cost and quality of materials and supplies because of the greater proportion of project costs required for the labor component, a result equally inimical to the purposes of the USHA. Finally, in providing for locally prevailing wage rates, Congress in section 12 of the Act specifically requires a determination or adoption by the *Federal* government of rates reflecting the locally prevailing practice.

To summarize, HUD's basis for preempting State prevailing wage laws is that application of the State laws conflicts with the requirements of the Act and stands as an obstacle to the execution of the purposes and objectives of the Act. HUD does not preempt simply because the State laws impose some additional costs on PHA/IHA projects. Rather, HUD has determined that the aggregate impact of the substantial increase in expenditures resulting from application of such laws seriously impairs the Department in discharging its statutory responsibility to provide and maintain lower income housing.

In specific response to the above comments, HUD agrees that Congress did not intend its statutory purpose to be accomplished at the expense of locally prevailing labor standards and that Congress explicitly provided for such standards. However, Congress' provision in section 12 of the USHA for wages meeting such standards specifically requires a determination or adoption by the *Federal* government of rates reflecting the locally prevailing practice. Adoption of the rule preempting higher State rates clearly leaves in place the protection of locally prevailing wage standards, determined or adopted by the respective Federal agencies as Congress required.

While there is evidence that Congress in the Davis-Bacon Act and related provisions intended to permit employers (whether as the result of negotiations or voluntarily) to pay higher than the Federally determined wage rates, HUD is aware of no legislative history indicating that Congress intended for the States to be free to compel the payment of such higher rates in Federally-funded PHA/IHA projects. Congressman Bacon of New York, the Davis-Bacon Act's sponsor in the House, stated that the Act

> does not put the Government in the position of price fixing or of anticipating wage levels * * *. It leaves that to employer and employee, where it belongs. [74 Cong. Rec. at 6511, February 28, 1931]

Thus, to construe the statute as permitting State-compelled higher rates would not only undercut Congress' grant of express authority to the Federal government to determine prevailing wage rates, but would also interfere with private bargaining which can result in rates higher than the Federally-determined minimum and lower than the State-mandated rate.

HUD recognizes that some States may have long evidenced a statutory concern about payment of prevailing wages. However, the relative importance to a State of its own law is not material when the state law conflicts with Federal law. See *Felder v. Casey*, 56 USLW 4689, 4791 (1988). In any event, this rule preempts only those State prevailing wage rates that certain States have made applicable to PHA/IHA projects receiving HUD assistance, and only to the extent that any of the rates for specific trades on a project exceed the corresponding Federal wage rates. The rule is narrowly drawn to eliminate the conflict with the USHA that is posed by State mandating of higher wage floors. States remain free to impose as well as enforce on HUD-assisted PHA/IHA projects those State rates that are equal to or lower than the corresponding Federal wage rates; more importantly, the rule in no way affects the States' ability to enforce their own State-mandated wage rates on the vast majority of State public works projects that is the subject of the States' traditional concern—*i.e.*, every "public work" except Federally-funded PHA/IHA projects.

Related to the matter of the States' concern with setting wage rates is the concept of federalism, which two comments from labor organizations suggest runs counter to the proposed rule. The comments point out the Supreme Court's affirmation of the value of permitting each State to be its own "laboratory for experimentation", and one of the comments cites several Federal labor standards statutes that explicitly permit or acknowledge the authority of the States to enact and enforce equivalent or higher standards. The comment also cites the Tenth Amendment to the Constitution ("The

powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

The concept of federalism is integral to, and not apart from, the determination of a Federal agency's authority to preempt state law in carrying out its responsibility to implement a Federal law that was within the U.S. Congress's constitutional authority to enact. Thus the legal basis upon which HUD relies in preempting higher State wage takes the concept of federalism into account in determining the permissible scope of preemption. The Supreme Court, in *Lawrence County v. Lead-Deadwood School District No. 40–1*, 469 U.S. 256 (1985), upheld the preemption of a State statute where a Federal statute provided that a local government recipient of Federal payments in lieu of taxes "may use the payment for any governmental puprose"; the State statute held to be preempted required local governments to distribute payments in lieu of taxes in the same way they distribute general tax revenues, likely resulting in a windfall for entities such as schools that were already fully funded by local revenues. In determining that the statute was preempted, the Supreme Court rejected "federalism" arguments opposing Federal intrusion into a State's efforts to provide fiscal guidance to its subdivisions, and noted that under the Spending Clause of the Constitution, Congress may impose conditions on the receipt of Federal funds absent some independent constitutional bar. There is no area in which the State's police and health-and-welfare authority is greater than in connection with its schools, or in which its core government functions are greater than in providing fiscal direction to its local governmental subdivisions. Nonetheless, in *Lead-Deadwood*, the Supreme Court determined that a State law mandating the manner of revenue allocation by its subdivisions, and clearly designed, from the State's perspective, to benefit school systems in counties receiving aid in lieu of taxes, was preempted. Thus, even if wage and hour standards are viewed as areas of traditional State concern, the result in *Lead-Deadwood* indicates this matters not in considering whether the Federal goal of providing an adequate supply of lower-income housing would be frustrated by imposition of higher State wage rates, or in determining that Federal preemption is a legitimate response to such frustration.

HUD notes that the fact that Congress has, in other labor standards statutes, permitted a State to enact or enforce equal or stricter standards does not suggest that the same applies to the USHA, where Congress has *not* provided for higher State wage rates. Congress' principal purpose in enacting the USHA was to remedy an acute shortage of decent, safe and sanitary lower income housing, maintain the lower income character of PHA and IHA projects and assure their continued availability to serve lower income families. Application of State-compelled wage rates would clearly frustrate this purpose.

A State agency comment questioned HUD's authority to override State wage and hour laws by regulation. As discussed in the preamble to the proposed rule, HUD's preemption in the narrow circumstances set out in the rule is authorized where State law stands as an obstacle to the accomplishment and execution of the purposes of the USHA, and in those circumstances the U.S. Supreme Court has indicated that Federal regulations have no less preemptive effect than Federal statutes, regardless of express Congressional authorization to displace State law.

Another State agency commenting in opposition to the proposed rule cited Congress' desire to preserve as much local autonomy as possible, as evidenced by the statement in section 2 of the USHA that one of the Act's purposes was "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs" (42 U.S.C. 1437) and by a 1949 Senate report stating that "the primary responsibility for the provision of low rent housing is in the hands of the various localities" with a limited Federal role.

Vesting of the maximum amount of responsibility in PHAs is unquestionably one of the policies of the Act. Contrary to the comment, however, this Congressional policy supports, rather than conflicts with, the preemption of State-mandated wage rates, which *furthers* the goal of local autonomy. Moreover, the overwhelmingly favorable comments from PHAs support this view. Preemption under the proposed rule would *eliminate* requirements imposed by the State on the local PHA/IHA. One PHA in New York State commented that "[t]his proposed rule should be considered as an additional step towards decontrol [of PHAs]." Another commented that while, from their observation, the difference in wage scales was minimal, these mandates have caused serious and controversial negotiations with contractors, delays in getting programs started and an "overall nuisance" in the bidding process. In any event, HUD notes that the policy of vesting the maximum amount of responsibility in local PHAs is established by section 2 of the USHA only to the extent "consistent with the objectives of this Act." There is no conflict with this policy in a rule which preempts State requirements that are inconsistent with the stated goal of remedying the acute shortage of lower income housing.

One State agency commented that under the law of the State, the agency is required to bring suit to enjoin the award of a contract, or any further work or payments thereunder where the contract is already awarded, if a public authority has not included a schedule of the (State) prevailing wages in its contracts for public works. The State agency suggested that the proposed rule would therefore lead to an expensive and time-consuming legal battle that would defeat HUD's objectives by causing delays and additional legal costs. HUD notes that the rule does not direct the PHA/IHA to physically exclude State wage rates from the contract; the contract must, however, indicate that any State rates that exceed the Federal rates are inapplicable to the contract and unenforceable. Assuming, however, that the State law would still otherwise require some State legal enforcement action in these circumstances, the rule would prohibit enforcement of preempted State requirements whether or not they were included in the contract. There shoyld not be any expensive and time-consuming State challenges because the rule would preempt any State law that would require legal action or other enforcement of the higher State rates, as a matter of law, thereby eliminating the asserted duty under State law to bring suit to enjoin contract award or work or payments under the contract.

A labor organization comment asserted that HUD does not allege an inherent conflict between the Federal and State laws in question, but rather a conflict by virtue of the manner in which the prevailing wage provisions of the respective statutes are interpreted and applied, and that the labor organization knew of no reported case involving preemption on the grounds that the respective regulatory schemes were not harmonious under the particular facts of a specific case. As indicated above, HUD believes there is an inherent conflict here between the Federal and State laws. Moreover, HUD notes that this comment cites no case suggesting that preemption is warranted only where an obstacle to the

accomplishment of the Federal statutory purpose is "inherent" in the State and Federal laws, but is unwarranted where the same obstacle results from the manner in which the respective statutes are interpreted and applied. In fact, a recent Supreme Court case repeats the established rule that preemption may be based upon the *effect* a State law, neutral on its face, has upon a Federal objective. *Felder* v. *Casey*, 56 USLW 4689 (1988). The effect of State laws that prescribe higher-than-Federal wage rates is to divert funds from the provision or maintenance of a greater number of lower income housing units to the payment of higher wages and thus obstruct the Federal objective.

**Effect on Competition**

Several comments concerned the proposed rule's effect on competition. The Chief Counsel for Advocacy of U.S. Small Business Administration commented that if HUD believes the impact of the rule is not expected to be significant in terms of both the number of small entities affected and the magnitude of the expected savings, HUD's Regulatory Flexibility Act certification accompanying the final rule should at least recognize that the changes brought about by the rule will clearly be beneficial to small businesses. The Chief Counsel stated that regulatory reform which reduces disparities caused by artificially inflated wage determinations can reasonably be expected to encourage greater small business participation in bidding on PHA projects, since many small firms have foregone bidding on public projects because of dislike for having to maintain a two-tier wage system with "higher wages for regulated projects and competitive wages on private projects". A trade association commented that the proposed rule is a step toward making the procurement process more competitive and would encourage more subcontractors, the overwhelming majority of which are small businesses, to take part. Another trade association commented that individual state laws are creating determinations of "prevailing" wages that are not true ongoing wages in a locality, and that such laws discriminate against small contractors because they are unable to compete with the capabilities and resources of larger firms to comply with such "inflated" rates and their paperwork requirements. Five PHAs also indicated that the proposed rule would stimulate competition. On the other hand, as noted earlier, a labor organization in New York State commented that the proposed rule would have an adverse effect on competition in bidding on PHA work by effectively precluding contractors that are parties to collective bargaining agreements from competitive bidding for such work, since in general the wage rate determined under New York law is the collectively bargained rate.

HUD recognizes that when a State law designates a collectively bargained wage rate as prevailing in a locality and the Federal government determines that a lower wage rate prevails, some contractors that are contractually bound to pay at the level of the State-determined wage rates would be competitively disadvantaged, since their labor costs would be reflected in an overall higher bid on the job, as the comment of the New York labor organization suggests. This may be an unavoidable effect on preempting State laws that would otherwise require HUD to fund excessive wage floors through the acceptance of higher bids or proposals for PHA work. In any event, the other comments cited support HUD's conclusion that the overall effect of the rule would be to increase competition because it would lead to a net increase in the number of firms willing to bid on PHA/IHA work at the Federally determined wage rates once higher State wage rates are preempted.

**Proposals for Alternatives and Modifications to the Proposed Rule**

Several comments suggested modifications or alternatives to the proposed rule or requested clarifications of the rule. Several PHAs in California and a regional association commented that the final rule should clarify whether or not Department of Labor (DOL) wage rates include fringe benefits, and the effect of these benefits upon the issued wage rate, *i.e.*, whether their value is in addition to, apart from, or to be subtracted from the Davis-Bacon wage rate.

In the context of this rule, DOL wage rates are the "Davis-Bacon" wage rates. Davis-Bacon wage rates include fringe benefits where DOL determines that more than 50 percent of the employees in the craft in the locality receive fringe benefits; in other areas Davis-Bacon wage rates do not include any fringe benefits and reflect only the prevailing basic hourly rate. See, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Davis-Bacon Construction Wage Determinations Manual of Operations* 63–65 (1986). Davis-Bacon wage rates that include fringe benefits so indicate and Federal law and regulations require that the fringe benefits must be provided or the hourly monetary equivalent listed in the DOL wage determination must be added to the basic hourly rate paid to the workers. HUD believes it is unnecessary for the final rule to include this explanation of what Davis-Bacon/DOL rates contain, however, because each DOL wage decision itself indicates whether fringe benefits are included in the wages that must be paid. As the proposed rule and its preamble indicated, State wage rates would be preempted on work that is subject to Davis-Bacon wage rates if the total State wage rate—including fringe benefits, if any, as well as basic hourly rate—exceeds the total DOL wage rate—including fringe benefits, if any, and basic hourly rate. The final rule has not been changed in this regard. Thus, where a State rate includes fringe benefits and the DOL rate does not (because DOL has determined that fringe benefits do not prevail for that trade in that locality), the total State rate including fringe benefits will be compared to the basic hourly rate determined by DOL to be prevailing, and will be preempted if it exceeds the DOL rate.

The same PHAs also commented that the issue of wage rates for apprentices and the ratio of apprentices to journeymen should also be addressed in the final rule. In addition, a New York State PHA commented that HUD, in conjunction with DOL and the Equal Employment Opportunity Commission, should consider preemption of New York State Labor Law section 220 to the extent that it precludes the payment of lower-than-journeyman State-determined wage rates to trainees enrolled under Federally-approved trainee programs. The PHA cited the case of *Monarch Electrical Contracting Corporation v. Roberts*, 510 N.E.2d 795, 517 NYS.2d 711, 70 NY2d 91 (NY Ct. of App. 1987), in which the Court of Appeals of New York held that section 220 recognized only two categories of workers—journeymen and State-registered apprentices—thus precluding payment of apprentice-level wage rates to trainees notwithstanding their participation in a U.S. DOL-registered trainee program. The court in that case indicated that the trainee program was functionally equivalent to an apprenticeship program but was designed in its entrance requirements to promote minority group participation, and invited the legislature to reexamine section 220, noting that its application "unexpectedly frustrates the very important policy of reducing discrimination in the workplace."

Apprentice and trainee wage rates and the allowable ratio of apprentices or

trainees to journeymen are not set out in Davis-Bacon wage determinations; they are set out in the apprenticeship program approved by the DOL Bureau of Apprenticeship and Training or a State Apprenticeship Agency recognized by the Bureau, or in the trainee program certified by the DOL Employment and Training Administration, although States may also legislate ratios. Apprentice and trainee wage rates are generally expressed as percentages of the DOL determined (journeymen) Davis-Bacon rate. The proposed rule did not address the issue of apprentice or trainee ratios because HUD did not intend to preempt State non-wage labor standards. In any event, HUD does not view as a significant difficulty the possibility that a State-legislated ratio might allow a lower proportion of apprentices or trainees than the relevant apprenticeship or trainee program. Accordingly, the final rule is unchanged in this regard.

With regard to the wage rates of apprentices and trainees, the final rule has been clarified in response to the above comments by referring explicitly to wage rates for apprentices and trainees under approved programs (in addition to the DOL-determined rates) on work that is subject to Davis-Bacon wage rates.

One PHA requested clarification as to whether other funds used in the development or operation of a public housing project, such as Community Development Block Grant, Emergency Shelter Grant or other HUD program funds, Farmers Home Administration funds, or State and local funds, would be subject to the preemption rule.

HUD does not intend that higher State wage rates be preempted unless the work in question is assisted in whole or in part with assistance for lower income public housing under the USHA. Thus, for example, modernization work funded in part with CIAP funds under section 14 of the USHA and in part with State funds would be subject to the preemption provisions of the rule; however, HUD does not intend that work on HUD-assisted public housing would be subject to preemption of State wage rates if the work in question is assisted entirely by, *e.g.*, State funds, Community Development Block Grant funds, or private donations. Accordingly, in those parts of the regulations that otherwise cover work that may receive no HUD assistance for public housing under the USHA (Parts 905 and 965), the final rule has been revised to exclude such non-USHA assisted work from the preemption provisions; no revision has been made in this regard to the final rule provisions in Parts 941 and 968, since those parts only cover work that is at least partially assisted with USHA assistance for public housing. HUD notes that section 12 of the USHA requires the payment of at least HUD-determined rates in the operation of the project and Davis-Bacon rates in the development of the project, without regard to the source of funds for the specific work involved.

The same PHA suggested that all HUD programs be subject to the preemption rule, and that the Community Development Block Grant and Emergency Shelter Grant programs were also intended to be administered in an efficient and economical answer to assure assistance to the greatest number of low income families. HUD has not adopted this suggestion because it is beyond the scope of this rulemaking, which is limited to work on public housing projects that are receiving assistance under the public housing programs of the USHA.

Two New York State PHAs commented that the rule should be expanded to preempt New York State Housing Law section 32, which requires the compensation fixed by the PHA for its officers, agents and employees to be approved by the local legislative body. The argument for such preemption was that some local governments may not be willing to approve salaries guaranteeing the best qualified workers.

HUD presumes that section 32 is intended to govern compensation for executive and administrative PHA personnel rather than laborers and mechanics who may be subject to the New York State prevailing wage law. The issue of compensation for executive and administrative personnel is outside the scope of this rule. HUD notes that such compensation has long been addressed by a provision in the Annual Contributions Contract between HUD and a PHA, which requires adoption of a statement of personnel policies, including salary and wage rates, that are comparable with pertinent local public practice.

One PHA commented that if the proposed rule is adopted, HUD must take into consideration local market conditions, trends, and adjustments in States with prevailing wage statutes in order to compete with trades that might be drawn away as a result of a higher wage scale in a specific trade. Another PHA, while supporting the rule, suggested the possibility of not receiving an adequate number of well qualified bidders on construction projects due to lower wage rates. HUD believes no modification to the proposed rule is warranted in this regard for two reasons. First, adoption of the rule leaves Federal wage rates, which are by definition a determination of the prevailing wage rates, applicable to PHA work. Second, this rule does not impose a cap on what PHAs or contractors may choose to pay their employees.

A housing and redevelopment association proposed several modifications to the rule. First, the association stated that various pressures could force PHAs to continue to pay (higher) State determined rates even with preemption in place, *e.g.*, because city and State funds will also be used on the project or because contracts and workers could be lost to competition with local government's housing construction or modernization. The association suggested that in these situations, PHAs should be provided a special waiver or an assurance that HUD will allow the costs of paying the State wages.

HUD believes no modification to this rule to include a special waiver is necessary. A State law that requires State-determined prevailing wage rates on public housing projects in general applies with no less force when solely Federal funds are used than when a mixture of Federal and State or city funds is used to carry out specific work on a HUD-assisted project, and the preemptive force of this rule is the same in both cases. However, neither the prevailing wage provisions of section 12 of the USHA nor this rule precludes a PHA (or its contractors) from paying rates higher than the Federally-determined prevailing wage for the locality.

For purposes of clarifying this point, HUD has decided to add provisions to the rule to state explicitly that the rule will not affect the applicability of wage rates established in collective bargaining agreements where the rates equal or exceed the Federal wage rate, nor does the rule impose a ceiling on wage rates the PHA or IHA or its contractors or subcontractors may choose to pay independent of State law. With regard to HUD allowance of the costs of paying the State wages, HUD budgetary review is not governed by this rule; PHA and IHA operating budgets are reviewed in accordance with outstanding instructions, and the provision added to this final rule does not imply automatic HUD allowance of all wage expenses.

