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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: April 11, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

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WHEN: April 12, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
RESERVATIONS: Call the Utah Department of Administrative Services, 801–538–3010

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Presidential Documents

Title 3—

The President

Proclamation 5948 of April 2, 1989

National Child Care Awareness Week, 1989

By the President of the United States of America

A Proclamation

Parents have no greater responsibility than their children—the precious persons entrusted to their care and protection. For millions of American families, child care is an increasingly important issue. With an increasing number of single-parent families and the proportion of mothers who work outside the home in two-parent families rising, more and more parents are seeking help in caring for their children.

The majority of those needing child care turn to family members, friends, or neighbors. Others seek support from an array of nonprofit and proprietary child care providers operating in the country today. Churches and church-affiliated programs also play a vital role in caring for our Nation's children, providing quality day care and the religious atmosphere that many parents desire.

Increasing the range of child care options available to parents—particularly those who head families of modest means—will benefit the Nation's children, their parents, and the country as a whole. Parents need options that allow them to make the child care arrangements that best meet their families' needs and preferences.

"National Child Care Awareness Week" is a time when we recognize the importance of quality child care and applaud the dedicated and concerned individuals who provide that care.

It is also a time to renew our efforts to be creative and energetic in increasing the variety of child care arrangements available to parents. We must always remember that parents are best able to make decisions about their children's care and should have the ability to do so freely.

As we celebrate "National Child Care Awareness Week," let us rededicate ourselves to improving care for the children of America. Let us also recognize that while the specific child care requirements of families differ, the provision of loving and supportive care is a need all children share.

The Congress, by Senate Joint Resolution 50, has designated the week beginning April 2, 1989, as "National Child Care Awareness Week" and has requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning April 2, 1989, as National Child Care Awareness Week. I call upon all Americans to join with me in honoring the parents, relatives, schools, churches, and commercial child care providers who accept the enormously important responsibility of helping to care for our children. National Child Care Awareness Week affords us a welcome opportunity to offer them recognition and encouragement.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-8182
Filed 3-3-89; 12:27 pm]
Billing code 3195-01-M

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 872 and 873

Additional Optional Life Insurance and Family Optional Life Insurance Under FEGLI

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations concerning the Federal Employees' Group Life Insurance (FEGLI) Program. The interim regulations: (1) Eliminate a requirement to be under age 36 to cancel a declination of additional optional life insurance; (2) clarify to whom benefits shall be paid on family optional insurance when an employee predeceases a covered family member and the family member dies within 31 days after the death of the insured; and (3) eliminate a requirement to be in a pay and duty status for the cancellation of a declination of family optional insurance to become effective.

DATE: Interim rule effective April 5, 1989. Comments must be submitted on or before June 5, 1989.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director, Office of Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Schleicher or Bill Smith, (202) 632–4634.

SUPPLEMENTARY INFORMATION: OPM routinely reviews the components of the FEGLI Program. Upon a recent review of the FEGLI regulations, OPM identified two areas in which the acquisition of FEGLI coverage could be made less restrictive and one regulation which we wish to revise to eliminate any potential confusion that could arise, as described below.

1. FEGLI regulations require an employee to be under age 36 in order to cancel a declination of additional optional life insurance because of marriage or the acquisition of an unmarried dependent child. The number of multiples the employee may elect is limited to the number of family members acquired and the election must be filed no more than 60 days from the date of the event permitting the election (5 CFR 872.205(a)(2)).

Given the other two restrictions, OPM has determined that the requirement to be under age 36 to cancel a declination of additional optional insurance is not necessary to the FEGLI Program. We are eliminating this under age 36 restriction, which widens the scope of the availability of additional optional life insurance for Federal employees.

2. The FEGLI law sets forth the conditions and order under which family optional life insurance benefits will be paid (5 U.S.C. 8714c(f)). The regulations implementing the law (5 CFR 873.102(b)) state to whom family optional insurance benefits will be paid if the employee, annuitant, or compensationer dies after the insured family member's death and before benefits are paid.

It is clear that the intent of the FEGLI law is for the person(s) entitled to the basic life insurance benefit to also receive the family optional insurance benefit in the event that the insured dies before a covered family member and the family member dies within the 31-day extension of coverage provided after the death of the insured. To eliminate any potential confusion, we are revising § 873.102(b) to delete any reference to the order of death of the insured and the family member.