Second, the association, noting that PHAs and IHAs would not be required to pay their own employees at the higher State rates, asserts that the rule could

create personnel problems for employers which would be "forced to reduce salaries of employees if in fact they begin to pay the lower [Federal] wage rate to others in the same classification." The association suggests grandfathering current employees into this rule change. HUD has not adopted this suggestion. While the rule would make higher State wage rates no longer mandatory or enforceable, nothing in the rule legally "forces" PHAs or IHAs to reduce wages to no more than the Federal prevailing wage level, nor does HUD have any general administrative policy that would force such a result.

Finally, the association commented that it strongly supported the statement in the preamble to the proposed rule that applicability of wage rates established in collective bargaining agreements with a PHA or its contractors will not be affected by the rule, regardless of whether those rates equal or exceed rates determined under State or Federal law; however, the association urged that this provision be spelled out in the rule itself and clarified to state that: (1) It pertains to any current or future agreements and (2) under such circumstances, HUD will recognize cost differences between State and Federal requirements as an eligible expenditure.

As discussed above, in response to this comment and another of the association's comments, HUD has decided to incorporate a provision into each of the sections of the rule to the effect that the rule shall not affect the applicability of wage rates established in collective bargaining agreements with a PHA or IHA or its contractors or subcontractors where such wage rates exceed the applicable Federal wage rate. HUD believes it is clear that these provisions pertain to current and future agreements. HUD has also added a clause indicating that the rule does not impose a ceiling on wages the PHA or IHA or its contractors or subcontractors may choose to pay independent of State law; this provision would apply in the absence of collectively bargained wage rates. As to recognition of eligible expenditures, that issue (which appears limited to wages paid by PHAs and IHAs to their own employees) is not the subject of the regulation sections added by this rule. In any event, the proper measure of costs for which the association requests recognition is not the difference between State and Federal rates, but the actual difference between the collectively bargained rates and the Federal rates. However, the Department is not willing to commit unconditionally to recognize such cost differences as an eligible expenditure in all cases.

A New York State PHA commented that the rule should be amended to apply a residential wage rate to all housing projects and that such rate should be issued by DOL. HUD cannot adopt either suggestion in this rule. First, the application of residential rates (as opposed to "building" rates) under the Davis-Bacon related acts, which is generally limited to work on residential structures of up to four stories, is a matter for determination by DOL and not HUD. Second, Section 12 of the USHA gives HUD, rather than DOL, the authority to determine prevailing wage rates for work involved in the operation of a public housing project (including routine and non-routine maintenance work), as opposed to development of the project which is subject to Davis-Bacon rates.

A Washington State PHA commented that PHAs need to be exempted from the State prevailing wage law, since without a complete exclusion the State rates must be requested and included in the bid documents, the contractor must accurately distinguish among the wage exhibits that which will apply, and the general contractor must submit for itself and its subcontractors "Intent to Pay Prevailing Wages" documents and "Affidavits of Wages Paid" at $12.50 each payable by the PHA. HUD has not adopted this suggestion because HUD does not view inclusion of State-determined prevailing rates that are equal to or lower than Federal wage rates as an obstacle to the purposes of the USHA; accordingly, HUD does not view State monitoring and enforcement of such State rates as in conflict with the USHA. However, HUD notes that the rule provides that State prevailing rates may not be enforced against contractors or subcontractors. To the extent that the State rates on a project exceed the corresponding Federal rates, HUD takes the position that it would be contrary to this provision in the rule for a State to require a contractor to submit a statement that it intends to pay the higher State rate.

**Comparison of Certain State Wage Rates to Federally-Determined Wage Rates**

The preamble to the proposed rule did not provide examples of the differences between Federally-determined prevailing wage rates and State-determined wage rates in the State of Washington. However, HUD has now had an opportunity to develop information regarding these differences in Washington State. For five common trade classifications in three principal counties, the following chart shows the differences between HUD-determined, Davis-Bacon, and State-determined wage rates which would be applied to residential (up to four story) construction, and indicates the percentage difference between Davis-Bacon and State rates (Column 4) and HUD-determined and State rates (Column 5):

| Trade | HUD rates[1] | Davis-Bacon rates | State rates | Percentage by which State rates exceed Davis-Bacon rates | Percentage by which State basic hourly rates exceed HUD rates[2] |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| King County: | | | | | |
| Bricklayers | $13.95 | $12.48 | $21.73 | +74.1 | +33.0 |
| Carpenters | 13.95 | 13.66 | 13.30 | −2.6 | −4.7 |
| Electricians | 13.95 | 11.505 | 15.08 | +31.1 | −5.0 |
| Painters | 11.20 | 11.02 | 14.66 | +33.0 | +30.9 |
| Plumbers | 13.95 | 12.70 | 14.12 | +11.2 | −23.9 |
| Pierce County: | | | | | |
| Carpenters | 12.38 | 16.45 | 12.56 | −23.6 | +1.5 |
| Cement Masons | 12.38 | 12.89 | 21.86 | +69.6 | +48.7 |
| Electricians | 12.38 | 13.38 | 21.64 | +61.7 | +51.1 |
| Painters | 11.085 | 11.87 | 12.50 | +5.3 | +12.8 |
| Plumbers | 12.38 | 11.24 | 14.12 | +25.6 | −14.2 |
| Spokane County: | | | | | |
| Carpenters | 12.16 | 13.29 | 11.36 | −14.5 | −6.6 |
| Cement Masons | 12.16 | 13.58 | 19.92 | +46.7 | +30.9 |

| Trade | HUD rates[1] | Davis-Bacon rates | State rates | Percentage by which State rates exceed Davis-Bacon rates | Percentage by which State basic hourly rates exceed HUD rates[2] |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| Electricians | 12.16 | 10.61 | 21.93 | +106.7 | +48.0 |
| Painters | 9.91 | 9.57 | 9.55 | −0.2 | −3.6 |
| Plumbers | 12.16 | 12.20 | 11.72 | −3.9 | −23.7 |

[1] Wage rates assigned to classifications through conformance based on position descriptions.
[2] Some State-determined wage rates include fringe benefits as well as basic hourly rates. Since HUD rates do not include fringe benefits, this column compares the State rates in Column 3 less any fringe benefits determined as part of the State rate, to HUD rates. This methodology was also incorporated in the proposed rule for purposes of determining whether preemption of State-determined wage rates would occur on work that is subject to HUD-determined wage rates, and has been adopted in the final rule as well.

*Data Sources: (As in effect May 2, 1988, except for HUD rates in Pierce County, which became effective July 1, 1988):*
HUD Maintenance Wage Rate Schedules (Seattle, Pierce County, Spokane).
U.S. Department of Labor Wage Decisions WA 88-4 (King County), 88-WA-0024 (Pierce County), 87-WA-0156 (Spokane County).
State of Washington Prevailing Minimum Hourly Wage Rates.

HUD has also updated its information regarding the extent to which rates determined by the State of California exceed Federally-determined wage rates in certain counties. The updated information, showing wage rates in effect as of March 1, 1988, covers a number of common trade classifications for PHA projects in three California urban counties—Sacramento, San Diego and San Francisco Counties:

| Trade | HUD rates[3] | Davis-Bacon rates | State rates | Percentage by which State rates exceed Davis-Bacon rates | Percentage by which State basic hourly rates exceed HUD rates[4, 6] |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| Sacramento County: | | | | | |
| Bricklayer | $12.52 | $31.05 | $23.96 | −22.8 | +56.9 |
| Carpenter | 12.52 | 25.995 | 26.47 | +1.8 | +52.4 |
| Cement Mason | 12.52 | 25.12 | 25.09 | −0.1 | +51.0 |
| Drywall Hanger | 12.52 | 26.485 | 27.47 | +3.6 | +56.4 |
| Electrician | 12.52 | 22.75 | 20.55 | −9.7 | +37.8 |
| Laborer (Gen.) | 7.40 | 22.32 | 22.12 | −0.9 | +119.0 |
| Painter | 12.52 | 22.04 | 23.14 | +5.0 | +41.1 |
| Plasterer | 12.52 | 25.56 | 25.55 | 0 | +37.8 |
| Plumber | 12.52 | 29.37 | 28.84 | −26.8 | +32.6 |
| PEO (Group 1) | NA | 33.87 | 33.87 | 0 | NA |
| San Diego County: | | | | | |
| Bricklayer | NA | 23.45 | 23.95 | +2.1 | NA |
| Carpenter | 10.85 | 19.54 | 25.60 | +31.0 | +83.4 |
| Cement Mason | NA | 24.23 | 24.23 | 0 | NA |
| Drywall Hanger | 10.85 | 20.28 | 23.65 | +16.6 | +79.2 |
| Electrician | 10.85 | 15.48 | 23.53 | +52.0 | +79.3 |
| Laborer (Gen.) | 9.52 | 22.24 | 22.59 | +1.6 | +61.6 |
| Painter | 9.52 | 23.04 | 25.13 | +9.1 | +106.6 |
| Plasterer | 10.85 | 19.96 | 23.21 | +16.3 | +59.2 |
| Plumber | 10.85 | 30.90 | 30.30 | −1.9 | +125.0 |
| PEO (Group 1) | NA | 26.80 | 26.79 | 0 | NA |
| San Francisco County: | | | | | |
| Carpenter | 19.95 | 27.48 | 29.10 | +5.9 | +8.8 |
| Cement Mason | 19.95 | 25.12 | 25.09 | −0.1 | −5.2 |
| Drywall Hanger | 19.95 | 28.615 | 29.60 | +3.3 | +8.8 |
| Electrician | 21.54 | 35.57 | 36.67 | +3 | +22.6 |
| Laborer (Gen.) | 14.33 | 23.32 | 23.12 | −0.9 | +20.1 |
| Painter | 18.55 | 25.46 | 28.51 | +10.7 | +24.1 |
| Plasterer | 18.55 | 30.96 | 31.48 | +1.7 | +22.2 |
| Plumber | 21.75 | 43.51 | 42.40 | −2.6 | +23.4 |
| PEO (Group 1) | NA | 33.87 | 33.87 | 0 | NA |

[3] Wage rates assigned to construction classifications through conformance based on position descriptions.
[4] See footnote 2.
[5] Wage rates assigned to Bricklayer, Cement Mason, Drywall Hanger and Plasterer based on conformance.
[6] See footnote 2.

*Data Sources: (as in effect on March 1, 1988):*
HUD Maintenance Wage Rate Schedules (Sacramento, and San Francisco and San Diego Counties).
U.S. Department of Labor General Wage Determinations CA88-1/2 (San Diego County) and CA88-4/2 (Sacramento and Francisco Counties).
State of California General Prevailing Wage Determination (Statewide).

These data are presented as a further indication that in some cases, State-determined wage rates substantially exceed the Federally-determined prevailing wage rates that would be applicable work to PHA projects.

## Cross References

As a technical matter and for ease of reference, the Department has

determined to cross-reference the new paragraph § 941.503(d) and § 968.19, respectively, by adding an additional sentence at the end of existing paragraph (d) (Prevailing wages) of § 941.208 and a new paragraph (4) to paragraph (h) (Wage rates) of § 968.9.

**Other Matters**

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule could affect the wage rates payable by small business construction firms, or the competitive position of such firms that choose to continue to pay higher wage rates that would no longer be required; it is also expected to result in a net increase in the number of small businesses bidding for work on PHA projects and therefore is expected to be beneficial to small businesses. However, it would only affect firms bidding on certain PHA and IHA projects in the small number of States with applicable rates exceeding the corresponding Federal rates, and contracts for work on such PHA and IHA projects would generally comprise only a part of the firms' total business.

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

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

This rule was listed as Sequence Number 1037 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854), under Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects in 24 CFR Parts 905, 941, 965, and 968**

Energy conservation, Grant programs: Housing and community development, Grant programs: Indians, Home ownership, Indians, Loan programs: Housing and community development, Loan programs: Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, 24 CFR Parts 905, 941, 965 and 968 are amended as follows:

## PART 905—INDIAN HOUSING

1. The citation of authority for Part 905 continues to read as follows:

**Authority:** Secs. 3, 4, 5, 6, 9, 11, 12, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (d) is added to § 905.211, as follows:

**§ 905.211 Contracts in connection with development.**

* * * * *

(d)(1) A prevailing wage rate determined under State or tribal law shall be inapplicable to the development of a Project whenever:

(i) The development of the Project: (A) Is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing and (B) is assisted with funds for lower income public housing under the Act; and

(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State or tribal law to be prevailing with respect to an employee in any trade employed in the development of a Project exceeds: (A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade, (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for development of the Project shall include a statement that any prevailing wage rate determined under State or tribal law to be prevailing with respect to an employee in any trade employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever such prevailing wage rate exceeds:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade,

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The IHA itself shall not be required to pay any prevailing wage rate determined under State or tribal law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the Project; and

(iii) No prevailing wage rate determined under State or tribal law and described in paragraph (d)(1)(ii) shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the development of the Project.

(3) Nothing in this paragraph (d) shall affect the applicability of any wage rate established in a collective bargaining agreement with an IHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable prevailing wage rate determined by the Secretary of Labor or an applicable apprentice or trainee wage rate based thereon, nor does this paragraph (d) impose a ceiling on wage rates an IHA or its contractors or subcontractors may choose to pay independent of State law.

(4) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of an IHA on or after October 6, 1988.

3. A new § 905.314 is added, as follows:

**§ 905.314 Preemption of State or tribal prevailing wage requirements.**

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to a contract or IHA-performed work item for the maintenance or improvement of a Project whenever:

(1) The contract or work item: (i) Is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing and (ii) is assisted with funds for lower income public housing under the Act; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the maintenance or improvement of a Project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276 *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for maintenance or improvement of the Project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to any employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds:

(A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq*) to be prevailing in the locality with respect to such trade;

(B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or

(C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) to any of its own employees who may be engaged in the work item for maintenance or improvement of the Project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the contract or IHA-performed work item for maintenance or improvement of the Project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with an IHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2), nor does this section impose a ceiling on wage rates an IHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of an IHA on or after October 6, 1988.

## PART 941—PUBLIC HOUSING DEVELOPMENT

4. The citation of authority for Part 941 continues to read as follows:

**Authority:** Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 941.208, paragraph (d) is revised to read as follows:

**§ 941.208 Other Federal requirements.**

* * * * *

(d) *Prevailing wages.* Participation in this program requires that not less than the wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276) shall be paid to all laborers and mechanics employed in the development of a project. All architects, technical engineers, draftsmen and technicians shall be paid not less than the wages prevailing in the locality as determined or adopted by HUD (42 U.S.C. 1437j). Prevailing wages determined under State law are inapplicable under the circumstances set out in § 941.503(d).

6. A new paragraph (d) is added to § 941.503, as follows:

**§ 941.503 Construction requirements.**

* * * * *

(d)(1) A prevailing wage rate determined under State law shall be inapplicable to the development of a project whenever:

(i) The development of the project is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State law to be prevailing with respect to an employee in any trade employed in the development of a project exceeds:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade,

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with

the Department of Labor or a DOL-recognized State Apprenticeship Agency or

(C) An applicable trainee wage rate based thereon specified in an DOL-certified trainee program.

(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development of the project shall include a statement that any prevailing wage rate determined under State law to be prevailing with respect to an employee in any trade employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever such prevailing wage rate exceeds:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade,

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The PHA itself shall not be required to pay any prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the project; and

(iii) No prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the development of the project.

(3) Nothing in this paragraph (d) shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable prevailing wage rate determined by the Secretary of Labor or an applicable apprentice or trainee wage rate based thereon, nor does this paragraph (d) impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State law.

(4) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA on or after October 6, 1988.

## PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

7. The citation of authority for Part 965 continues to read as follows:

**Authority:** Secs. 2, 3, 6, and 9, U.S. Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart H is also issued under Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846).

8. A new Subpart A, consisting of § 965.101 is added as follows:

### Subpart A—Preemption of State Prevailing Wage Requirements With Respect to Maintenance and Operation of Projects

**§ 965.101 Preemption of State prevailing wage requirements with respect to maintenance and operation of projects.**

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law shall be inapplicable to a contract or PHA-performed work item for the maintenance and operation (including modernization) of a project whenever:

(1) The contract or work item: (i) Is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing and (ii) is assisted with funds for lower income public housing under the U.S. Housing Act of 1937, as amended; and

(2) The wage rate determined under State law to be prevailing with respect to an employee in any trade or position employed in the maintenance and operation of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for maintenance and operation of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds: (A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade; (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) to any of its own employees who

may be engaged in the work item for maintenance and operation of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the contract or PHA-performed work item for maintenance and operation of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2), nor does this section impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA on or after October 6, 1988.

## PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

9. The citation of authority for Part 968 continues to read as follows:

**Authority:** Secs. 6 and 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437d and 1437*l*), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. A new paragraph (h)(4) is added to § 968.9, as follows:

**§ 968.9 Other program requirements.**

* * * * *

(h) * * *

(4) Prevailing wage rates determined under State or tribal law are inapplicable under the circumstances set out in § 968.19.

* * * * *

11. A new § 968.19 is added, as follows:

**§ 968.19 Preemption of State or tribal prevailing wage requirements.**

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to the modernization of a project whenever:

(1) The modernization of the project is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) In the case of non-routine maintenance, the wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA or IHA and any contract executed by the PHA or IHA for modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds (A) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade; (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA or IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) to any of its own employees who may be engaged in the modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) shall be enforced against the PHA or IHA or any of its contractors or subcontractors with respect to employees engaged in the modernization of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or IHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2), nor does this section impose a ceiling on wage rates a PHA or IHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA or IHA on or after October 6, 1988.

Dated: August 2, 1988.

**James E. Baugh,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 88-18083 Filed 8-9-88; 8:45 am]

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federal register

Wednesday
August 10, 1988

Part VI

# Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Final Rules and Notice of Proposed Rulemaking

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL-3427-5]**

## Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Pima County Carbon Monoxide Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This notice announces EPA's final action to approve revisions submitted by the State of Arizona on October 5, 1987; January 6, 1988; and March 23, 1988 to the carbon monoxide (CO) state implementation plan (SIP) for the Tucson CO Planning Area (Pima County). This action is based on EPA's conclusion that the control measures and attainment demonstration submitted with the plan meet the requirements of section 110 and Part D of the Clean Air Act and strengthen the existing SIP. EPA believes that the Pima CO plan includes a persuasive demonstration of timely attainment of the CO standard using all reasonably available control measures. EPA is also approving the 1986 and 1987 inspection and maintenance (I/M) legislation for both Pima and Maricopa Counties. EPA is also approving Pima County's new source review (NSR) regulations adopted on July 16, 1985 and NSR commitments consistent with EPA requirements submitted by the State of Arizona on July 22, 1988. With the full approval of the Pima SIP, EPA is lifting the construction ban on major new stationary sources and major modifications of CO sources imposed on September 23, 1986 (51 FR 33746).

**EFFECTIVE DATE:** August 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Wallace Woo, Chief, State Liaison Section (A-2-2), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634, FTS: 454-7634.

**SUPPLEMENTARY INFORMATION:**

### I. Background

A brief background of the Clean Air Act (CAA or the Act) and the history of the Pima County SIP is provided here. For a more comprehensive discussion of the relevant requirements of the CAA and EPA's regulatory actions on the Pima SIP, see the proposed approval of the SIP revision for Pima County (53 FR 14818, April 26, 1988).

The CAA amendments of 1977 required states to revise their state implementation plans by certain times for all areas that had not then attained the National Ambient Air Quality Standards (NAAQS). Part D of the CAA allowed "nonattainment" areas to provide for attainment by no later than December 31, 1982, with the addition that certain areas, in which it was "not possible," despite implementation of all reasonably available control measures, to meet that deadline for ozone and/or CO attainment demonstration, could apply for a further extension to December 31, 1987.

A large portion of Pima County was designated as nonattainment for CO on March 3, 1978 (43 FR 8970). The State submitted Pima County's initial nonattainment area plan for CO in 1978. On May 24, 1982, the State submitted a request to EPA to extend the CO attainment date in Pima County to December 31, 1987.

On July 7, 1982 (47 FR 29532), EPA took final action to approve the 1978 SIP revision on the condition that the State submit revised regulations for Pima County to meet EPA's NSR requirements. On February 3, 1984, the State submitted proposed revisions to the 1978 CO plan, including an evaluation of control options for the county, adjustments to the baseline and projected data assumptions, and a new section relating to "hotspot" control. On March 1, 1985 (50 FR 8346), EPA proposed to approve and incorporate into the SIP the CO control measures submitted by the State in 1984 but deferred action on whether the attainment demonstration and new measures met the requirements of Part D.

On July 16, 1985, the Pima County Health Department (PCHD) adopted new NSR regulations and on May 9, 1986 (51 FR 17210), EPA proposed to approve the Pima rules if the State and the PCHD submitted additional revisions to their rules to remedy certain deficiencies.

On January 27, 1986 (51 FR 3346), EPA proposed (1) to find that the Pima County CO plan, as revised in 1984, did not demonstrate attainment of the CO standard as expeditiously as practicable as required by section 172 of the CAA, and (2) based on that finding, to impose a moratorium under section 110(a)(2)(I) of the CAA on major new construction and major modifications of stationary sources of CO in the Tucson CO Air Planning Area. In the same notice, EPA also proposed to deny the State's request for an attainment date extension to December 31, 1987. On September 23, 1986 (51 FR 33746), EPA published a final notice disapproving the CO plans for both the Maricopa and Pima Counties nonattainment areas and imposed the section 110(a)(2)(I) construction ban on major new sources and major modifications to sources of CO in the two areas. In this final notice, EPA did not take action on the State's attainment date extension request.

On August 10, 1987, the U.S. District Court for the District of Arizona ordered EPA to promulgate a federal implementation plan (FIP) under section 110(c) of the CAA for CO in the Maricopa and Pima Counties nonattainment areas. The Court found that EPA's duty to promulgate a FIP arose when EPA found that the State plans were inadequate. The Court Order is the result of a citizen suit brought against EPA on April 8, 1985, by the Arizona Center for Law in the Public Interest (ACLPI).

On January 6, 1988, the State submitted to EPA the final Pima CO plan. The plan contains commitments to implement control measures by the five jurisdictions in the Pima County nonattainment area and demonstrates attainment of the CO standard by early 1990. Attainment is demonstrated with the Federal Motor Vehicle Control Program (FMVCP), the State's I/M program, existing traffic flow improvements, and programmed roadway improvements. On April 26, 1988 (53 FR 14818), EPA proposed to approve the control measures adopted by the State and local jurisdictions. Because the SIP submittal demonstrates the attainment and maintenance of the CO standard within the timeframe that EPA believes applies after 1987 by virtue of the unique circumstances of the Pima County area, EPA concluded that a FIP for Pima County would not be necessary.

### II. Plan Approval

The Pima CO plan provides for attainment of the CO standard with reasonably available control measures in 1990. The mass transit expansion and other control measures adopted by Pima County jurisdictions, as well as the I/M program approved today, and the FMVCP, will result in attainment of the standard in 1990 and maintenance consistent with the ten-year maintenance period described in EPA's November 24, 1987 proposal on post-1987 planning. In a separate section of today's **Federal Register**, EPA is proposing to approve the recently passed State oxygenated fuels program and the locally adopted travel reduction ordinances as additional measures in the Pima CO SIP. Although these new measures will not by themselves be

sufficient to advance the 1990 attainment date, they will provide extra assurances that Pima County will attain the CO standard in 1990 and maintain it thereafter. The measures that EPA is proposing to approve today will also serve the function of a contingency provision EPA might otherwise require to insure that additional reductions would be forthcoming in the event of unanticipated shortfalls in planned emission reductions.

*Inspection and Maintenance Program*

In the April 26, 1988 NPRM for this notice, EPA proposed to approve the following I/M program rules which were submitted as SIP revisions by the State on October 5, 1987: R9–3–1001 Definitions; R9–3–1003 Vehicles to be inspected by the mandatory vehicular emissions inspections program; R9–3–1005 Time of inspection; R9–3–1006 Emissions test procedure; R9–3–1008 Procedure for issuing certificates of waiver; R9–3–1009 Tampering repair requirements; R9–3–1010 Low emissions tune-up; R9–3–1011 Vehicle inspection report; R9–3–1013 Reinspections; R9–3–1016 Licensing of inspectors; R9–3–1018 Certificate of inspection; R9–3–1019 Fleet station procedures and permits; R9–3–1025 Inspection of state stations; R9–3–1026 Inspection of fleet stations; R9–3–1027 Registration of emission analyzers and opacity meters; R9–3–1028 Certification of users of registered analyzers and analyzer repair persons; R9–3–1030 Visible emissions: Mobile sources; and R9–3–1031 Standards for evaluating aftermarket catalytic converters. No comments from the public regarding the proposed approval of these rules were received. These revisions to the I/M program substantially enhance the program's effectiveness; therefore, EPA takes final action to approve these rules as part of the Arizona SIP for both Maricopa and Pima Counties.

In the NPRM, EPA also proposed to approve the following portions of 1987 Arizona State legislation (Senate Bill 1360), submitted as a SIP revision on March 23, 1988: Section 6: ARS 15–1444–C(added); Section 7: ARS 15–1627–F(added); Section 21: ARS 49–542–A(amended); Section 21: ARS 49–542–E(added); Section 21: ARS 49–542–J.3.(b)(amended); and Section 23: ARS 49–550–E(added). No comments from the public were received regarding this proposal. Because this legislation further enhances the Arizona I/M program, EPA takes final action to approve these revisions to the I/M program as part of the Arizona SIP for both Maricopa and Pima Counties.

As noted in the NPRM, EPA is allowing credit for Senate Bill 1360 emission reductions based upon the legislation, because the legislation provides specific and enforceable amendments to the State's I/M program. The State is expected to submit to EPA as a SIP revision changes to the State's regulations conforming to the legislation. These regulations will be approved in a separate **Federal Register** action.

*New Source Review Rules*

In the proposal for today's notice, EPA indicated that it was reviewing Pima's NSR rules to determine whether they could be approved in their current form in light of the deficiencies noted in EPA's May 9, 1986, proposal to approve the NSR rules (51 FR 17210). The May 9, 1986, **Federal Register** notice also identified deficiencies in the State's NSR rules, which had been proposed for approval on November 12, 1981 (46 FR 55714). EPA has concluded that the NSR rules for Pima County and the State of Arizona can now be fully approved based upon commitments by Pima County and the State of Arizona to implement their NSR rules consistent with EPA's requirements. EPA has determined that the rules as written are adequate to meet the requirements of 40 CFR 51.165(a) if certain ambiguous provisions are always interpreted consistent with EPA's requirements. The State submitted a letter for the State on June 1, 1988, and a letter for Pima County on July 22, 1988, making all of the necessary commitments. These commitment letters, which are appended to the TSD for this notice, concern stack heights, temporary sources, growth allowances, net emission decreases, reasonable further progress, volatile organic compounds, stationary sources, allowable offsets, permittee responsibility and visibility protection. Both commitment letters have been forwarded to the Office of the Federal Register for incorporation by reference into the Code of Federal Regulations as enforceable components of the Pima CO SIP. As such they are federally enforceable against both Pima County and the State of Arizona under sections 113 and 304 of the Act. The commitments are also enforceable through citizen suit under section 304 of the Act.

*Approval of Arizona H.B. 2206*

In a separate section of today's **Federal Register**, EPA is taking final action to approve SIP revisions that provide for attainment and maintenance of the carbon monoxide standard in Maricopa County and provide additional assurance of maintenance in Pima County. Two specific measures, the loaded-mode inspection and maintenance testing program and the voluntary no-drive-day program, are State mandated programs developed as SIP revisions in Arizona H.B. 2206 and submitted to EPA on July 18, 1988. A brief description of how these measures apply in Pima County follows.

A. Loaded-Mode Inspection and Maintenance Testing

Currently the Arizona I/M program passes or fails vehicles based on their exhaust emission concentrations under curb idle conditions. Section 18 of H.B. 2206 amends section 49–542 F of the Arizona Revised Statutes, to require beginning on January 1, 1989, that 1981 and newer vehicles pass both curb-idle mode and loaded-mode emissions tests. Fleet operators who have obtained a permit to test their own vehicles are allowed to substitute a 2500 revolutions-per-minute mode for the loaded-mode portion of the test to avoid the need for dynamometers at the fleet operators test sites.

EPA has calculated the expected incremental benefit of loaded testing using MOBILE3 which contains EPA's standard estimates of the I/M reductions for both idle and loaded-plus-idle testing. Inputs for average speed, registration mix, tampering/misfueling rates, and I/M stringency were those recommended by the Arizona Department of Environmental Quality (ADEQ) as being representative for Phoenix. Inputs specific to Tucson would be only slightly different and the effect on the resulting CO credit would be small. The incremental CO reduction from loaded-mode testing was calculated by EPA to be 4.0 percent in December 1991. A more complete discussion of factors related to this calculation is contained in the technical support document (TSD) for the Maricopa County CO plan approval.

B. Voluntary No-Drive-Day Program

In its proposal on the Maricopa SIP on May 16, 1988, EPA listed three criteria for approving voluntary no-drive-day programs for emissions reduction credit. These criteria are assurance of adequate annual funding, the existence of an institutional framework meeting the requirements of CAA section 172(b)(10), and the development of a monitoring program to assess and verify the impact of the program.

H.B. 2206 in section 17 requires a County with a population of more than 400,000 (effectively Pima and Maricopa Counties) to institute a voluntary no-drive-day program. With the County

having clear responsibility for implementation, the program meets the institutional requirements of CAA section 172(b)(10). H.B. 2206 also requires the ADEQ to fund the voluntary no-drive-day programs from the Air Quality Fund; therefore, long-term funding of the program is assured. Based on the legislation meeting the first two criteria, EPA is approving the voluntary no-drive-day program as part of a CO maintenance program in Pina County. Because a monitoring protocol to assess and verify the impact of the program is still lacking, EPA is not at this time proposing to approve a specific emission reduction credit for the program. Before EPA can approve a specific emission reduction credit for this measure, the State must submit a monitoring protocol for the program and any supporting documentation on the effectiveness of such a program in Pima County. Should the State submit this information, EPA will at that time revisit the issue of an emission reduction credit in the Pima SIP for a voluntary no-drive-day program.

### III. Response To Comments

EPA received letters from four commenters in response to its proposed approval of the Pima CO SIP. The legal issues raised by the ACLPI are addressed below. A summary of and complete responses to all comments can be found in the TSD for this notice.

ACLPI commented that the attainment date for the Pima area should not be three years from the date of SIP approval. ACLPI argued that after passage of the statutory Part D attainment dates, EPA should interpret the Act as requiring attainment at the soonest time, essentially without regard to practicalities, in order to implement Congressional intent in setting the original deadlines. As EPA has previously explained in full, EPA believes that after December 31, 1987, a SIP needs to demonstrate attainment no more quickly than as expeditiously as practicable but by certain fixed dates. See EPA's proposed post-1987 attainment policy, 52 FR 45044, 45049 (November 24, 1987); the proposal for today's action, 53 FR 14818, 14819 (April 26, 1988); and EPA's proposed SIP for Maricopa County, 53 FR 17378, 17381 (May 16, 1988) for a full discussion of EPA's legal interpretation.

If EPA were to accept ACLPI's position that post-1987 planning should provide for attainment at the soonest time, many post-1987 nonattainment areas would have to resort to draconian measures with drastic social and economic impacts—such as plant closings, gasoline rationing and mandatory no drive restrictions—simply because such measures are physically available to bring about attainment. EPA does not believe that Congress, if it had addressed the post-1987 nonattainment situation now being faced, would have required this result, even after passage of the Part D dates. EPA believes that Congress would instead have regarded the "as expeditiously as practicable" requirement to be still in place, albeit bounded in situations, such as that of Pima County, by fixed attainment deadlines.

ACLPI cites *American Lung Association* v. *Kean*, 18 *Envtl. L.Rptr.* 20317 (D.N.J. 1987), in support of its position. ACLPI misinterprets that case. That case in fact interprets the Act to require "SIP implementation 'as expeditiously as *practicable*' after December 31, 1987." *American Lung Association*, Id. at 20317 (emphasis added). The case does not require SIP implementation more rapidly than practicable and does not set any outside date for attainment in the event no near term date is practicable. This case is therefore consistent with EPA's position; indeed, the "as expeditiously as practicable" formulation would actually allow for a much longer attainment period in very severe nonattainment areas.

The Pima County SIP which EPA is approving today provides for attainment in early 1990, little more than 2 years after SIP approval. EPA believes that this is as expeditious as practicable and well within any outside attainment date derived from sections 110(a)(2)(A) and 110(e).

ACLPI commented that the Pima CO SIP does not provide for implementation of all reasonably available control measures as required by section 172(b)(2) of the Act. EPA has long interpreted section 172(b)(2) as requiring implementation of only those available controls necessary to provide for attainment by the applicable attainment date. This is because it would not be reasonable to require states to implement measures that, although technologically available, would not materially advance an area's attainment date. *See* EPA's General Preamble on Part D SIP preparation, 44 FR 20372, 20375 (April 4, 1979).

The Pima CO SIP provides for attainment in 1990. EPA does not believe that any combination of available controls would advance that attainment date. EPA notes that the Arizona Legislature recently passed a bill requiring the use of oxygenated fuels in Pima County during the winter CO season as well as loaded-mode testing for the existing I/M program. EPA is proposing to approve the oxygenated fuels program and approving the loaded-mode I/M testing as components of the Pima CO SIP in separate sections of today's **Federal Register**. Although the measures will not advance the attainment date for Pima County, EPA believes that they will provide additional assurance that Pima will attain the CO standard in 1990 and maintain it thereafter.

ACLPI commented that EPA could not approve the Pima CO SIP and lift the construction ban in Pima County so long as the plan lacks an approvable NSR component. EPA has reviewed the Pima NSR program and has determined that it can be fully approved based upon Pima County's and the State of Arizona's commitments to interpret the regulation consistent with EPA's requirements. The State submitted a letter for the State on June 1, 1988, and a letter from Pima County on July 22, 1988, making the necessary commitments. These commitment letters, which have been appended to the TSD for this notice, have been forwarded to the Office of Federal Register for incorporation by reference into the Code of Federal Regulations as enforceable components of the Pima CO SIP. As such they are enforceable against Pima County and the State of Arizona under sections 113 and 304 of the CAA, and will effectively control any court's interpretation of the State's and County's intent under the NSR rules.

ACLPI also commented that the Pima CO plan does not meet the requirement of section 172(b)(11)(A) that the NSR program require a demonstration that the benefits of a proposed source significantly outweigh the environmental and social costs imposed by the source. Section 172(b)(11)(A) technically does not apply at all to Pima County. The section only applies by its own terms to areas that received attainment date extensions to 1987. EPA has stated, however, that generally SIPs for areas that failed to attain in 1982 as planned would have to meet all requirements applicable to extension areas in order to demonstrate timely attainment. *See* "Guidance Document for Correction of Part D SIPs for Nonattainment Areas," January 27, 1984. The Arizona NSR program does require a demonstration that the benefits of a proposed project outweigh the project's environmental costs. EPA concludes that with that provision Arizona's NSR program adequately complies with EPA's policy that nonextension areas that failed to attain generally meet the

Part D requirements for extension areas to demonstrate attainment.

ACLPI commented that EPA should be including trip reduction ordinances in the Pima CO SIP. Since the proposal on this action, EPA has received a formal SIP submittal from Arizona requesting approval of travel reduction ordinances adopted by the various Pima County local jurisdictions. EPA is proposing to approve these measures in a separate section of today's **Federal Register** as additional assurances that Pima County will attain the CO standard in 1990 and maintain it thereafter.

ACLPI commented that the Pima CO plan did not contain adequate contingency provisions. In its 1981 guidance on CO SIP preparation EPA required Part D SIPs to contain contingency measures to compensate for unanticipated shortfalls in planned emission reductions. As previously mentioned, the Arizona Legislature recently passed an oxygenated fuels program, a loaded-mode I/M testing requirement and voluntary no-drive-day program applicable to Pima. In separate notices in today's **Federal Register** EPA is approving the loaded-mode and voluntary no-drive-day measures, and proposing to approve the oxygenated fuels program and the travel reduction ordinances adopted by the Pima County local jurisdictions. These measures will together provide significant additional emission reductions in Pima County that will be available to compensate for any unanticipated shortfalls in planned emission reductions. These measures which have already been adopted will adequately serve the function of the contingency provisions EPA contemplated in 1981.

## IV. Summary of Final Action

EPA is today taking final action to approve the Pima CO plan submitted to EPA on January 6, 1988. The plan provides for attainment of the CO standard with reasonably available control measures in 1990. The revised I/M regulations, the FMVCP and other control measures adopted by Pima County jurisdictions will result in attainment of the standard in 1990 and maintenance consistent with the ten-year maintenance period described in EPA's November 24, 1987 proposal on post-1987 planning.

EPA is taking final action on Pima County's NSR regulations, originally proposed for approval on May 9, 1986 (51 FR 17210). The original NSR submittal, together with implementation commitments by Pima County and the State of Arizona, meet the requirement of 40 CFR 51.165(a).

EPA is also proposing today, in a separate **Federal Register** notice, to approve two additional CO control measures recently submitted by the State for incorporation into the Pima maintenance plan. The first measure includes submittal of the travel reduction ordinance regulations adopted by Pima County jurisdictions as part of the CO plan. The second is an oxygenated fuels program mandated in Arizona H.B. 2206. In addition, in a separate notice for Maricopa County, EPA is approving two programs in H.B. 2206 that will affect Pima County. The first program is a loaded-mode I/M requirement and the second is a voluntary no-drive-day program. EPA believes these additional measures will provide further emissions reductions to strengthen the maintenance plan.

As described above, the attainment and maintenance demonstration in the Pima CO plan meets all EPA and CAA Part D criteria, including the proposed post-1987 policy, which would require a maintenance demonstration of 10 years from the SIP due date. Based on this finding, EPA also takes final action today to fully approve the Pima SIP as meeting all requirements of section 110 and 172 of the Clean Air Act and therefore lifts the moratorium under section 110(a)(2)(I) of the CAA on major new construction and major modification of stationary sources of CO in the Tucson CO Air Planning Area.

## V. Regulatory Process

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the **Federal Register** on July 1, 1982.

**Authority:** 42 U.S.C. 7401–7642.

Date: August 4, 1988.

**Lee M. Thomas,**

*Administrator.*

Subpart D of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

### Subpart D—Arizona

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401—7642.

2. Section 52.120 is amended by adding paragraphs (c)(54)(i) (D) and (E), (56)(i)(B), (58), (59), (60), (61), (62), (64) and (66) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(54) * * *

(i) * * *

(D) New or amended rules R9–3–302 (paragraphs A–H); and R9–3–303 (paragraphs A to C and E to I), adopted on May 26, 1982.

(E) Previously approved and now removed (without replacement) rule R9–3–101, No. 46.

* * * * *

(56) * * *

(i) * * *

(B) New or amended rules R9–3–101, Nos. 135 and 157, adopted on September 19, 1983.

(57) [Reserved]

(58) The following amendments to the plan were submitted by the Governor's designee on October 18, 1985.

(i) Incorporation by Reference.

(A) Pima County Health Department.