3. 5 CFR 873.205(b) precludes the cancellation of a declination of family optional insurance from becoming effective while the employee is in a non-pay status. We recognize that many employees may be in a non-pay status when an event occurs which would allow election of family optional insurance, such as the acquisition of a child. In order to make this insurance more readily accessible to Federal employees, we are revising this regulation to make the effective date of a cancellation of declination of family optional insurance the day the employing office receives the election and basic insurance is in force, regardless of pay and duty status, subject to the conditions specified in 5 CFR 873.205(a).

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of Title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived to allow eligible Federal employees immediate access to liberalized FEGLI benefits.

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 these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and their family members.

List of Subjects in 5 CFR Parts 872 and 873

Administrative practice and procedure, Government employees, Life insurance.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending Parts 872 and 873 of Title 5 of the Code of Federal Regulations as follows:

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

1. The authority citation for Part 872 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 872.205 [Amended]

2. In § 872.205(a)(2), the second sentence is amended by removing the phrase "before the employee's 36th birthday and".

PART 873—FAMILY OPTIONAL LIFE INSURANCE

3. The authority citation for Part 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 873.102 [Amended]

4. In § 873.102, paragraph (b) is amended by removing the phrase "after the insured family member's death and".

§ 873.205 [Amended]

5. In § 873.205, paragraph (b) is amended by removing the phrase "the first day the employee actually enters on duty in pay status, on or after".

[FR Doc. 89-8006 Filed 3-31-89; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV-89-037]

Expenses and Assessment Rate for Marketing Order No. 955

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under interim Marketing Order 955 for the 1989 fiscal period ending September 15. Authorization of this budget will allow the Vidalia Onion Committee to incur expenses reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: The interim final rule is effective April 5, 1989. Written comments to the interim final rule must be received by April 17, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Tentative Marketing Agreement No. 955 and Interim Marketing Order No. 955 [7 CFR Part 955] concerning Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

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

There are approximately 160 handlers and 260 producers of Vidalia onions in that portion of Georgia covered by the interim order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the Georgia Vidalia handlers and producers may be classified a small entities.

An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Vidalia onions. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The marketing order became effective March 16, 1989 on an interim basis to enable the industry to collect assessments on 1989 shipments. The initial budget will cover the period through September 15, 1989, as the subsequent fiscal period begins on September 16, 1989. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Vidalia Onion Committee met on March 27, 1989, and unanimously recommended an initial 1989 budget of $150,000. The committee also recommended an assessment rate of $0.10 per 50-pound bag. This rate, when applied to anticipated shipments of 1.5 million 50-pound bags would yield $150,000 in assessment revenue which would be adequate to cover budgeted expenses. Major expense items include the committee Manager's salary, promotion activities and a contingency reserve.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the interim marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The committee's initial fiscal period began March 16, 1989, and the interim order requires that the rate of assessment for a particular fiscal period shall apply to all assessable Vidalia onions handled during that fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Part 955

Marketing agreements and orders, Vidalia onions (Georgia).

For the reasons set forth in the preamble, 7 CFR Part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR Part 955 continues to read as follows:

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

2. Section 955.201 is added to read as follows:

Note.—This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 955.201 Expenses and assessment rate.

Expenses of $150,000 by the Vidalia Onion Committee are authorized, and an assessment rate of $0.10 per 50-lb. bag of Vidalia onions is established for the fiscal period ending September 15, 1989. Unexpended funds may be carried over as a reserve.

Dated: March 31, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-8087 Filed 4-4-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1137

[DA-89-008 and DA-89-012]

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of March through August 1989 portions of the Eastern Colorado Federal milk order that relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Proposed Suspension: Issued February 21, 1989; published February 24, 1989 (54 FR 7949).

Notice of Proposed Suspension: Issued March 7, 1989; published March 10, 1989 (54 FR 10159).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 24, 1989 (54 FR 7949) and on March 10, 1989 (54 FR 10159) concerning proposed suspensions of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the proposed suspensions, which are combined in this final rule, were received.

After consideration of all relevant material, including the proposals in the notices and other available information, it is hereby found and determined that for the months of March through August 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

Statement of Consideration

This action relaxes for the months of March through August 1989 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and suspends the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month.

The order provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distributing plants in the months of March, April, May, June, July and December, and 20 percent in other months. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association of producers supplying the market. The cooperative association stated that the volume of producer milk pooled on the Eastern Colorado order during 1988 was 5.6 percent greater than during 1987. Mid-Am observed that the trend appears to be continuing in 1989, as producer milk receipts pooled under the order during January 1989 were 1.3 percent above January 1988. The cooperative projects that the increase in milk production under the Eastern Colorado order will continue during the March through August period.