(*1*) New or amended regulations: Regulation 16: Rule 166; Regulation 17; Rule 171 and 175; Regulation 20: Rule 202; Regulation 37: Rules 371, 372, 373, Figure 371–A, Figure 371–C, and Figure 372; and Regulation 38, Rule 381, A1, 2, 3, 4, 5, and B, adopted on December 6, 1983.

(59) The following amendments to the plan were submitted by the Governor's designee on October 24, 1985.

(i) Incorporation by Reference.

(A) Arizona Department of Health Services.

(*1*) New or amended rule R9–3–303, adopted on September 28, 1984.

(60) The following amendments to the plan were submitted by the Governor's designee on October 5, 1987.

(i) Incorporation by Reference.

(A) Arizona Department of Health Services.

(*1*) New or amended rules R9–3–1001 (Nos. 8, 25, 33, 34, 38, 39, 40, and 43, No.

8), R9–3–1003, R9–3–1005, R9–3–1006, R9–3–1008, R9–3–1009, R9–3–1010, R9–3–1011, R9–3–1013, R9–3–1016, R9–3–1018, R9–3–1019, R9–3–1025, R9–3–1026, R9–3–1027, R9–3–1028, R9–3–1030, and R9–3–1031, adopted on December 23, 1986.

(2) Previously approved and now removed (without replacement), Rule R9–3–1014.

(61) The following amendments to the plan were submitted by the Governor's designee on January 6, 1988.

(i) Incorporation by reference.

(A) The 1987 Carbon Monoxide State Implementation Plan Revision for the Tucson Air Planning Area adopted on October 21, 1987.

(62) The following amendments to the plan were submitted by the Governor's designee on March 23, 1988.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(1) Senate Bill 1360: Section 6: ARS 15–1444–C (added), Section 7: QRS 15–1627–F (added), Section 21: ARS 49–542–A (amended, Section 21: ARS 49–542–E (added), Section 21: ARS 49–542–J.3.(b) (amended), and Section 23: ARS 49–550–E (added), adopted on May 22, 1987.

(63) [Reserved]

(64) The following amendments to the plan were submitted by the Governor's designee on June 1, 1988.

(i) Incorporation by Reference.

(A) Letter from the Arizona Department of Environmental Quality, dated June 1, 1988, committing to administer the provisions of the Federal New Source Review regulations consistent with EPA's requirements. The commitments apply to the issuance of, or revision to, permits for any source which is a major stationary source or major modification as defined in 40 Code of Federal Regulations, Part 51, Subpart I.

(65) [Reserved]

(66) The following amendments to the plan were submitted by the Governor's designee on July 22, 1988.

(i) Incorporation by Reference.

(A) Letter from the Pima County Health Department, Office of Environmental Quality, dated April 24, 1988 committing to administer the New Source Review provisions of their regulations consistent with EPA's requirements. The commitments apply to the issuance of, or revision to, permits for any source which is a major stationary source of major modification as defined in 40 Code of Federal Regulations, Part 51, Subpart I.

**§ 52.124 [Amended]**

3. Section 52.124 is amended by removing paragraph (a)(2).

[FR Doc. 88–18081 Filed 8–9–88; 9:46 am]

BILLING CODE 6560–50–M

## 40 CFR PART 52

**[FRL–3427–6]**

## Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Maricopa County Carbon Monoxide Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This notice announces EPA's final action to approve revisions to the carbon monoxide (CO) state implementation plan (SIP) for the Maricopa County (Phoenix) CO nonattainment area that were submitted by the State of Arizona on October 5, 1987, and July 18 and 22, 1988. In its May 16, 1988, notice of proposed rulemaking (NPRM) (52 FR 17379), EPA proposed to approve certain control measures in the 1987 Maricopa CO plan; however, those measures did not by themselves provide sufficient emission reductions to demonstrate timely attainment of the CO standard in Maricopa County. In response to the plan's failure to demonstrate timely attainment and to an order by the U.S. District Court for the District of Arizona, EPA also proposed in the same notice to promulgate a federal implementation plan (FIP) for Maricopa County. This proposed FIP contained two measures—an oxygenated fuels program for motor vehicles and an employer-based trip reduction program—which together with the proposed SIP measures would have provided sufficient emission reductions to demonstrate attainment by December 31, 1991. As fully discussed in the May 16 proposal and later in this notice, EPA believes that the December 31, 1991 date is the latest date by which an approvable Arizona SIP may demonstrate attainment under the Clean Air Act and EPA's own policies in light of the possibility of attainment by then without the use of draconian measures.

In June, 1988, the Arizona State Legislature passed House Bill 2206 which contains a state-run oxygenated fuels program, a travel reduction program, a loaded-mode testing requirement for the State's inspection and maintenance (I/M) program, and other measures. Two of those measures, the loaded-mode I/M test requirement and the voluntary no-drive-day program apply to both Maricopa and Pima Counties. On July 18 and 22, 1988, the State submitted portions of H.B. 2206 and a persuasive demonstration that the measures in the bill along with the SIP measures proposed for emission reduction credit by EPA on May 16 will lead to attainment of the CO standards in Maricopa by December 31, 1991. In its May 16 notice, EPA had proposed in advance to approve the measures similar to those in H.B. 2206 if the State adopted and submitted them to EPA prior to August 10, 1988. Today, EPA takes final action to approve the SIP Submittals received by EPA on October 5, 1987, and July 18 and 22, 1988. EPA takes this action based on its conclusion that the control measures and the attainment demonstration fully meet the requirements of section 110 and Part D of the Clean Air Act (CAA or the Act). EPA is also taking final action to approve the Maricopa County New Source Review (NSR) regulations proposed for approval on July 3, 1983 (48 FR 34293).

With its full approval of the Maricopa SIP, EPA is withdrawing its proposed FIP and the proposal to impose highway funding restrictions under CAA section 176(a) which were proposed on May 16, 1988. In addition, EPA is lifting, effective today, the section 110(a)(2)(I) construction ban on major new or modified sources of CO that it imposed on September 23, 1986 (51 FR 33746).

**EFFECTIVE DATE:** August 10, 1988.

**ADDRESSES:** Copies of the submitted SIP revisions and EPA's technical support document (TSD) for this rulemaking are available for public inspection during normal working hours at the following addresses:

Environmental Protection Agency, Region 9, State Liaison Section, A–2–2, Air Management Division, 215 Fremont Street, San Francisco, CA 94105

Arizona Department of Environmental Quality, Office of Air Quality, 2005 N. Central Avenue, Sixth Floor, Phoenix, Arizona 85004

Maricopa Association of Governments, 1820 West Washington, Phoenix, Arizona 85007

**FOR FURTHER INFORMATION CONTACT:** Wallace D. Woo, Chief, State Liaison Section (A–2–2), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7634, FTS: 454–7634

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The CAA amendments of 1977 required States to revise their SIPs by certain times for all areas that had not then attained the National Ambient Air Quality Standards (NAAQS). Generally, the States containing these designated "nonattainment areas" had to submit revised SIPs by January 1, 1979. The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or CO to no later than December 31, 1987, was available under section 172 if the State could demonstrate as part of its 1979 SIP revision that attainment by the end of 1982 was not possible, despite the implementation of all reasonably available control measures. For areas that received an attainment date extension from EPA, States were required to submit to EPA by July 1, 1982, an additional SIP revision that provided for attainment no later than December 31, 1987, and that complied with all other requirements of Part D of the CAA.

*A. Maricopa SIP Disapproval*

Maricopa County was designated as nonattainment for CO on March 3, 1978 (43 FR 8970), and the State submitted Maricopa County's initial nonattainment area plan for CO in 1979 and 1980. On October 30, 1980, the State submitted a request to EPA to extend the CO attainment date in Maricopa County to December 31, 1987. EPA proposed to approve the extension request on February 5, 1982 (47 FR 5439).

On May 5, 1982 (47 FR 19826), EPA took final action to approve the 1979 SIP revision on the condition that the State submit revised regulations for Maricopa County to meet the Act's NSR requirements. On June 3, 1982, and March 4, 1983, the State submitted NSR regulations for Maricopa County. On July 3, 1983 (48 FR 34293), EPA proposed to approve the Maricopa NSR rules with one exception and certain understandings.

Beyond establishing the NSR condition, EPA, in its final action on the 1979 CO plan, found that the plan was not adequate to bring about attainment by the end of 1982. EPA premised its limited approval of the plan on the expectation that (1) the Agency would take final action to grant the State's request for an attainment date extension to December 31, 1987, and (2) the State would submit another plan revision which would provide for attainment by that date. The State submitted a plan purporting to meet this requirement on October 26, 1982.

On January 27, 1986 (51 FR 3343), EPA proposed to disapprove the revised Maricopa plan and impose the section 110(a)(2)(I) construction ban because the State had not adequately demonstrated that the plan would provide for timely attainment of the standard.

On September 23, 1986 (51 FR 33746), EPA published a final notice disapproving the CO plans for both the Maricopa and Pima Counties nonattainment areas and imposing the section 110(a)(2)(I) construction ban on major new sources and major modifications to existing sources of CO in the two areas. As explained fully in the September 23, 1986 notice, EPA determined that it was not necessary to take final action on the State's attainment date extension request.

*B. U.S. District Court Order*

On August 10, 1987, the U.S. District Court for the District of Arizona ordered EPA to promulgate a FIP under section 110(c) of the Act for CO in the Maricopa and Pima Counties nonattainment areas. The Court found that EPA's duty to promulgate a FIP arose when EPA found the State plans were inadequate. The Court Order is the result of a citizen suit brought against EPA on April 8, 1985, by the Arizona Center for Law in the Public Interest (ACLPI). The timeframe specified in the Court Order for EPA to promulgate a FIP was six months following either the formal submittal of the Pima CO plan or September 30, 1987, whichever came first. *McCarthy* v. *Thomas*, D. Ariz. No. CIV–85–34–TUC–1WDB (slip op., Aug. 10, 1987). The Court left open the possibility that EPA could file a motion after January 1, 1988, requesting an extension of the time period for FIP promulgation if necessary.

On March 14, 1988, EPA moved the Court to extend the period for EPA to promulgate a FIP for the Maricopa and Pima areas. On April 19, 1988, the Court issued an Order requiring EPA to propose a FIP for Maricopa County no later than May 13, 1988, hold public hearings on the proposal no later than June 10, 1988, close the public comment period following the hearing by July 11, 1988, and promulgate a FIP for Maricopa County no later than August 10, 1988. The Court also ordered that the same schedule for FIP promulgation shall apply for Pima County if EPA did not accept the Pima County SIP. On July 19, 1988, EPA moved the Court to amend its Order to specifically allow EPA to approve Arizona's SIP for Maricopa County by August 10, 1988. The Court granted EPA's motion on July 20, 1988.

EPA outlined its intended approach to comply with the Court Order to promulgate a FIP for Maricopa and Pima Counties in an advance notice of proposed rulemaking (ANPRM) (51 FR 45466) published on November 30, 1987. In the ANPRM, EPA explained that, to promulgate a FIP for these two areas, EPA must select control measures that fill whatever gaps are left by approved portions of the State plans. The ANPRM also discussed the Maricopa County CO plan that had been submitted as a SIP revision by the State on October 5, 1987. The plan indicated that the area could attain the CO standard as early as 1990 and in any event by 1995 if the recommended control strategy in the SIP (including an oxygenated fuels program for motor vehicles, winter daylight, savings time, and an employer-based trip reduction ordinance) were fully adopted and implemented.

The Maricopa plan claimed credit, both implicitly and explicitly, for the Arizona vehicle inspection and maintenance (I/M) program as expanded through 1987. On April 26, 1988, in a **Federal Register** notice on the revised Pima CO plan, EPA proposed to approve the improvements to the State's I/M program as adopted by the Arizona State Legislature in 1985, 1986, and 1987. (51 FR 14818). The revised Maricopa plan also assumed credit for the following additional control measures: Transit and ridesharing improvements, expanded facilities to encourage increased pedestrian and bicycle trips, alternative work hours, alternative fuels for vehicle fleets, alternative-fueled transit vehicle purchase, and a voluntary no-drive-day program. On May 16, 1988 (53 FR 17379), EPA proposed to approve and assign emissions reduction credits to all of these measures except for the alternative fuels for vehicle fleets and the voluntary no-drive-day program. However, the creditable measures in the revised plan did not by themselves provide sufficient emissions reductions to demonstrate attainment of the CO standard. Therefore, EPA also proposed to promulgate the two control measures for Maricopa County identified in the ANPRM—an oxygenated fuels program and an employer-based trip reduction program—as technologically available elements of a FIP that would provide the emission reductions necessary for attainment.

*C. Proposed FIP*

As fully described in the May 16, 1988 notice, EPA's evaluation of the air quality modeling analysis in the SIP submittal prepared by the Maricopa Association of Governments (MAG) shows that a 22.0 percent reduction in the 1991 baseline CO emissions is

needed to demonstrate attainment of the 8-hour CO standard by December 31, 1991. (The applicable attainment date for the Maricopa plan is described in detail in the proposed rulemaking and is summarized later in this notice.) The MAG plan provided an approvable emission reduction of 3.9 percent by the end of 1991 leaving a shortfall of 18.1 percent in the emission reductions needed for attainment To fill that shortfall, EPA proposed two federal control measures—an employer alternative modes incentives program and an oxygenated fuels program—which, together with the approvable SIP measures, would provide at least a 22.0 percent reduction in CO emissions by the end of 1991.

The proposed oxygenated fuels program required an equivalent oxygen content level of 2.57 percent in motor vehicle fuels sold in the Maricopa area in the winter CO season. October 1 through March 31. Oxygenated fuel blends, in the form of aliphatic alcohols and/or ethers which are currently on the market and available to the Maricopa area, include methyl-tertiary-butyl-ether (MTBE), ethanol (gasohol) and methanol/cosolvent blends The effect of these blends in gasoline is to cause motor vehicle engines to run leaner thereby reducing emissions of carbon monoxide In the May 16, 1988 notice, EPA noted that the equivalent oxygen content requirement could change in the final rulemaking depending upon the combination of control measures selected for promulgation and on whether the State adopted any additional control measures EPA also solicited comments on whether the proposed trip reduction regulation should be replaced by a higher average oxygen content level in the oxygenated fuels program.

The proposed employer alternative modes incentive program required that each employer of 100 or more employees at a worksite in the nonattainment area develop and offer to its employees alternative transportation mode incentives These incentives would be designed to reduce the number of single-occupant-vehicle (SOV) commute trips to the employer's worksite The proposed trip reduction goal was a 5 percent reduction in SOV commute trips in the first year and an additional 5 percent in the second year EPA's proposed program was designed to regulate the same group of employers at the same trip reduction level as the MAG model trip reduction ordinance (described fully in the May 16, 1988 notice) EPA estimated that the MAG model or EPA's proposed regulation, if fully implemented, could reduce CO emissions by 1.8 percent by the end of 1991.

In the May 16, 1988 proposal, EPA recognized the possibility that Arizona would adopt and submit as a SIP revision additional CO control measures prior to final promulgation by EPA of the proposed FIP measures. EPA proposed to modify the final FIP if additional controls were submitted and EPA determined that they were approvable for CO emission reduction credit. The purpose of the modification would be to rely as much as possible on State controls rather than federal controls and to promulgate only as much federal control as needed to satisfy the Act's attainment date requirements. EPA proposed that if the revised SIP achieved 22.0 percent or more emission reductions, and EPA approved it, EPA would not promulgate any FIP.

EPA noted that the Arizona State Legislature was considering several bills that would establish oxygenated fuels programs in Maricopa County and was proposing legislation to improve the State I/M program through the addition of a loaded-mode testing requirement and to require a trip reduction program in Maricopa County. In its proposed notice, EPA evaluated the various carbon monoxide control measures then under consideration by the Arizona State Legislature and indicated which measures EPA would approve if adopted and submitted as SIP revisions

The May 16, 1988 proposal provided that if a legally enforceable trip reduction ordance was adopted by the State, County, or local governments which was substantially equivalent to the MAG model ordinance and the proposed federal trip reduction regulation and which covered all or virtually all employers of more than 100 persons in the CO nonattainment area, then EPA would not finalize its own trip reduction regulation. The notice also stated that EPA might go directly to final approval of the loaded-mode I/M testing requirement then being considered by the Arizona Legislature Finally, in order to lay the procedural foundation for EPA to take action on any new oxygenated fuels legislation with as little delay as possible, EPA proposed the methods and assumptions that it would use in approving or disapproving such new legislation and in assigning CO emission reduction credit to it

*D Dates for Attainment and Maintenance of the CO Standard*

The May 16, 1988 notice describes in detail the legal requirements applicable to any FIP that EPA would promulgate for the Maricopa area, in light of its unique characteristics. In general those requirements would also apply to any SIP submitted for the area Specifically EPA concluded that the FIP as well as any SIP approved by EPA, must meet the requirements of both section 110 and Part D of the CAA. EPA also interpreted those requirements to determine how they apply to implementation plans for this area after December 31, 1987 the latest attainment date expressly identified in the CAA. That date is the planning date for areas that received EPA's approval of an extension beyond the otherwise applicable planning date December 31, 1982. See section 172(a) The Maricopa area has not received EPA's approval of such an extension However, since the later date, December 31, 1987, has now elapsed as well, the discussion below analyzes both dates similarly—as elapsed Part D dates

As explained in EPA's policy on post-1987 attainment planning proposed on November 24, 1987 (52 FR 45044), since it will be physically impossible after 1987 for EPA to plan for these areas to attain by the elapsed dates in Part D, EPA intends to interpret the requirement to plan for attainment by those dates as a legal impossibility. EPA believes that Congress would have intended EPA in such circumstances to select, in place of the elapsed dates, a subsequent date consistent with the general principles of the CAA and Part D. *See Chevron, U.S.A v. N.R.D.C.*, 467 U.S 837 (1984)

Although it is not clear what subsequent date Congress would have intended in these circumstances, the history of the CAA's planning requirements suggests that Congress would have provided EPA (and these areas) an additional period analogous to the 3- and 5-year periods set forth in section 110(a)(2)(A) and section 110(e), respectively. When Congress in 1977 directed EPA to initiate a new round of planning for areas that have failed earlier to produce adequate plans meeting the section 110 requirements, it created new planning periods comparable to the section 110 periods (3/5 years from EPA's approval of the state plan), rather than shortening those periods and thereby demanding plans for immediate attainment Section 172(a)(1) required the SIPs for non extension areas to provide for attainment by the end of 1982, four years from the date these submittals were due (January 1, 1979) (See section 129(c)). To be sure, Congress provided a much longer attainment period for extension areas. From January 1, 1979 to December 31, 1987 approximately nine years from the date the initial Part D SIPs were due But it set up two planning periods for

these areas—one to apply all "reasonably available" measures and a second to supplement those measures Since most reasonably available measures should already have been implemented in the Maricopa area by now, EPA regards post-1987 planning for the area as comparable to the planning during the second Part D period. That period spanned from the July 1982 submittal date (see section 129(c)) to the end of 1987, a period roughly consistent with the 3- and 5-year periods in section 110. Thus, although sections 110(a)(2) and (e) do not literally apply to the Maricopa area, EPA will use them (absent considerations of impossibility) as the best indicators of the attainment periods Congress would have intended to apply to plans for these areas after passage of the Part D dates.[1]

Section 110(a)(2) requires implementation plans to provide for attainment as expeditiously as practicable but no later than 3 years from EPA's approval of an adequate plan. Section 110(e) allows the EPA Administrator to grant a 2-year extension of the attainment date (beyond the 3-year period in section 110(a)(2)(A)) only if:

(A) One or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plans which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and

(B) The State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3 years cannot be achieved.