Mid-Am stated that the movement of milk produced in Kansas and Nebraska to Eastern Colorado pool distributing plants each month, solely for the purpose of qualifying Mid-Am producers for continued pool status, would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

No comments in opposition to the proposed action were received. Comments supporting the proposed action were filed by Western Dairymen Cooperative, Inc., a cooperative association representing most of the producers pooled under the order. Mid-Am also filed comments that supported the suspension.

Milk production is significantly above year-earlier levels, while Class I sales by pool plants regulated under the order have increased only slightly. Consequently, a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses than would be allowable under the order's diversion limits. Current production trends are expected to continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the

diversion limits of the Eastern Colorado milk order should be relaxed and the "touch-base" requirements of the order should be suspended for the months of March through August 1989 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of § 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of March through August 1989:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

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

§ 1137.12 [Amended]

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant" are suspended.

3. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing" are suspended.

Signed at Washington, DC, on March 30, 1989.

Robert Melland,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89–8021 Filed 4–4–89; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1785

Cushion of Credit Account Computations and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Part 1785 Loan Account Computations, Procedures, and Policies, by adding five new sections: § 1785.66, General; § 1785.67, Definitions; § 1785.68, Establishing a Cushion of Credit Payment Program; § 1785.69, Cushion of Credit Payment Account Computations; and § 1785.70, Application of RETRF Cushion of Credit Payments. These additions incorporate the provisions of Section 313 of the Rural Electrification Act of 1936 as amended by the Omnibus Budget Reconciliation Act of 1987 (the RE Act). Section 313 requires the Administrator to develop and promote programs to encourage borrowers to voluntarily make deposits into cushion of credit accounts within the Rural Electrification and Telephone Revolving Fund. Borrowers shall receive 5 percent per annum on all REA cushion of credit payments received or credited to their account by REA, after October 1, 1987. Balances in cushion of credit accounts may be reduced only to make scheduled payments on loans made or guaranteed under the RE Act. Borrowers may not maintain balances or establish balances in a cushion account while any payment, or portion thereof, is in default. Computations required under this section have been made by REA as of October 2, 1987, the procedure for borrowers to follow if they wish to have all computations made as of the date of this Final Rule are included in § 1785.70(a).

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Robert D. Ruddy, Director, Fiscal Accounting Division, Rural Electrification Administration, Washington, DC 20250–1500, telephone number (202) 382–8823. The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing the proposed rule is available on request from the above office.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulations. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees; No. 10.851, Rural Telephone Loans and Loan Guarantees; and No. 10.853, Rural Economic Development Loan and Grant Program.

Background

On December 22, 1987, Section 313, Cushion of Credit Payments Program, was added to the RE Act. This section requires all voluntary overpayments made by borrowers on REA loans after October 1, 1987, to be deposited in a cushion of credit account.

On December 2, 1988, REA published a proposed rule to amend 7 CFR Part 1785, Loan Account Computations, Procedures, and Policies, by adding five new sections: § 1785.66, General; § 1785.67, Definitions; § 1785.68, Establishing a Cushion of Credit Payment Program; § 1785.69, Cushion of Credit Payment Account Computations; and § 1785.70, Application of RETRF Cushion of Credit Payments. REA invited interested parties to file comments on or before January 3, 1989.

Comments

REA received comments from the following two organizations:

National Rural Electric Cooperative Association

National Telephone Cooperative Association

Both respondent organizations commented on the portion of § 1785.70, Application of RETRF cushion of credit payments, which states: "In those instances where a borrower has prior to October 2, 1987, maintained an advance payment account with REA, its cushion of credit account will be applied in accordance with the provisions of this section prior to using any balance remaining in its advance payment account. * * *" The organizations suggested that REA change or eliminate the sentence in order to reapply funds first from the old 2 percent and 5 percent advance payment accounts, and then from the new cushion of credit account. One organization stated they felt such an ordering for the reapplication of funds would be more consistent with Congressional intent, while the other contended REA has, without authority, unilaterally changed the priority for application of the advance payment accounts. REA believes that Section 313 of the Act evidences a Congressional intent to establish the cushion of credit program with an effective date of October 1, 1987. Thus balances in advance payment accounts arising prior to the effective date stated in Section 313 are not governed by that section of the RE Act. REA believes that it has inherent authority to reconcile existing regulations on advance payments (Bulletin 20–9:320–12) with the regulation concerning cushion of credit accounts in order to assure clarity and avoid inconsistent treatment of accounts in choosing which account to debit first in the case of a defaulting borrower.

One organization commented that distinguishing the old 2 percent and 5 percent advance payment accounts from the "new cushion of credit account" was inconsistent with Congressional intent. The language of Section 313 specifically provides for the establishment of the cushion of credit program and set October 2, 1987, as the baseline for computing balances in the rural economic development subaccount, which is directly linked to the new cushion of credit program. There is no provision in Section 313 of the RE Act which provides that existing assets or deposits in "advance payment accounts" be transferred to or comingled with assets in cushion of credit accounts established after October 1, 1987. REA notes that to do so would retroactively subject deposits in advance payment accounts to the statutory restrictions on withdrawals from cushion of credit accounts. REA does not wish to impose such restrictions without clear expression of authority to do so. Accordingly, the language in the proposed rule is appropriate.

One organization believes that all parts of Section 313 of the RE Act should be implemented in the Final Rule and that Section 1785 should include a section covering the Rural Economic Development subaccount. REA feels the present system of dealing with the administrative portion in 7 CFR 1785 and the program portion in 7 CFR 1709 Rural Development is an appropriate separation. However, REA is amending the Final Rule to include language indicating that a subaccount will be established for rural development purposes.

One organization stated that the old 2 percent advance payment account should earn interest at the rate of 5 percent after October 1, 1987, and that interest accrued should be transferred to the new 5 percent cushion of credit account. REA's proposed and final rule provides that all interest earned after October 1, 1987, on advance payment accounts or cushion of credit accounts will be credited to the new cushion of credit accounts. However, REA does not believe that Section 313 of the RE Act could be reasonably interpreted to justify accruing interest at 5 percent on balances on deposit in 2 percent advance payment accounts because such accounts (as explained above) are not cushion of credit accounts established pursuant to Section 313, and thus are not subject to Section 313's requirement that REA pay 5 percent interest on cushion of credit accounts.

One organization stated that an additional section should be added to explain the fund's operations in relation to the Rural Electrification and Telephone Revolving Fund, Treasury, and the Federal Financing Bank and that payments into the fund supports economic development in rural areas. REA feels it is beyond the scope of the regulation to explain the operations of the fund with Treasury and the Federal Financing Bank. However, The Rural Electrification and Telephone Revolving Fund, § 1785.66, General, will be expanded to include language regarding the purpose for establishing the fund.

List of Subjects in 7 CFR Part 1785

Cushion of Credit Account Computations and Procedures

In view of the above, REA amends 7 CFR, Chapter XVII, Part 1785 by revising the authority citation and by designating existing §§ 1785.1 through 1785.17 as Subpart A and adding Subpart B §§ 1785.66 thorugh 1785.70 to read as follows:

PART 1785—[AMENDED]

Subpart A—Loan Payments and Statements

Sec.

1785.1–1785.16 [Reserved]

1786.17 Basis dates and termination of unadvanced loan fund commitments—electric.

Subpart B—REA Cushion of Credit Account Computations and Procedures

Sec.

1785.66 General.

1785.67 Definitions.

1785.68 Establishing an REA cushion of credit payment account.

1785.69 Cushion of credit payment account computations.

1785.70 Application of RETRF cushion of credit payments.

Authority: 7 U.S.C. 901 *et seq.*; Title 1, Subtitle D, Section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203: Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—Loan Payments and Statements

§§ 1785.1–1785.16 [Reserved]

§ 1785.17 Basis dates and termination of unadvanced loan fund commitments—electric.

Subpart B—REA Cushion of Credit Account Computations and Procedures

§ 1785.66 General.

This subpart B sets forth policies and procedures on the REA cushion of creditpayments program. The cushion of credit payments program will be maintained only for insured loans evidenced by obligations of the Fund. A subaccount within the Fund is hereby established for purposes of promoting rural economic development. It shall be known as the "Rural Economic Development Subaccount." The assets of the subaccount shall be obtained from crediting (on a monthly basis) a sum determined by multiplying the outstanding cushion of credit payments made after October 1, 1987, by the difference (converted on a monthly basis) between the average weighted interest rate paid on outstanding certificates of beneficial ownership issued by the Fund and the 5 percent rate of interest provided to borrowers on

cushion of credit payments, repayment of loans made pursuant to Section 313 of the Act, and other sources as provided by law. This subaccount shall be used to provide grants or zero interest loans to borrowers under the Act for the purpose of promoting rural economic development.

§ 1785.67 Definitions.

"Accumulated (deferred) interest" means interest allowed to accumulate up to, and including, the basis date of REA notes covering loans approved before June 5, 1957. The accumulated interest is payable in equal periodic installments over the remaining life of the notes.

"Act" means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et. seq.).