Applying these attainment deadlines to the Maricopa area, the plan must demonstrate attainment as expeditiously as practicable but in no case later than 1991 (assuming plan approval in 1988), unless even with the application of reasonably available alternative means attainment cannot be achieved within that period. For the reasons described below and later in this notice, EPA is approving the State's plan for the Maricopa area which now includes two creditable measures originally proposed as FIP measures—an employer-based trip reduction program and an oxygenated fuels program—and an additional creditable measure, loaded-mode I/M testing, that will bring about attainment of the CO standard by December 31, 1991 in the area

EPA believes that a trip reduction program, an oxygenated fuels program, and a loaded-mode I/M testing program are technologically available measures that would produce enough emissions reductions in combination to bring about attainment by December 31, 1991. However, EPA does not believe that any combination of available, practicable measures exists which could provide for attainment in the Maricopa area before the end of 1991. It is true that a very stringent oxygenated fuels program could theoretically advance the attainment date to 1990, but EPA cannot now conclude that any oxygenated fuels program is definitely practicable for application in the Maricopa area due to numerous outstanding questions concerning market penetration, fuel availability, compliance monitoring, and consumer reaction to such a program. EPA is approving the oxygenated fuels program described later only because it is necessary to provide for attainment by end of 1991. Consequently, EPA does not believe that any practicable measures exist which could achieve attainment in the Maricopa area before the end of 1991.

On the other hand, EPA can also not make the conclusion, necessary to support a two-year attainment date extension under section 110(e), that a trip reduction program, an oxygenated fuels program and a loaded-mode I/M testing requirement are clearly not reasonably available alternatives measures. Oxygenated fuels are technologically available and EPA believes that, although there are numerous and significant outstanding questions concerning the program, they may well not prove to be significant obstacles to successful implementation of the program. Similarly, a trip reduction program is in place in some California localities and thus, despite potential employer resistance, it appears reasonably available for the Phoenix area as well. Finally the loaded-mode testing requirement also appears reasonably available for Phoenix.

Therefore, EPA is approving a trip reduction program, an oxygenated fuels program, and a loaded-mode I/M testing requirement for the Maricopa area because the programs are technologically available measures that are necessary to bring the area into attainment by the end of 1991. And, beyond that, as proposed, EPA does not believe it is appropriate to invoke the two-year extension provided in section 110(e).

EPA's approval of the SIP for Maricopa is consistent with outstanding agency guidance on CO SIP preparation. In an April 4, 1979 notice (44 FR 20372), EPA published criteria for approval of the Part D SIP revisions that the Act required states to submit in 1979. On January 22, 1981 (46 FR 7182), EPA published criteria for evaluating the supplemental SIP revisions for extension areas due in mid-1982.

Section 110(a)(2) requires a plan to provide not only for timely attainment of the NAAQS but also for maintenance of the standards thereafter. The SIP for the Maricopa area is based on the modeling and emission projections prepared by MAG as part of its SIP submittal. The MAP plan projects emissions only through 1995; however, the projections demonstrate that the proposed SIP will continue to provide for maintenance of the CO NAAQS at least through 1995 EPA's proposed policy on post-1987 planning would require post-1987 SIPs to include a demonstration of maintenance for a period of ten years following the time of SIP submittal. As applied to the Maricopa SIP, it would require a maintenance demonstration through 1998. Based on available data and its own projections based on the MAG plan, EPA concludes that with the SIP approved today the Maricopa area will attain and maintain the CO NAAQS through at least 1998. EPA recognizes that the phase- out of the CO reduction benefits of the Federal Motor Vehicle Emission Control Program and population growth and associated increases in vehicle miles traveled may cause CO levels to rise in the Maricopa area in the late 1990s EPA will continue to gather the necessary data to monitor the continuing validity of this

[1] Certain important qualifications apply to this analysis. First, EPA is here dealing with a situation in which attainment within 3 years is a practical possibility given the size of the nonattainment problem and the measures that the state has submitted. EPA currently has rulemaking and policy proposals outstanding which raise the question of whether EPA must disapprove a SIP and thereby trigger a construction ban, even where a state has failed to submit measures that would provide for attainment within 3 or 5 years *and* where attainment by means of any measures would be impossible as a practical matter. See 52 FR 26404 (July 14, 1987 and 52 FR 45044 (November 24, 1987). Thus EPA has yet to decide in final form what the role of impossibility is under the Act for the purpose of approval or disapproval of SIPs.

Second, EPA is not deciding in this notice of final action what its obligations under section 110(c) to promulgate a federal implementation plan are Again, the role of the doctrine of impossibility is uncertain. Further, it is uncertain in any event that EPA must promulgate a FIP that provides for attainment by a near term fixed date. EPA currently is exploring these issues in connection with the ozone and CO SIPs for certain areas in California including the South Coast Air Quality Management District EPA does not intend by means of the discussion and analysis in this notice to express a final view on these issues.

maintenance determination beyond 1995.

*E. Lifting of Construction Ban and Withdrawal of Proposed 176(a) Sanctions*

Section 110(a)(2)(I) of the CAA and EPA's regulation at 40 CFR 52.24 impose a ban on the construction of major new or modified stationary sources of CO until such time as a state plan meeting the requirements of Part D is approved by the Administrator. Accordingly, EPA imposed the construction ban upon disapproval of the SIP on September 23, 1986. Since EPA has now determined that the SIP submitted by Arizona meets the requirements of section 110 and Part D of the CAA and will result in attainment of the CO standard as expeditiously as practicable in 1991, EPA is taking final action to approve the SIP for Maricopa County and lift the construction ban originally imposed on September 23, 1986.

In the May 16, 1988 notice, EPA proposed that, if Arizona did not supplement the Maricopa plan with the measures to demonstrate expeditious attainment, EPA would make a final finding that the State is not making reasonable efforts to submit an adequate Part D plan and, upon making such a final finding, would impose the federal highway finding restriction of section 176(a). Since Arizona has submitted additional CO control measures which EPA has determined meet the requirements of Part D of the CAA, EPA can no longer make this finding and therefore withdraws its proposal on this issue.

*F. Finding under Section 211(c)(4)(C)*

EPA believes that Arizona is authorized under the Clean Air Act to prescribe and enforce the oxygenated fuels program EPA is approving today. As fully explained in the May 16, 1988 NPRM at 17412–3, EPA interprets section 211(c)(4)(A) to allow state regulation of motor vehicle fuels or fuel additives unless there has been federal pre-emption. Under section 211(c)(4)(A) pre-emption of state regulation of a fuel occurs (i) if EPA has found that no fuel-related control or prohibition is necessary for that fuel or additive and has published such finding in the **Federal Register**, or (ii) if EPA has prescribed by regulation under section 211(c)(i) a control or prohibition applicable to the fuel or fuel-additive regulated by the state that is different from the state control or prohibition. The Agency wants to stress that it does not believe that either form of pre-emption has occurred in this case.

First, EPA has not made the finding that no fuel-related control or prohibition is necessary and clearly has not published any such finding in the **Federal Register.**

Second, EPA does not believe that it has prescribed the type of fuel control contemplated in section 211(c)(4)(A)(ii). EPA believes the reference in that section to "a control or prohibition applicable to such fuel or fuel additive" prescribed by the Administrator was intended to include only the same type of fuel control that the regulation in question is attempting to prescribe. Under this approach, section 211(c)(4)(A)'s prohibition of the adoption of a particular type of fuel control would be triggered only if EPA had already prescribed, by regulation under section 211(c)(1), the same type of fuel control as at issue in the case at hand—in this case controls on the oxygen content of fuels. Since EPA has not prescribed any control on the oxygen content of any fuel by section 211(c) rulemaking,[2] the Agency believes that the pre-emption described in section 211(c)(4)(A)(ii) has not occurred. As a result, Arizona is free to adopt its own oxygen content controls and EPA is free to approve a SIP which includes such controls. Under these circumstances, EPA may approve such controls without making the special finding described in section 211(c)(4)(C) of the Act. Section 211(c)(4)(C) allows, where pre-emption has occurred, state fuel-related controls to be approved into a SIP if EPA finds such controls are "necessary" to achieve the standard the SIP implements. In this case a finding under section 211(c)(4)(C) is not required because pre-emption has not occurred.

Even if pre-emption has occurred, however, EPA believes that it may still approve certain types of state provisions for limits on oxygen content because the Agency can make the finding under section 211(c)(4)(C), which would authorize approval and, thus, eliminate the pre-emption problem. In the May 16, 1988 notice, EPA proposed to make such a finding as to provisions concerning oxygen content and today makes this finding final as to the oxygenated-fuel provisions in H.B. 2206. Section 211(c)(4)(C) authorizes EPA to approve into a SIP a state-adopted fuel control measure that has otherwise been pre-empted by EPA action, if EPA finds that the state control "is necessary to achieve the standard" that the SIP implements. As explained in the May 16, 1988 proposal, EPA interprets the language to require the Agency to find that the fuel control requirement is essential to achieve timely attainment of the standard. EPA believes that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable.

As explained in the proposal at 17413, EPA believes that reductions achievable by an oxygenated fuels program are essential to bring about timely attainment in the Maricopa CO nonattainment area, because no other measures short of severe draconian controls are available to achieve attainment by the end of 1991. Short of such severe alternatives, only an oxygenated fuels program, supplemented by other measures like loaded-mode I/M testing and travel reduction ordinances, can provide the 22 percent CO reduction necessary for attainment in 1991 without unacceptable socioeconomic impacts. In order to lay the procedural foundation for final approval of new legislation, EPA listed several conditions or restrictions on its proposed finding that an oxygenated fuels program is "necessary" within the meaning of section 211(c)(4)(C). EPA believes that H.B. 2206 meets those conditions. At proposal the Agency indicated that some of the bills then before the Arizona legislature contained elements that exceeded the requirements for timely attainment. EPA then solicited comment on whether, if some elements in the final legislation exceeded the minimum program necessary for timely attainment, the Agency should treat those elements as separable from the remainder of the program and withhold the "necessity" finding for them. 53 FR 17413–17414.

EPA has examined H.B. 2206 and believes that two elements of the legislation, if viewed in isolation from the remainder, arguably require reductions beyond the minimum that would produce timely attainment. First, the averaging requirement of section 41–2124 might, if triggered, produce more CO reduction in the January through March period than is strictly needed for timely attainment. Second, the set-aside authority of sections 78–2071 through 78–2708 might, if exercised, make it possible for more fuel to be blended to higher oxygen levels than might otherwise be the case.

In light of the process that led to the State's enactment of H.B. 2206, however, EPA has concluded that these two

[2] EPA has estimated limits on oxygen content for certain new fuels that have been granted waivers under section 211(f) of the Act for introduction into commerce, but has taken no such action under section 211(c).

elements must be viewed as integral parts of the legislation adopted by Arizona and that, because the legislation consists primarily of elements essential to timely attainment, EPA should find the legislation as a whole "necessary" to achieve the CO standard. A review of the legislative activity leading to the enactment of the law demonstrates that the final legislation reflects a balance aimed at assuring the widest possible availability of alternative types of oxygenated fuels in the Maricopa County petroleum market. In fact, the Agency believes that a primary reason that the legislature successfully formulated the necessary oxygenated fuels program is that it was able to reach a consensus ensuring the introduction of a significant amount of fuels with alcohol into the area. Because both of the program elements described above appear to have been adopted for the purpose of meeting this alcohol-related goal, and since that goal itself seems to have been critical to enactment of the legislation as a whole, EPA believes it would be inappropriate to conclude that those elements were not themselves "necessary" to achieve the standard, within the meaning of section 211(a)(4)(C).[3] Indeed, to withhold the "necessity" finding from those two elements would reflect a misunderstanding of the process that led to the enactment of H.B. 2206. For these reasons, EPA finds that the oxygenated fuels program as a whole contained in H.B. 2206 is "necessary to achieve attainment" of the CO standard in the Maricopa nonattainment area.

## II. Evaluation of State SIP Submittals

On October 5, 1987, the State of Arizona submitted the MAG 1987 Carbon Monoxide Plan for the Maricopa County Area and parts of Arizona Senate Bill 1360 as revisions to the SIP. On May 16, 1988, EPA explicitly proposed to assign specific emission reduction credits to several of the measures in the plan and the bill. EPA also proposed to approve the resolutions of commitment in the SIP to implement control measures which were passed by the jurisdictions in Maricopa County as well as other State and local agencies.

On July 18, 1988, the State submitted portions of Arizona H.B. 2206 and on July 22, 1988, the State submitted additional portions of H.B. 2206 as well as a demonstration that the measures in the 1987 SIP submittal combined with measures in the new submittals provide for attainment of the CO standard in Maricopa County by the end of 1991. Also accompanying the July 22, 1988 SIP submittal were workplans from agencies having responsibility for implementing parts of H.B. 2206. These workplans express each agency's intent to carry out the legislation and are included in the technical support document (TSD) for this notice.

Immediately following is a more detailed evaluation of the measures in the SIP submittals. Table 1 is a complete list of the measures for which EPA today is approving specific emission reduction credits.

TABLE 1.—CONTROL MEASURES BEING APPROVED FOR SPECIFIC EMISSION REDUCTION CREDITS

[In percent]

| Measure | Emission reduction | |
|---|---|---|
| | 1991 | 1995 |
| **1987 SIP Submittal** | | |
| 1987 I/M legislation | 2.1 | 1.8 |
| Short-range transit improvements | .1 | .1 |
| Expanded MAG regional ridesharing program | .3 | .5 |
| High-occupancy-vehicle lanes on freeways | NA | .3 |
| Freeway surveillance, ramp, metering, and signage | NA | .1 |
| Increased bicycle use | .2 | .2 |
| Pedestrian travel | .1 | .1 |
| Conversion of buses to alternative fuels | .1 | .3 |
| Alternative work hours | 1.1 | 1.0 |
| **1988 SIP Submittals** | | |
| Oxygenated fuels: | | |
| Sun waiver approved [1] | 16.20 | 15.35 |
| Sun waiver denied | 14.28 | 13.17 |
| Loaded-mode I/M testing | 4.0 | 5.9 |
| Travel reduction program | 1.8 | 2.1 |
| Total: | | |
| Sun waiver approved | 24.1 | 25.7 |
| Sun waiver denied | 22.3 | 23.8 |

[1] Sun Refining Marketing Company waiver request to EPA to add 15 percent MTBE by volume to unleaded fuel.

### *A. Control Measure Evaluation*

#### Measures in the 1987 SIP Submittal

The MAG recommended a list of 45 transportation and mobile source control measures for inclusion in its final carbon monoxide plan. These measures included expansion of the I/M program boundaries, improvements to transit and ridesharing programs, trip reduction ordinances, public awareness programs, a voluntary no-drive-day program, parking management, high-occupancy-vehicle (HOV) facilities, traffic flow improvements, pedestrian and bicycle travel amenities, alternative fuels, alternative work hours, changes in land use policies, winter daylight savings time, and miscellaneous other measures. A complete list of these measures can be found in the TSD.

In 1987, the Arizona State Legislature passed S.B. 1360. This legislation required, among other things, enhancements to the State I/M program, alternative workhours for public employees, and purchase of only clean-fuel buses by public agencies after January 1990. Emission reduction credits for these measures were taken in the MAG plan.

The State submitted the final MAG CO plan and S.B. 1360 to EPA as revisions to the Arizona CO SIP on October 5, 1987. Included in this SIP submittal are resolutions passed by the MAG member jurisdictions that contained commitments to implement measures in the MAG plan. Resolutions or letters of commitments are also included from the MAG Regional Council, the Phoenix Metropolition Chamber of Commerce, the Regional Public Transportation Authoirty (RPTA), the Arizona Department of Transportation, and the two local Air Force Bases. EPA is taking action today to incorporate these resolutions as part of the Maricopa SIP.

From its review of the specific commitments in the plan as well as actions of the State Legislature, EPA proposed on May 16, 1988 to credit nine measures as part of the Arizona SIP. These measures are the I/M program enhancements in S.B. 1360,[4] short-range transit improvements, expanded ridesharing, HOV lanes, freeway flow improvements, increased bicycle and pedestrian travel, conversion of buses to alternative fuels, and alternative workhours. EPA today is taking action to grant these measures the emission reduction credits listed in Table 1. More detailed information on EPA's reasoning for and the State's commitments to each of these measures is discussed in the TSD.

The cities, towns, and the County of Maricopa also made commitments to other measures (for example: Traffic flow improvements, educational programs, and city/county employee programs) that will contribute to reductions in ambient carbon monoxide concentrations. Unfortunately, due to the nature of many of these measures and their often very small emission reductions, specific emission reduction estimates were impossible to calculate. While not granting specific emission reduction credits for these measures,

[3] The Agency might have concluded otherwise if the bill had consisted primarily of elements not technically necessary for attainment, but H.B. 2206 is not that case.

[4] EPA is taking final action to approve these provisions in its final action on the Pima CO SIP elsewhere in today's **Federal Register.**

EPA is today incorporating these commitments into the Maricopa SIP.

Measures in the 1988 SIP Submittals

In June of this year, the State Legislature passed H.B. 2206. This bill contains the authority or requirements for an oxygenated fuels program, loaded-mode I/M testing, a voluntary no-drive-day program in both Pima and Maricopa Counties, and a travel reduction program in Maricopa County only. On July 18 and 22, 1988, the State submitted portions of the adopted bill to EPA as a revision to both the Maricopa and Pima portions of the Arizona CO SIP. Accompanying the July 22 SIP submittal were workplans from each of the agencies charged with implementing a program or part of a program under H.B. 2206. These workplans clarify each agency's responsibilities and intents on implementing the provisions of the bill and are included as attachments to the TSD. Below is a short description of each of the control measures in H.B. 2206.

*1. Oxygenated Fuels Program.* H.B. 2206 establishes an oxygenated fuels program for the CO nonattainment area of Maricopa County. New Section 41–2123 A, Arizona Revised Statutes, sets the required oxygen content of leaded fuel at 2.4 to 3.7 percent by weight. Unleaded fuel is prohibited from containing less than 1.9 percent oxygen or more oxygen than allowed by the provisions of an EPA waiver under section 211(f) of the CAA, i.e., currently a maximum of 3.7 percent. These restrictions apply from and after September 30 of one year through March 31 of the next year, beginning in the fall of 1989. Section 41–2123 B provides that if the Sun Refining and Marketing Company's request for a waiver for 15 percent by volume MTBE in unleaded gasoline (53 FR 11701 (April 8, 1988) is approved by EPA, the oxygen limits will instead be 2.3 to 3.7 percent for both leaded and unleaded gasoline.

New section 41–2124 directs the Arizona Department of Transportation (ADOT) to enforce a higher oxygen content requirement from January 1 through March 31, if marketing data for the preceding October and November indicate that less than 10 percent of fuel sold contained 3.2 to 3.7 percent oxygen. The higher oxygen requirement would be enforced through averaging over the three month period. The oxygen requirement is to be set by ADOT to ensure that 18 percent of all fuel sold contains between 3.2 and 3.7 percent oxygen. The averaging requirement apparently would not supersede the requirement that each quantity of fuel sold also meet the required minimum and maximum oxygen limits in section 41–2123 A or B.

New sections 28–2701 through 28–2708 establish authority for the Governor to implement a set-aside program that effectively insures the availability of gasoline suitable for blending with alcohol, if the ADOT determines a shortage of such unblended gasoline exists during the mandatory oxygenated fuels period.

Only the requirements of section 41–2123 A and B can be credited with CO emission reductions. The averaging requirement of section 41–2124 would, if triggered, produce additional CO reduction but only in the January through March period. However, EPA has no assurance that this requirement would in fact be triggered. The set-aside authority of sections 28–2071 through 28–2708 would, if exercised, make it possible for more fuel to be blended to higher oxygen levels associated with alcohol-based blends than might otherwise be the case with other gasoline blends. The Governor has the discretionary authority, however, to declare a shortage and order the set-aside program into operation. Even if ordered, EPA has received no information with which to estimate the degree of alcohol blending during the entire compliance period, as discussed later in this section.

Before presenting EPA's analysis of the Maricopa County program, it should be noted that a detailed description of oxygenated fuels and their effect on motor vehicle emissions is contained in EPA's NPRM of May 16, 1988 (58 FR 17378). Also, the overall methodology and assumptions for evaluating the CO effects of the oxygen content limits specified in section 41–2123 A or B were proposed at 17410 of that same **Federal Register** notice and clarified by a memo from Phil Lorang, Office of Mobile Sources, EPA, to Wallace Woo, EPA Region 9 (June 22, 1988). The details of the methodology are contained in the TSD for this action and will not be repeated here. The interested reader is instead referred to that document. However, the basic elements of EPA's evaluation are briefly described below.

The EPA report, "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," January 29, 1988, EPA –AA–TSS–PA–87–4, is the basis for the calculation of CO emission reductions. The guidance in this report is supplemented with the following information and assumptions, which pertain to the specific program contained in H.B. 2206.

In response to the mandate which specifies different oxygen levels for specific grades of gasoline, EPA assumes that catalyst vehicles will use unleaded gasoline and that vehicles manufactured without a catalyst will use leaded fuel with an allowance for the voluntary use of unleaded fuel. EPA also assumes that, in the near term, no switching between leaded and unleaded gasoline will occur due to changes in relative price or consumer desire to use or avoid one type or level of oxygenate. Regarding the actual oxyen content, EPA assumes that the minimum oxygen content for all grades of gasoline will be met using MTBE with a 0.1 percent oxygen safety margin.[5] This assumption is based on a workplan for implementation of H.B. 2206 contained in Appendix B.2 of the SIP Addendum which indicates an intent by the Arizona Department of Weights and Measures (ADWM) to allow no enforcement tolerance for oxygen content so that refiners must blend to a slightly higher oxygen level to allow for measurement variability. Additionally, no major oil company, other sizable gasoline marketer, or other investor indicated in comments on EPA's NPRM that it will definitely purchase and import via pipeline from California oxygen-free gasoline for resale to distributors for use in alcohol blending. Thus, EPA is conservatively assuming that no alcohol blends will be sold in the Phoenix area for the purposes of assigning emission reduction credits to the program. Therefore, if the Sun waiver is not approved, leaded fuel is expected to contain a level of MTBE which produces 2.5 percent oxygen content by weight and unleaded fuel is expected to contain a level of MTBE which produces 2.0 percent oxygen by weight. If the Sun waiver is approved, EPA assumes that all fuel will contain a level of MTBE which produces 2.4 percent oxygen by weight, i.e., about 13.2 percent MTBE by volume depending on the density of individual batches of gasoline used in blending.

With respect to enforcement of the State's program, as noted above, the ADWM has developed a workplan for implementation of H.B. 2206 which contains enforcement provisions. Further, H.B. 2206 appropriates

[5] EPA originally assumed leaded fuel would be blended with ethanol blends. However, the "substantially similar" restriction of section 211 of the Clean Air Act does not apply to leaded fuel, so MTBE can legally be used at any levels. The Agency finds the current MTBE assumption is more realistic and more conservative regarding emission benefits. See the TSD for details.

resources to the Department for this purpose.

Given the information and assumptions delineated above, the fleet average CO emission reduction would be 14.28 percent on December 31, 1991 if the Sun waiver is not approved. If the waiver is approved, the CO reduction would be 16.20 percent on that date.

The actual CO reduction in Maricopa County may be higher, but not assuredly so. If a 10 percent market share for alcohol blends is in fact achieved throughout the six-month mandate period, the 3.4 to 3.7 percent oxygen content by weight normally associated with such fuel would provide greater CO benefits than the smaller values assumed by EPA for MTBE blends. For example, if the Sun waiver is approved and a 10 percent alcohol blend market share actually occurs throughout the six-month period, the fleet CO reduction in December 1991 would be 16.7 percent. However, EPA has no evidence that this will in fact occur for the entire compliance period, so this estimate is provided for illustration only, and is not part of the basis for SIP approval.

*2. Loaded-Mode Inspection and Maintenance Testing.* Currently the Arizona I/M program passes or fails vehicles based on their exhaust emission concentrations under curb-idle conditions. Section 18 of H.B. 2206 amends Section 49–542 F of the Arizona Revised Statutes, to require, beginning on January 1, 1989, that 1981 and newer vehicles pass both a curb-idle mode and a loaded-mode emissions test (i.e., a test conducted while a vehicle is operating under load on a dynamometer to simulate actual driving conditions). To avoid the need for dynamometers at the fleet operators' test sites fleet operators who have obtained a permit to test their own vehicles are allowed to substitute a 2500 revolutions per minute mode for the loaded-mode portion of the test.

EPA has calculated the expected incremental benefit of loaded-mode testing using MOBILE3 which contains EPA's standard estimates of the I/M reductions for both idle and loaded-plus-idle testing. Inputs for average speed, registration mix, tampering/misfueling rates, and I/M stringency were those recommended by the Arizona Department of Environmental Quality as being representative for Phoenix. The incremental CO reductions from loaded-mode testing were calculated by EPA to be 4.0 percent in 1991 and 5.9 percent in 1995.[6] A more complete discussion of factors related to this calculation is contained in the TSD.

The May 16, 1988 NPRM stated that EPA might go directly to final approval of the loaded-mode testing requirement then being considered by the Arizona legislature. EPA is today approving the loaded-mode testing requirement, for both Maricopa and Pima Counties, as part of the Arizona CO SIP.

*3. Travel Reduction Program.* H.B. 2206 establishes a travel reduction program (TRP) in the nonattainment area of Maricopa County, which is very similar to the Pima County Travel Reduction Ordinance. The legislation appoints Maricopa County as the implementing and enforcing agency and provides funding for implementation through the State Air Quality Fund.

The TRP requires all employers of 100 or more full-time equivalent employees at a worksite to appoint a transportation coordinator, distribute information on alternative transportation modes to their employees, participate in surveys of alternative-mode usage of their employees, and develop a travel reduction plan. The travel reduction goals in the program are a 5 percent reduction in single-occupant vehicle trips to each major employer's worksite in the first year and an additional 5 percent in the second year. Travel reduction goals in the third and subsequent years are to be set by the MAG and enacted by County ordinance.

Under the TRP, major responsibility for overseeing the implementation of the program is held by the travel reduction program regional task force. This task force, the exact composition of which is to be decided by the Maricopa Board of Supervisors, may have representatives of major employers, development owners, Maricopa County jurisdictions, and public interest groups. Duties of the task force include reviewing surveys and travel reduction plans and requiring employers to revise unapprovable and/or inadequate plans. The task force is also responsible for recommending that enforcement actions be initiated. The task force makes recommendations to the existing County Air Quality Advisory Committee, a volunteer committee which currently provides recommendations to the Maricopa Board of Supervisors on air quality rules and regulations.

Violations of the TRP are punishable by civil penalties of up to $350 per day. Violations include failure to designate a transportation coordinator, to disseminate information, to submit an approvable trip reduction plan, or to implement such a plan. Failure of a major employer to achieve the goal is not considered a violation of the TRP although it does trigger mandatory and specific revisions to the employer's travel reduction plan.

In a letter dated July 22, 1988, the County outlined its expected budget and staffing for implementing the TRP as well as a schedule for working with employers. Staffing for the program will be located in the Bureau of Air Quality Control with additional contracted services from the Regional Transportation Authority. The County is currently scheduled to provide major employers with survey forms by the second week of February 1989. After that, the County will provide major employers with survey forms as soon as the provisions of H.B. 2206 allow.

In overall concept the TRP is similar to the proposed Federal trip reduction regulation and the MAG model trip reduction ordinance discussed at length in the proposal for today's notice. The requirements in all three apply to employers with more than 100 employees at a worksite and include the appointment of an employer transportation coordinator, the annual dissemination of information on alternative transportation modes to employees, annual surveys of employee commute modes, and the annual preparation, submittal, and implementation of a trip reduction plan that includes a report on the current year's program. The trip reduction goals are the same in all three programs. All three enforce on the failure of an employer to meet the requirements listed above. While EPA did propose in its trip reduction regulation to enforce on failure to meet the goal, the MAG model and the TRP do not. The TRP does require, however, that employers who have failed to meet the annual travel reduction goal implement a specified number of travel reduction strategies. This automatic trigger functions similarly to enforcement of the goal. (See the subsection "Trip/Travel Reduction Program" under the Response to Comment section of this notice for more information.)

In its May 16 notice, EPA proposed to grant an emission reduction credit of 1.8 percent in 1991 to the MAG model trip reduction ordinance and calculated the same emission credit for its own proposed regulation. Because the TRP

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[6] In a subsequent **Federal Register** notice, EPA plans to propose to amend the existing loaded-mode test procedure contained in 40 CFR Part 85, Subpart W. The proposed changes will eliminate discrepancies between Arizona's loaded-mode testing protocol and EPA's requirements, thereby ensuring continued performance warranty coverage for potentially affected consumers. The minor revisions presently being contemplated do not change the CO benefit being credited to Arizona's loaded-mode testing requirement and, therefore, the amendment is not an issue in today's action.

covers the same employers at the same trip reduction goal as both the MAG model and the federal regulation, EPA is granting a 1991 emission reduction credit of 1.8 percent to the program.

*4. Voluntary No-Drive-Day Program.* In its 1987 SIP submittal, MAG and the State took a substantial emission reduction credit for a voluntary no-drive-day program in Maricopa County. As described in that SIP submittal, the program was a joint undertaking of the Phoenix Metropolitan Chamber of Commerce, the Regional Public Transportation Authority, and the Arizona Office of Energy. The SIP submittal, however, contained no long-term funding commitment for the program. EPA's review of the proposed voluntary no-drive-day program raised three concerns, and in May 1988, EPA proposed not to approve the program as part of the SIP. The three concerns were assurance of adequate annual funding, the existence of an institutional framework meeting the requirements of CAA section 172(b)(10), and the development of a monitoring program to assess and verify the impact of the program.

H.B. 2206 in section 17 requires a County with a population of more than 400,000 (effectively Pima and Maricopa Counties) to institute a voluntary no-drive-day program. With the County having clear responsibility for implementation, the program meets the institutional requirements of CAA section 172(b)(10). H.R. 2206 also requires the DEQ to fund the voluntary no-drive-day programs from the Air Quality Fund; therefore, long-term funding of the program is assured. Based on these two changes, EPA is approving the voluntary no-drive-day program as part of the SIP for both Maricopa and Pima Counties; however, because a monitoring protocol to assess and verify the impact of the program is still lacking, EPA is not at this time approving a specific emission reduction credit for the program. Before EPA can approve a specific emission reduction credit for this measure, the State must submit a monitoring protocol for the program and any supporting documentation on the effectiveness of such a program in Maricopa or Pima County. Should the State submit this information, EPA will at that time revisit the issue of an emission reduction credit in the Maricopa SIP for a voluntary no-drive-day program.

*5. Other Measures.* In addition to the voluntary no-drive-day measure, EPA is also approving as part of the SIP, but without allotting emission reductions credit, the public education program for oxygenated fuels, incentives for the use of compressed natural gas in vehicle fleets, allocation of moneys rom the Air Quality Fund for public transit projects and encouragement of vanpools for County and State employees. H.B. 2206 provides the legislative authority for these programs and specifically allocates moneys from the Air Quality Fund to the agencies which will implement them. H.B. 2206 allows subsidies, in the form of payment to third-party companies and tax deductions, as incentives for County, State and private employers, respectively, to encourage the use of vanpools for employees. Although the emission reduction impacts for these measures has not been determined, EPA believes these measures support the attainment and maintenance demonstrations in the SIP and demonstrate the wide range of efforts the State has taken to improve CO in Maricopa County.

*6. New Source Review.* On June 1, 1988, the State submitted a letter from itself, and on July 22, 1988, the State submitted a letter from Maricopa County. These letters make certain commitments regarding implementation of the State and Maricopa NSR rules pursuant to the understandings in EPA's 1983 proposed approval of those rules. Based upon these letters, EPA is taking final action to approve the Maricopa NSR rules and, elsewhere in the **Federal Register** today, EPA is taking final action to approve the State NSR rules. These commitment letters, which are appended to the technical support document for this notice, concern stack heights, temporary sources, growth allowances, net emission decreases, reasonable further progress, volatile organic compounds, stationary sources, allowable offsets, permittee responsibility, and visibility protection. Both letters have been forwarded to the Office of the Federal Register for incorporation by reference into the Code of Federal Regulations as enforceable components of the Maricopa CO SIP. As such they are federally enforceable against both Maricopa County and the State of Arizona under sections 113 and 304 of the Act. The commitments are also enforceable through citizen suit under section 304 of the Act.

*B. Demonstration of Attainment, Maintenance and RFP*

In its May 16, 1988 NPRM, EPA concluded that any approvable SIP submitted by the State must demonstrate attainment of the CO standard by December 31, 1991. EPA's evaluation of the air quality analysis in the MAG plan indicates that a 22.0 percent reduction in the 1991 baseline CO emissions is needed to demonstrate attainment of the 8-hour CO NAAQS by December 31, 1991.

Table 1 is a list of the control measures which were submitted by the State and to which EPA is granting specific emission reductions credit in this notice. EPA calculates that these measures will reduce CO emissions by 22.3 percent in 1991 if the Sun Waiver is denied and 24.1 percent in 1991 if the Sun Waiver is approved. These reductions are sufficient to reduce the ambient CO concentrations in Maricopa County to below the NAAQS by the end of 1991. If the Sun Waiver is approved, EPA projects that attainment will be achieved by mid 1991. In Table 1, the total emission reductions are not a sum of the individual emission reductions because measures that control tailpipe emissions (e.g. oxygenated fuels, and the I/M program) reduce the emission reduction impact of measures which control VMT (transit, and the travel reduction program).

EPA has concluded that a demonstration of maintenance for 10 years after the date of approval is sufficient for the Maricopa SIP. Because the Maricopa plan does not provide modeling results past 1995, EPA has used available data to forecast the expected ambient air quality from the latest date in the plan, 1995, to 1998.

The major factor influencing CO air quality in Maricopa is mobile sources. Using VMT growth projections and the expected reductions from the FMVCP, EPA estimates that the second maximum concentration at the design monitor would be 10.0 ppm in 1998 assuming reductions from only the FMVCP, the State's I/M program (including loaded-mode testing and the 1987 legislation), and the freeway build-out. A 10.0 ppm reading would require a reduction of 10.3 percent in CO emissions from other SIP measures in order to show continued maintenance with the 9.0 ppm CO NAAQS. The oxygenated fuels program alone will achieve a 12.46 percent reduction (assuming the Sun Waiver is denied) in 1998. This reduction is sufficient by itself to show continued maintenance. Because the estimates of the emission reductions from other measures rely on State-performed modeling which is unavailable for the period after 1995, the 1998 impacts of the other measures in the SIP cannot be determined; however, these measures will continue to provide additional emission reductions through 1998.

Section 172 of the CAA requires that state implementation plans demonstrate

reasonable further progress (RFP). RFP is defined in section 171(1) as "annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval * * * and regular reductions thereafter) * * *". During the CO season of 1988/89, the 1987 I/M program, loaded-mode I/M testing (scheduled to begin January 1, 1989), short-range transit improvements, regional ridesharing, bicycle and pedestrian improvements, and alternative work hours will provide emission reductions. In addition, a voluntary no-drive-day program and the voluntary introduction of oxygenated fuels may also provide emission reductions during this season.

During the 1989/90 CO season, the above measures as well as the then mandatory oxygenated fuels program, and the initiation of the travel reduction program will provide increasing emission reductions. In fact during this season, less than fourteen months after today's approval, the mandatory oxygenated fuels program will provide the majority of the emission reductions needed for attainment by the end of 1991. In 1990/91, higher goals in the travel reduction program will continue to reduce ambient CO concentrations. By the 1991/92 season, the projected date of attainment, the complete control strategy will provide sufficient emission reduction to demonstrate attainment.

Even without these SIP measures, the modeling performed for the plan demonstrates that considerable progress will be achieved in reducing emissions in Maricopa County with only the "baseline" measures—FMVCP, the pre-1987 I/M program, and the freeway build-out—despite high growth rates in VMT. The modeling shows that a 34 percent reduction in emissions was needed to demonstrate attainment in 1987, 25.6 percent is needed to demonstrate in 1990, and 22.0 percent in 1991. In addition, H.B. 2206 requires that the oxygenated fuels program, the travel reduction program, and the loaded-mode testing start in 1989—more than two years before the date of attainment. Finally, the majority of the other SIP commitments specifically listed in Table 1 are already being implemented and are providing emission reductions. All these factors provide sufficient evidence that the plan demonstrates RFP and meets the requirement for "substantial reductions in the early years."

## III. Response to Comments

EPA received a considerable number of comments in response to its May 16 NPRM. Comments were made both in writing and at a June 10, 1988, public hearing in Maricopa County. The majority of the comments received dealt specifically with the two federal measures that EPA proposed to promulgate in its FIP. Most of these comments are made moot by EPA's action today to withdraw the FIP in preference to the State plan. However, some of the comments received address the SIP submittals or bear on EPA's finding that the SIP is fully approvable under section 110 and Part D of the CAA. EPA's response to those comments are given below. A summary of pertinent comments received on the May 16 notice can be found in the technical support document for this rulemaking.

### *A. Legal Issues*

#### Attainment Date

The ACLPI commented that the attainment date for the Maricopa area should not be three years from the date of SIP approval. ACLPI argued that after passage of the statutory Part D attainment dates, EPA should interpret the Act as requiring attainment at the soonest time, essentially without regard to practicalities in order to implement Congressional intent in setting the original deadlines. As EPA previously explained in full, EPA believes that after December 31, 1987, a SIP needs to demonstrate attainment no more quickly than as "expeditiously as practicable" but by certain fixed dates. See EPA's proposed post-1987 attainment policy, 52 FR 45044, 45049 (November 24, 1987), and the proposal for today's action, 53 FR 17378, 17381 (May 16, 1988), for a full discussion of EPA's legal interpretation.

If EPA were to adopt ACLPI's position that post-1987 planning should provide for attainment at the soonest time, many post-1987 nonattainment areas would have to resort to draconian measures with drastic social and economic impacts—such as plant closings, gasoline rationing and mandatory no-drive restrictions—simply because such measures are physically available to bring about attainment. EPA does not believe that Congress, if it had addressed the post-1987 nonattainment situation now being faced, would have required such a result, even after passage of the Part D dates. EPA believes that Congress would instead have regarded the "as expeditiously as practicable" requirement to be still in place, albeit bounded in situations, such as that of Maricopa County, by fixed attainment deadlines.

ACLPI cites *American Lung Association* v. *Kean*, 18 Envtl. L.Rptr. 20317(D.N.J. 1987), in support of its position. ACLPI misinterprets that case. That case in fact interprets the Act to require "SIP implementation 'as expeditiously as *practicable*' after December 31, 1987." *American Lung Association*, id. at 20317 (emphasis added). The case does not require SIP implementation more rapidly than practicable and does not set any outside date for attainment in the event no near term date is practicable. This case is therefore consistent with EPA's position; indeed, the "as expeditiously as practicable" formulation would actually allow for a much longer attainment period in very severe nonattainment areas.

The Maricopa County SIP that EPA is approving today provides for attainment by 1991. EPA believes that this is the appropriate attainment date for the area in light of the Agency's conclusion that no measures beyond those already included in the Maricopa SIP are both practicable and would advance that attainment date. ACLPI suggests a number of measures that it believes are available that together might advance the attainment date for the Maricopa area. EPA cannot now conclude that any of these measures are both practicable and sufficient to materially advance the attainment date.

Specifically, ACLPI suggests an immediate, major expansion of the transit system, a rigorous program of parking controls, exclusive bus lanes, winter daylight savings time, mandatory no-drive days, and a statewide I/M program. The Maricopa SIP already contains some measures for expanded mass transit and HOV lanes. EPA does not believe there are grounds to conclude that the substantial expansion of the transit system that would be necessary to advance the attainment date from 1991 could practicably be implemented in the short time between now and the end of 1990. EPA cannot require a state to observe winter daylight savings time since authority to establish or regulate daylight savings time is reserved to the U.S. Department of Transportation's (USDOT) Office of General Counsel under the 1966 Uniform Time Act. EPA believes that any program to create parking controls, mandatory no-drive-days and exclusive bus lanes could not materially advance the attainment date, unless it were so stringent as to create the type of public uproar that EPA faced when it promulgated such measures in FIPs in the 1970s. In light of that experience, EPA cannot conclude that such stringent programs would be practicable to implement. Beyond that, the Maricopa SIP already contains the most stringent I/M program in the country, and it has

recently been expanded to include a loaded-mode testing feature. Although further expansion of the program might be practicable, EPA cannot conclude from its experience with other states' less stringent programs that a significant expansion in Arizona's tough program is certainly practicable. Therefore, EPA believes that the 1991 date derived by analogy to sections 110(a)(2)(A) and 110(e) is the appropriate attainment date for the Maricopa area.

Reasonable Further Progress

ACLPI commented that the proposed plan did not provide for reasonable further progress towards attainment. EPA does not agree. The expanded I/M program, transit improvements, ridesharing program, increased bicycle and pedestrian travel, fleet conversions, alternative work hours, trip reduction ordinances and the FMVCP will together provide measurable emissions reductions throughout 1989 and 1990. It is true that the bulk of the emissions reductions will result from the oxygenated fuels program, which will only be voluntary in the 1988/89 CO season. However, EPA expects that the voluntary program will still provide some reductions in 1988/89 season and sizable emissions reductions will result from the mandatory program beginning in the 1989/90 CO season. Together these measures provide for reasonable further progress towards attainment.

Reasonably Available Control Measures

ACLPI commented that the Maricopa CO SIP does not provide for implementation of all reasonably available control measures (RACM) as required by section 172(b)(2) of the Act. ACLPI specifically refers to transit improvements and parking controls as reasonably available measures.

EPA has long interpreted section 172(b)(2) as requiring implementation of only those available controls necessary to provide for attainment by the applicable attainment date. This is because it would not be reasonable to require states to implement measures that, although technologically available, would not materially advance an area's attainment date. See EPA's General Preamble on Part D SIP preparation, 44 FR 20372, 20375 (April 4, 1979).

As explained above, EPA does not believe it has grounds to conclude that any combination of clearly praticable measures would provide for attainment in the Maricopa area before 1991. EPA believes that the approvable measures in the Marcicopa SIP provide for attainment as expeditiously as practicable and that therefore any additional potentially available measures would not be necessary to achieve timely attainment and consequently would not be required as RACM.

Maintenance

Two commenters addressed the issue of maintenance of the CO standard. ACLPI commented that the maintenance demonstration in the Maricopa plan is inadequate because it is not supported by the record and does not cover a sufficiently long period of time. EPA disagrees. The maintenance demonstration is based on the modeling and emissions projections in the MAG plan and EPA's own projections based on the data in the MAG plan. These projections indicate that the Maricopa area will maintain the CO standard until at least 1998. This demonstration covers the ten-year time period which EPA proposed as appropriate for a maintenance demonstration in its proposed post-1987 CO/Ozone policy. ACLPI commented that a maintenance demonstration should not be limited to ten years but should instead extend to the limit of technical feasibility. On the other hand, the USDOT commented that EPA should not apply the maintenance requirements of its proposed post-1987 policy to any areas until the Agency has finalized the policy. EPA believes that given these conflicting public comments the use of a ten-year maintenance demonstration is appropriate. Although the post-1987 policy is not yet final, EPA believes that projections extending ten years are technically reliable and provide a manageable planning period. Projections beyond that period become too speculative to be reliable.

Moreover, although the Act requires SIPs to contain a demonstration of maintenance of the standards, the Act nowhere indicates the length of time such demonstrations should cover.

Where the statute is unclear, EPA must fill any gaps using a rule of reasonableness. *See Chevron v. NRDC*, 467 U.S. 837 (1984). As reflected in the proposed post-1987 policy, and because projections of source growth and emissions reductions beyond ten years are too speculative, EPA has determined that a ten-year period is a reasonable period for a maintenance demonstration in Maricopa County and that requiring a demonstration extending more than ten years would not be reasonable.

In supplemental comments ACLPI pointed to 40 CFR 51.42 in support of its assertion that at least a 20-year maintenance demonstration would be appropriate. That provision is part of EPA's 1975 maintenance program. The entire program, however, has been effectively superseded by the 1977 CAA amendments and creation of Part D and the section 107 nonattainment area designations. The reference to maintenance in Part D (section 172) and the entire planning scheme in Part D were created in light of the failures of the 1970's efforts to produce sound state plans. They were not intended as a ratification of EPA's approach to these issues in the previous years. While in 1975 EPA apparently believed that a 20-year maintenance demonstration would be desirable and feasible, EPA now views the issues differently. Upon subsequent reflection, in light of the Agency's post-1977 experience with computer models for projecting mobile source emissions and with the inaccurate growth projections in the initial round of Part D SIPs, EPA currently concludes that projections beyond 10 years are simply too speculative. The Agency's recent conclusions are reflected in the proposed post-1987 policy. For these reasons, EPA believes at this time that a maintenance demonstration through 1998 is adequate for the Maricopa area.

Finally EPA notes that the Maricopa SIP which EPA is approving today includes several recently-adopted meaures to which EPA had not assigned emission reduction credit in the proposal for this action. These are the voluntary no-drive-day program and the requirement under the oxygenated fuels program for a specific market share of alcohol blends. EPA is not relying upon any reductions from these new measures to bring about attainment. However, the emission reductions from these measures will be available as additional assurances that the Maricopa area will continue to maintain the CO standard into the future.

New Source Review (NSR)

ACLPI commented that EPA could not approve the Maricopa CO SIP and lift the construction ban in Maricopa County so long as the plan lacks an approvable NSR component. EPA has reviewed the Maricopa NSR program and has determined that it can be fully approved based upon Maricopa County's and the State of Arizona's commitments to interpret the regulation consistent with EPA's requirements. The State submitted a letter from itself on June 1, 1988, and a letter from Maricopa County on July 22, 1988, which make the necessary commitments. These commitment letters, which have been appended to the TSD for this notice, have been forwarded to the Office of Federal Register for incorporation by reference into the Code of Federal Regulations as enforceable component

of the Maricopa CO SIP. As such are enforceable against Maricopa County and the State of Arizona under sections 113 and 304 of the Act and will effectively control any court's interpretation of the State's and County's intent under the NSR rules.

ACLPI also commented that the Maricopa CO plan does not meet the requirement of section 172(b)(11)(A) that the NSR program require a demonstration that the benefits of a proposed source significantly outweigh the environmental and social costs imposed by the source. Section 172(b)(11)(A) technically does not apply at all to Maricopa. The section only applies by its own terms to areas that received attainment date extensions to 1987. EPA has stated, however, that generally SIPs for areas that failed to attain in 1982 as planned would have to meet all requirements applicable to extension areas in order to demonstrate timely attainment. See Guidance Document for Correction of Part D SIPs for Nonattainment Areas, January 27, 1984. The Arizona NSR program does require a demonstration that the benefits of a proposed project outweigh the project's environmental costs. EPA concludes that with that provision Arizona's NSR program adequately complies with EPA's policy that non-extension areas that failed to attain generally meet the Part D requirements for extension areas to demonstrate attainment.

Contingency Plan

ACLPI commented that the Maricopa plan does not include adequate contingency provisions. The ACLPI also commented that EPA should adopt a contingency plan because of uncertainty of emission reduction estimates and should ensure that it is legally enforceable and self-implementing. In its 1981 guidance on SIP preparation, EPA indicated that all Part D SIPs should contain contingency measures to compensate for unanticipated shortfalls in planned emission reductions. Although not directly required by the CAA, EPA believed that such measures would be appropriate to provide assurance that an area would achieve timely attainment. It is true that the contingency provisions in the Maricopa SIP are not extensive. However, as mentioned above, the recently adopted Arizona legislation mandates two measures that EPA had not previously included in the Maricopa attainment demonstration. These measures are a requirement for a minimum market share of alcohol blends and the voluntary no-drive-day program. Although EPA cannot assign specific emission reduction credits to these programs as part of this final action, they can result in additional emission reductions beyond those necessary to achieve timely attainment and may offset unanticipated shortfalls in planned emission reductions. These measures, which have already been adopted, will adequately serve the function of the contingency provisions EPA contemplated in 1981 in conjunction with the contingency measures in the MAG plan.

Conformity Provisions

Two commenters addressed the plan's conformity provisions. (See discussion of section 176(c) and conformity generally in the May 16, 1988 proposal.) ACLPI commented that the provisions were inadequate, presumably because they failed to fully meet EPA's 1981 guidance establishing criteria for approval of 1982 plan revisions as indicated in the proposal, and therefore EPA should promulgate conformity provisions. On the other hand, USDOT commented that EPA should not require that the Maricopa plan contain the conformity provisions outlined in either the proposed post-1987 policy of EPA's April 1, 1980, ANPRM on conformity requirements. USDOT claims transportation actions are excluded from the 1980 ANPRM because of the June 12, 1980, USDOT/EPA agreement and that they also excluded from the proposed post-1987 policy.

Compliance with section 176(c) of the Act concerning conformity is primarily the responsibility of the various federal agencies and metropolitan planning organizations approving or funding projects. EPA's policy is to require conformity requirements in SIPs as needed to protect the air quality standards. The control measures in the Maricopa SIP are basically all transportation related measures. The conformity provisions in the Maricopa SIP are adequate to insure compliance with section 176(c) in Maricopa County. EPA will continue to work with Maricopa County to incorporate additional conformity procedures and criteria consistent with all outstanding EPA guidance as appropriate in light of the Agency's conclusions on conformity issues in its final post-1987 ozone/CO policy when it is published. See 52 FR 45044 (November 24, 1987).

Highway Funding Sanctions

Several commenters addressed the proposed funding sanctions. ACLPI strongly supported the termination of highway assistance, while USDOT asserted that section 176(a) highway funding sanctions are not available at all in the period beyond 1987. Several local agencies and the State opposed the imposition of sanctions because they believe the State was making reasonable efforts to develop an approvable SIP. Since EPA is today approving the Maricopa CO SIP, the Agency is withdrawing its proposal to impose funding sanctions; therefore, these comments are moot.

*B. Oxygenated Fuels*

The Agency's oxygenated fuels proposal included a description of the assumptions and methods that EPA intended to use in evaluating the specific elements of any subsequently adopted State program. Several comments were received on this methodology, although significantly more general comments were received on the federal proposal. Of these, the only comments that appear directly relevant to the approvability of the SIP pertain to the proposed October 1989 implementation date of the fuels program, which was both originally proposed by EPA and chosen by Arizona. The basic question to be resolved is whether the effective date represents progress toward attainment as expeditiously as practicable.

In evaluating this issue, EPA finds it particularly important to note that the State's program will likely result in the oxygen content of all gasoline in the Maricopa County nonattainment area being substantially above the levels found in conventional fuels during the mandatory compliance period. This could result in a significant amount of new facilities being added to the Phoenix petroleum terminal, or to refineries servicing the area, to produce the requisite oxygenated fules, i.e., the blending of MTBE and/or alcohol with gasoline. Such a situation is not dissimilar to that expected under the federal proposal, which prompted EPA to orignially select, and most commenters to support, the October 1989 implementation date. Furthermore, many commenters pointed out the importance of instituting an oxygenated fuels program that minimizes the risk for fuel supply disruptions, prevents unnecessary price increases, and has a high degree of public acceptance. EPA concurs and believes that the approximately one year leadtime afforded by the October 1989 date should be adequate to achieve these goals. On the other hand, the available information does not provide an adequate basis to conclude that a significant acceleration in the date is possible without jeopordizing these objectives. Therefore, the effective date

for Arizona's oxygenated fuels program appears reasonable to allow for the orderly transition from conventional to oxygenated gasolines.

The remaining comments primarily related to EPA's January 1988 guidance for calculating CO reduction benefits from alternative fuels, or to concerns associated with the relatively high average oxygen content and likely large market share for alcohol blends under the federal proposal. The comments pertaining to the Agency's emission reduction methodology for oxygenated fuels will be considered in a separate action, along with other information that has become available since the guidance was formulated. These comments do not call into question EPA's action on the SIP, primarily because the suggested revisions to the guidance would likely increase the estimated CO benefits for the program contained in the SIP. The comments pertaining to the relatively high oxygen content of EPA's proposal are also not directly relevant to the SIP, because the State program has less stringent oxygen requirements. As a result, the Agency expects that the majority of gasoline sold in Phoenix during the wintertime compliance period will contain MTBE, which is widely regarded as a fully satisfactory oxygenating compound.

A more complete discussion of these and other comments is contained in the TSD for today's action.

*C. Trip/Travel Reduction Programs*

EPA received a number of comments on the proposed federal trip reduction regulation and the State travel reduction program. These comments fell into one of three categories. The first category are positions and support for those positions on whether EPA should promulgate in its FIP a more stringent oxygenated fuels program in lieu of a federal trip reduction regulation. EPA had specifically asked in its proposal for comments on this issue. The second category are comments on specific aspects of the proposed federal regulation such as area of coverage and whether enforcement under CAA section 113 is appropriate for such a regulation. The final category are comments that deal with aspects of the State's travel reduction program.

Because EPA is promulgating neither a trip reduction regulation nor an oxygenated fuels program, issues raised on trip reduction regulation versus higher oxygen levels are moot as are issues on specific aspects of the federal regulation. The final category of comments bear on EPA's ability to approve the State's travel reduction legislation under section 172 and are addressed below.

ACLPI stated in its comments that the State's legislation failed in two ways to meet the section 172(b)(10) criteria that—as ACLPI writes—"all control measures be supported by legally enforceable requirements, schedules and timetables for compliance."

ACLPI claims that H.B. 2206, which contains the travel reduction program, does not set dates by which employers' travel reduction plans must be submitted. While EPA agrees that the legislation does not set specific dates on which the requirements of the program must be met by major employers, EPA disagrees, with the implication that there is no enforceable schedule in the travel reduction program. In section 49–588, each major employer is required to prepare and submit a travel reduction plan in each year of the regional program. By definition (see section 49–581(16)), the regional program is to begin in January 1989. Taken together, this language requires that every employer who is a major employer in 1989 prepare and submit a travel reduction plan by the end of 1989. While the legislation does give the County great discretion on the exact date travel reduction plans must be submitted, it does constrain the overall timeframe therefore does not pose an issue under the CAA section 172(b)(10) requirement for schedules and timetables for compliance. In addition, a letter from Maricopa County submitted with the July 25, 1988 SIP submittal indicates that the County will begin the program as soon as H.B. 2206 allows, i.e., January 1, 1989.

ACLPI further commented that because there were no sanctions against employers for failure to achieve the trip reduction goal, the trip reduction program fails to meet the requirement that all control measures be supported by "legally enforceable requirements." EPA disagrees. In a very real sense the TRP does impose sanctions against employers failing to achieve the goal. The TRP requires any major employer who fails to meet the annual trip reduction goal to implement a specific number of trip reduction strategies: Two in the first year of the regional program, three in the second, and, in the third and subsequent years, the strategies specified by the TRP Task Force. This process of triggering an automatic and specific revision to the travel reduction plan deprives an employer of a good part of its discretion under the program and represents a powerful incentive for employers to achieve the goals. Failure to revise the plan or to implement the required strategies would trigger the enforcement process in the TRP, which in turn will itself be enforceable by citizens and the Administrator under sections 304 and 113 of the CAA. EPA therefore believes that the TRP meets the Act's requirement concerning legal enforceability.

*D. Other Comments*

EPA received three comments regarding the benefits to be obtained from the State's I/M program. In the NPRM, EPA noted that the State had made an adjustment to the I/M credits in its modeling. This adjustment was to freeze the I/M benefits for vehicles which had been in the I/M program for more than five years. EPA stated in the NPRM that this adjustment was inconsistent with accepted use of MOBILE3 and, further, that the State did not provide EPA with any data showing that such effect occurs in either the Arizona I/M program or other I/M programs in the Country. EPA, therefore, recalculated the emission reductions needed for attainment excluding this adjustment. Excluding the adjustment lowered the percent reduction needed to attain the CO standards in 1991.

EPA received three comments regarding its recalculation of the I/M benefit. The State and MAG commented that MOBILE3 has always grossly underestimated CO concentrations in Maricopa County and that the State's modeling, though still underestimating CO concentrations, has proven to be considerably more accurate. ACLPI commented that because the I/M program has been operated exclusively by the State for more than a decade, EPA is not in the position to question the State's conclusions regarding the emission reductions achievable by that program.

The State has not provided any emissions data to support the accuracy of freezing I/M benefits after a vehicle has been in the program five years. MOBILE3, the mobile source emission factor model—including the routines to calculate I/M credits—was developed by EPA after extensive public input. In the face of no State data to support its contention that MOBILE3 underestimates CO concentrations in Maricopa County, EPA must stay with its publicly debated policy on the use of MOBILE3 when determining the minimum reductions needed for attainment. However, the State is free to base its own planning on the higher emission reduction targets derived from its assumptions about I/M benefits. EPA encourages them to do so; however, in determining the approvability of the attainment demonstration in the

Maricopa SIP, EPA will rely on its policy on calculating I/M benefits.

In supplementary comments, ACLPI gave new vehicle miles traveled (VMT) numbers for Maricopa County which are higher than the numbers in the Maricopa plan. ACLPI commented that because the SIP underestimates the VMT numbers, EPA should disapprove the attainment demonstration in the SIP and adopt additional FIP measures to address the increased emissions from the VMT growth.

The simple existence of higher VMT numbers does not lead to the conclusion that the attainment demonstration in the MAG plan is inadequate and that additional FIP or SIP control measures are needed. The VMT numbers supplied by ACLPI show a substantial increase in baseline (1985) VMT numbers. Changes in the baseline data affect the model evaluation and thus the future-year modeling and the emission reduction needed for attainment in unpredictable ways. Depending on the spatial distribution of the VMT and the effect on regional speeds, the emission reduction needed for attainment could increase, decrease or remain the same. Simply stated, the effect on the attainment number of the VMT increases presented by ACLPI is indeterminate lacking a completely new modeling exercise.

Given that this new VMT data has appeared near the conclusion of the current SIP planning process and the data's impact on the SIP is indeterminate, the issue faced by EPA is what is the most appropriate use of this new data. When determining the emission reductions needed for attainment, the State and MAG did use the most current data then available. After completing the modeling in the spring of 1987, the State did revise the modeling results to reflect higher VMT figures that had then just become available. The State has now submitted its complete plan which includes an adopted control strategy sufficient to demonstrate attainment using the best data available when the control strategy was developed. In this situation, EPA believes the most appropriate response to this new growth data is not to delay approval of the SIP but rather to use the new data in the next round of planning as the State is already planning to do.

In its comment regarding the CO plan attainment demonstration, ACLPI states that the model is based on an unrepresentative design value. ACLPI cites 1984 monitored values of 20 ppm (high) and 19 ppm (2nd. high) from the West Indian School microscale site as the values which should have been considered for the design day.

When a design value is selected from a multi-year data base, EPA policy dictates that the second-highest concentration be used as the design value on which to base a CO SIP. In the MAG CO plan, a 1985 monitored value of 18.5 ppm was used as the design value. This value is essentially the same as using the second-high 1984 value of 19 ppm, although it must be noted this is not the reason for its selection. The State, in agreement with EPA, decided upon the Urban Airshed Model for modeling the SIP control strategy and initiated an intensive air quality and meteorological sampling program to acquire the data necessary to provide the inputs to the model. The design value was selected by the State from this 1985 data base as being the most representative value on which to model a control strategy. EPA agrees with the State's judgment about the representativeness of the 1985 data.

### IV. Summary of Final Action

In todays's notice, EPA is taking final action to approve the revisions to the carbon monoxide state implementation plan for the Maricopa nonattainment area which were submitted by the State of Arizona on October 5, 1987, and July 18 and 22, 1988. Specifically, EPA is approving and incorporating by reference into the SIP the *MAG 1987 Carbon Monoxide Plan for the Maricopa County Area* (including the resolutions of commitments contained in that plan) and portions of Arizona S.B. 1360 and H.B. 2206. In addition, EPA is approving specific emission reduction credits for the following measures: The 1987 I/M program improvements, short-range transit improvements, expanded ridesharing, HOV lanes, freeway flow improvements, increased bicycle usage, pedestrian travel improvements, conversion of buses to alternative fuels, alternative work hours, oxygenated fuels program, loaded-mode I/M testing (which also applies to both Maricopa and Pima Counties), and a travel reduction program. The specific emission reduction credits for these measures are listed in Table 1 of this notice. EPA is also approving as part of the SIP, but without emission reduction credits, the voluntary no-drive-day program (which applies to both Maricopa and Pima Counties), the minimum gasohol market share requirment, public education programs for oxygenated fuels, incentives for the use of compressed natural gas in vehicle fleets, public transit projects, programs to encourage the use of vanpools for County, State and private employees, and allocation of monies from the State's Air Quality Fund to fund several of these programs. Finally, EPA is approving the Maricopa County NSR regulations.

EPA's evaluation of the control strategy submitted by the State shows that these measures will provide sufficient emission reductions to attain the CO standards in Maricopa County by December 31, 1991, maintain the standards until after 1998, and provide RFP between plan approval and attainment. Therefore, EPA is today approving the State's demonstration of attainment.

With these actions, EPA is approving the Maricopa portion of the Arizona CO SIP as fully meeting the requirements of section 110 and Part D of the CAA. With this full approval, EPA is withdrawing the federal implementation plan that it proposed on May 16, 1988. EPA is also lifting the CAA section 110(a)(2)(I) construction ban imposed in Maricopa County on September 23, 1986, and withdrawing its May 16, 1988, proposal to impose highway funding restrictions under section 176(a).

### VII. Regulatory Process

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the **Federal Register** on July 1, 1982.

**Authority:** 42 U.S.C. 7401–7642.

**Lee M. Thomas,**

*Administrator.*

Date: August 4, 1988.

Subpart D of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

### Subpart D—Arizona

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.120 is amended by adding paragraphs (c)(55), (57), (60)(i)(B), (62)(i)(A)(*2*), (65), and (66)(i)(B) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(55) The following amendments to the plan were submitted by the Governor's designee on March 4, 1983.

(i) Incorporation by Reference.

(A) Maricopa County Health Department, Bureau of Air Quality Control.

(*1*) New or amended rule 21.0: A–C, D.1. a–d, and E adopted on October 25, 1982.

* * * * *

(57) The following amendments to the plan were submitted by the Governor's designee on April 17, 1985.

(i) Incorporation by Reference.

(A) Maricopa County Health Department, Bureau of Air Quality Control.

(*1*) New or amended regulations: rule 21.0: D.1., D.1.e, f, and g adopted on July 9, 1984.

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(60) * * *

(i) * * *

(B) The Maricopa Association of Governments (MAG) 1987 Carbon Monoxide (CO) Plan for the Maricopa County Area, MAG CO Plan Commitments for Implementation, and Appendix A through E, Exhibit 4, Exhibit D, adopted on July 10, 1987.

(62) * * *

(i) * * *

(A) * * *

(*2*) Senate Bill 1360: Section 2: ARS 9–500.03 (added), Section 14: ARS 41–796.01 (added); Section 17: 49–454 (added), Section 18: 49–474.01 (added), and Section 25: ARS 49–571 (added), adopted on May 22, 1987.

(63) [Reserved]

(64) * * *

(65) The following amendments to the plan were submitted by the Governor's designee on July 18, 1988.

(i) Incorporation by Reference.

(A) Arizona Revised Statutes.

(*1*) House Bill 2206, Section 2: ARS 15–1627 (amended); Section 6: Title 28, ARS Chapter 22, Article 1, ARS 28–2701, ARS 28–2702, ARS 28–2703, ARS 28–2704, and ARS 28–2705 (added); Section 7: ARS 41.101.03 (amended); Section 9: ARS 41–2065 (amended); Section 10: ARS 41–2066 (amended); Section 11: ARS 41–2083 (amended); Section 13: Title 41, Chapter 15, Article 6, ARS 41–2121: Nos. 1, 3, 4, 5, 6, 7, 8, and 9, ARS 41–2122, ARS 41–2123, ARS 41–2124 (added); Section 15: Title 49, Chapter 3, Article 1, ARS 49–403 to 49–406 (added); Section 17: Title 49, Chapter 3, Article 3, ARS 49–506 (added); Section 18: ARS 49–542 (amended); Section 19: ARS 49–550 (amended); Section 20: ARS 49–551 (amended); Section 21: Title 49, Chapter 3, Article 5, ARS 49–553 (added), Section 22: ARS 49–571 (amended); Section 23: Title 49, Chapter 3, Article 8, ARS 49–581, ARs 49–582, ARS 49–583, ARS 49–584, ARS 49–585, ARS 49–586, ARS 49–588, ARS 49–590, and ARS 49–593 (added); Section 25: Definition of major employer, Section 27: Appropriations; Section 29: Delayed effective dates, adopted on June 28, 1988.

(66) * * *

(i) * * *

(B) Letter from Maricopa County Department of Health Services, Division of Public Health, dated April 28, 1988 and submitted to EPA by the Arizona Department of Environmental Quality July 25, 1988, committing to administer the New Source Review provisions of their regulations, consistent with EPA's requirements. These commitments apply to the issuance of, or revision to, permits for any source which is a major stationary source or major modification as defined in the Code of Federal Regulations, Part 51, Subpart I.

(C) Addendum to MAG 1987 Carbon Monoxide Plan for the Maricopa County Nonattainment Area, July 21, 1988 (supplemental information related to the SIP revision of July 18, 1988).

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**§ 52.124 [Removed]**

3. Section 52.124(a)(1) is removed and the section is reserved.

[FR Doc. 88–18079 Filed 8–9–88; 9:46 am]

BILLING CODE 6560–50–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL-3427-7]**

## Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Pima County Carbon Monoxide Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice announces EPA's proposed action to approve the state implementation plan (SIP) revisions submitted by Arizona on May 26 and July 18, 1988, to its carbon monoxide (CO) plan for the Tucson CO Planning Area (Pima County). EPA is today proposing to approve the recently passed State oxygenated fuels program and the travel reduction ordinances adopted by Pima County jurisdictions as additional measures for the Pima CO SIP. This proposal is based on EPA's conclusion that these additional measures will strengthen the maintenance demonstration of the CO standard consistent with the ten-year maintenance period described in EPA's November 24, 1987 (52 FR 45044) proposal on post-1987 ozone/CO planning.

**DATE:** Comments must be submitted to EPA at the address below by September 9, 1988.

**ADDRESSES:** Comments on this proposal should be sent to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: State Liaison Section, A-2-2, Air Management Division.

Copies of the submitted plan and EPA's technical support document (TSD) are available for public inspection during normal working hours at the following addresses:

Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, State Liaison Section (A-2-2), Air Management Division

Arizona Department of Environmental Quality, Office of Air Quality, 2005 North Central Avenue, 6th Floor, Phoenix, AZ 85004

Pima Association of Governments, 177 North Church Street, 4th Floor, Tucson, AZ 85701

**FOR FURTHER INFORMATION CONTACT:** Wallace Woo, Chief, State Liaison Section, (A-2-2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634, FTS: 454-7634

**SUPPLEMENTARY INFORMATION:**

### I. Background

In a separate section of today's **Federal Register**, EPA is taking final action to approve SIP revisions that provide for attainment of the carbon monoxide standard in Pima County in 1990 and maintenance of that standard through 1998. EPA is proposing in this notice to approve the recently passed State oxygenated fuels program and the locally-adopted travel reduction ordinances as additional measures in the Pima CO SIP. Although these new measures will not by themselves be sufficient to advance the 1990 attainment date, they will provide extra assurances that Pima County will attain the CO standard in 1990 and maintain it thereafter. The demonstration of maintenance is consistent with the ten-year period described in EPA's November 24, 1987 proposal on post-1987 ozone/CO planning. Projections of maintenance beyond ten years would be too speculative to be reliable.

The measures that EPA is proposing to approve today will also serve the function of a contingency provision EPA might otherwise require to insure that additional reductions would be forthcoming in the event of unanticipated shortfalls in planned emission reductions. In its original guidance on preparation of SIPS for areas receiving attainment date extensions to 1987, EPA called for such contingency provisions as a component of an approvable attainment demonstration. See 46 FR 7182 (January 22, 1981). EPA subsequently indicated that areas such as Pima County that had not obtained an attainment date extension but failed to attain by 1982 would generally have to meet all of the requirements for extension areas in order to demonstrate timely attainment. See Guidance Document for Correction of Part D SIPs for Nonattainment Areas, January 27, 1984. The measures in today's proposal have already been adopted and will provide significant additional emission reductions beyond in the CO SIP that EPA is approving elsewhere in this **Federal Register**. These additional reductions will be available to compensate for any unanticipated shortfalls in planned emission reductions and will thus serve the purpose of the contingency provisions EPA contemplated in 1981.

### II. EPA Evaluation

*Travel Reduction Ordinances*

In March and April 1988, all five jurisdictions in the Pima County nonattainment area (Pima County, Tucson, South Tucson, Marana, and Oro Valley) individually adopted the travel reduction ordinance (TRO) developed by the Pima Association of Governments (PAG). Authority for local jurisdictions to adopt and enforce TROs was provided in S.B. 1360 and reconfirmed in H.B. 2206. In addition to adopting the TRO, each of the five jurisdictions signed an intergovernmental agreement (IGA) to jointly implement the individual ordinances through PAG. The State submitted the adopted TRO and IGA to EPA as a revision to the Pima County portion of the Arizona Carbon Monoxide SIP on May 26, 1988.

The model TRO requires all employers of 100 or more fulltime equivalent employees at a worksite to distribute information on alternative transportation modes to their employees, participate in surveys of the alternative-modes usage of their employees, and develop a travel reduction plan. The travel reduction goals in the ordinance are a 15 percent employee participation rate in the first year of the regional program, 20 percent in the second, 25 percent in the third, and additional 1 percent increases in the participation rate in each of subsequent years until a 40 percent participation rate is achieved. Alternatively, after a 25 percent employees participation rate is achieved, an employer can demonstrate an annual reduction of 1.5 percent in the average annual vehicle miles traveled per employee.

Under the IGA, the TRO will be implemented by the Pima Assocation of Governments. While a committee within PAG will recommend enforcement actions, actual enforcement powers are retained by the individual jurisdictions. All parties to the IGA have agreed to fund the travel reduction program at PAG and have already allocated funds for the program's first six months. In addition, the 1988 Air Quality Legislation (H.B. 2206) passed by the Arizona Legislation in June 1988, requires the Director of the Department of Environmental Quality to grant funds from the Air Quality Fund to local jurisdictions or regional planning agencies to implement TROs.

Additional details on the TRO and IGA can be found in the technical support document (TSD) for this notice.

*Oxygenated Fuels Program*

H.B. 2206 establishes an oxygenated fuels program for the CO nonattainment area of Pima County. The program is composed of three basic parts. First, a new section 41-2125 A of the Arizona

Revised Statutes sets the required oxygen content of leaded or unleaded gasoline at 1.8 to 3.7 percent by weight. This requirement applies from and after September 30 through March 31, beginning in the Fall of 1990. Second, a new section 41–2125 B of the Arizona Revised Statutes advances the effective date of the Pima County requirement by one year (to start in the Fall of 1989), if a CO exceedance occurs between October 1988 and March 1989, or if the Pima County Board of Supervisors and Tucson City Council join in adopting the earlier effective date by March 31, 1989. Third, and finally, new sections 28–2701 through 28–2708 of the Arizona Revised Statutes enable the Governor to implement a State set-aside program that effectively insures the availability of gasoline suitable for blending with alcohol, if the Department of Transportation determines a shortage of such unblended gasoline exists for compliance with the mandatory oxygenated fuels period.

Of the above three elements, EPA can grant CO emission reduction credits only to the requirements of the new section 41–2125 A. The possibility of advancing the effective date of the program is not a maintenance related issue, and is not pertinent to this proposal. The set-aside authority of sections 28–2701 through 28–2708 would, if exercised, make it possible for more fuel to be blended to higher oxygen levels associated with alcohol-based blends than might otherwise be the case with other gasoline blends, but the Governor has discretion to declare a shortage and order the set-aside program into operation. Even if ordered, EPA has received no information with which to estimate the degree of ethanol blending during the entire compliance period, as discussed further below.

Before presenting EPA's analysis of the Pima County program, it should be noted that a detailed description of oxygenated fuels and their effect on motor vehicle emissions is contained in EPA's Notice of Proposed Rulemaking (NPRM) on the Maricopa Federal Implementation Plan (FIP), of May 16, 1988 (53 FR 17378). Also, the methodology and assumptions for evaluating the CO effects of the oxygen content limits specified in section 41–2125 A were prososed at 17410 of that same **Federal Register** notice and clarified by a memo from Phil Lorang, Office of Mobile Sources, EPA, to Wallace Woo, EPA Region 9 (June 22, 1988). The details of this methodology are contained in the draft technical support document for this action, and will not be repeated here. The interested reader is instead referred to that document. However, the basic elements of EPA's evaluation are briefly described below.

The EPA report, "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," January 29, 1988, EPA–AS–TSS–PA–87–4, is the basis for the calculation of CO emission reductions. The guidance in this report is supplemented with the following information and assumptions. For any grade of gasoline for which the minimum oxygen content is 1.8 percent by weight, EPA will assume that all fuel sold of that grade is on average 1.9 percent oxygen (or 10.45 percent MTBE by volume). This assumption is based on the plan for implementation of H.R. 2206 contained in the addendum to the Maricopa County CO plan which indicates an intent by the Department of Weights and Measures to allow no enforcement tolerance for oxygen content, so that refiners must blend to a slightly higher oxygen level to allow for measurement variability. Additionally, no ethanol blends are currently marketed in Pima County and no major oil company, other sizable gasoline marketer, or other investor indicated in comments on EPA's NPRM for Maricopa that it will definitely purchase and import via pipeline or truck transport oxygen-free gasoline for resale to distributors for use in ethanol blending. Therefore, EPA is assuming that no ethanol blends will be sold in Pima County. Further, the workplan referred to above also contains a commitment by the Arizona Department of Weights and Measures to enforce the oxygenated fuels requirements and H.B. 2206 appropriates resources to the Department for this purpose.

Given the information and assumptions delineated above, EPA is assuming that all fuel sold in the Pima County nonattainment area will contain a level of MTBE which produces 1.9 percent oxygen by weight, i.e., about 10.45 percent MTBE by volume depending on the density of individual batches of gasoline used in blending. These assumptions result in a fleet CO emission reduction on December 31, 1991, of 12.83 percent.

The actual CO reduction in Pima County may be higher, but not assuredly so. If ethanol blends are marketed in the area, the 3.4 to 3.7 percent oxygen by weight that is normally associated with the gasoline would provide greater benefits than the 1.9 percent oxygen by weight assumed by EPA for MTBE blends. Also, some or all of the leaded fuel supplied to Tucson through the pipeline from Texas refineries may be blended with MTBE to comply with the higher oxygen levels applicable to the Phoenix area under the provisions of H.B. 2206. However, EPA has no assurance that either of these events will occur and thus can not assign emission reduction credit to either measure.

EPA believes that Arizona is authorized under the Clean Air Act to prescribe and enforce the oxygenated fuels program proposed for approval today. As fully explained in the May 16, 1988 NPRM at 17412–3, EPA interprets section 211(c)(4)(A) to allow state regulation of motor vehicle fuels or fuel additives unless there has been federal pre-emption. Under section 211(c)(4)(A) pre-emption of state regulation of a fuel occurs (i) if EPA has found that no fuel related control or prohibition is necessary for that fuel or additive and has published such finding in the **Federal Register**, or (ii) if EPA has prescribed by regulation under section 211(c)(1) a control or prohibition applicable to the fuel or fuel-additive regulated by the state that is different from the state control or prohibition. The Agency wants to stress that it does not believe that either form of pre-emption has occurred in this case.

First, EPA has not made the finding that no fuel-related control or prohibition is necessary; and clearly has not published any such finding in the **Federal Register**.

Second, EPA does not believe that it has prescribed the type of fuel control contemplated in section 211(c)(4)(A)(ii). EPA believes the reference in that section to "a control or prohibition applicable to such fuel or fuel additive" prescribed by the Administrator was intended to include only the same type of fuel control that the regulation in question is attempting to prescribe. Under this approach, section 211(c)(4)(A)'s prohibition of the adoption of a particular type of fuel control would be triggered only if EPA had already prescribed, by regulation under section 211(c)(1), the same type of fuel control as at issue in the case at hand—in this case controls on the oxygen content of fuels. Since EPA has not prescribed any control on the oxygen content of any fuel by section 211(c) rule making,[1] the Agency believes that the pre-emption described in section 211(c)(4)(A)(ii) has not occurred and that Arizona is free to

[1] EPA has established limits on oxygen content for certain new fuels that have been granted waivers under section 211(f) of the Act for introduction into commerce, but has taken no such action under section 211(c).

adopt is own oxygen content controls and EPA is free to approve a SIP which includes such controls. Under these circumstances, EPA may approve such controls without making the special finding described in section 211(c)(4)(C) of the Act. Section 211(c)(4)(C) allows, where pre-emption has occurred, state fuel-related controls to be approved into a SIP if EPA finds such controls are "necessary" to achieve the standard the SIP implements. In this case a finding under section 211(c)(4)(C) is not required because pre-emption has not occurred.

### III. Summary of Proposed Action

EPA is proposing to approve the oxygenated fuels program provision of Arizona House Bill 2206 as a revision to the Pima County portion of the Arizona Carbon Monoxide SIP. EPA is also proposing to approve as revisions to the SIP the travel reduction ordinances adopted by five local jurisdictions in Pima County as well as the intergovernmental agreement signed by these jurisdictions to implement the ordinances. Although these measures are not essential for the State to demonstrate attainment and maintenance of the CO standard in Pima County, EPA is making this proposal because these measures both strengthen the SIP and serve as contingency measures.

### IV. Regulatory Process

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. Final approval of these SIP revisions would merely approve requirements that the State has already adopted (See 46 FR 8706).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

**Authority:** 42 U.S.C. 7401–7642.

Date: August 3, 1988.

**Daniel W. McGovern,**

*Regional Administrator.*

[FR Doc. 88–18080 Filed 8–9–88; 9:46 am]

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# Reader Aids

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