"Advance payment" means a voluntary unscheduled payment on an REA note, made prior to October 2, 1987, credited to the advance payment account of a borrower.

"Cushion of Credit Payment" means a voluntary unscheduled payment on an REA note made after October 1, 1987, credited to the cushion of credit account of a borrower.

"Current interest" means interest payable periodically as it accrues.

"Fund" means the Rural Electrification and Telephone Revolving Fund established pursuant to the Act.

"Interest credit" means interest earned on balances in advance payment or cushion of credit accounts. Since the periodic installments are established by the terms of the notes, the interest credits cannot serve to change the total amount of each installment; therefore, an amount equal to the interest credits is added to the principal installment due. On receipt of the full installments, amounts equal to the interest credits (the principal offsets) are added to the respective advance payment accounts.

"Prepayment" means a voluntary unscheduled payment which the borrower instructs REA to apply directly and immediately to the principal of an REA note.

"REA notes" means those notes, bonds, or other obligations evidencing indebtedness created by loans made by REA pursuant to Titles I, II, or III of the Act.

"Subaccount" means the "Rural Economic Development Subaccount" established pursuant to the Act as part of the Fund.

§ 1785.68 Establishing an REA cushion of credit payment account.

A cushion of credit account shall be automatically established by REA for each borrower who makes a payment after October 1, 1987, in excess of amounts then due on an REA note. Such account will bear interest at a rate of 5 percent per annum. All payments on REA notes which are in excess of required payments and not otherwise designated shall be deposited in the borrowers' respective cushion of credit accounts. Payments received in the month in which an installment is due will be applied to the installment due. However, if the regular installment payment is received at a later date in the month, the first payment received will be applied retroactively to a cushion of credit account and the second will be applied to the installment due.

§ 1785.69 Cushion of credit payment account computations.

(a) *Deposits.* Cushion of credit payments are credited to the borrowers' cushion of credit accounts.

(b) *Interest.* Interest at the rate of 5 percent per annum shall be credited on a quarterly basis to cushion of credit accounts. Interest earned will appear as a reduction in the interest billed on the borrower's REA notes and will be separately shown on REA Form 694, "Statement of Interest and Principal Due."

§ 1785.70 Application of RETRF cushion of credit payments.

(a) If a maturing installment on an REA note or a note which has been guaranteed by REA is not received by its due date, funds will be withdrawn from the borrower's cushion of credit account and applied as of the installment due date beginning with the oldest of such notes as follows: first, to current interest then due on all notes; second, to the accumulated interest due, if any, on all notes; and third, to the principal then due on all notes. In those instances where a borrower has prior to October 2, 1987, maintained an advance payment account with REA, its cushion of credit account will be applied in accordance with the provisions of this section prior to using any balance remaining in its advance payment account to pay interest and principal installments on notes. Computations required under this section have been made by REA as of October 2, 1987; however, any borrower may make a one time irrevocable election to have all such computations made as of April 5, 1989 by filing written notice to that effect with Robert D. Ruddy, Director, Fiscal Accounting Division, Rural Electrification Administration, Washington, DC 20250–1500.

(b) A borrower may reduce the balance of its cushion of credit account only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under the Act.

Dated: March 15, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89–8022 Filed 4–4–89; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

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

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Availability of Record Formats and Hard Copy Filing Formats for Certificate Filings

Issued March 29, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of availability of record formats and hard copy filing formats for certificate filings.

SUMMARY: This notice identifies revisions and additions to the record formats for certificate filings. There are now seventeen record descriptions for a certificate filings. These formats have been revised in response to certain recommendations and comments submitted prior to, during, and after the Order No. 493 (53 FR 15,025 (Apr. 27, 1988)) implementation conference held on February 1 and 2, 1989. In addition, several new record formats have been added to expedite staff analysis of certificate filings and to minimize both the number and detail of data requests issued to applicants subsequent to certificate filings.

DATES: The revised FERC certificate filing record formats and hard copy filing formats are available on March 29, 1989. Comments on the certificate filing formats are due by April 14, 1989.

FOR FURTHER INFORMATION CONTACT: George Dornbusch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7300, Washington, DC 20426, (202) 357–9181.

SUPPLEMENTARY INFORMATION: At the implementation conference held on February 1 and 2, 1989, commenters made recommendations and Commission staff advised the participants that it would make several significant revisions to the current

record formats for certificate filings and that new record formats would be designed that will (1) clarify filing requirements for applicants; (2) standardize data common to the universe of certificate filings; (3) expedite staff review of certificate applications; and (4) reduce the number and detail of necessary data requests for subsequent response by applicants.

Staff has revised the comments and incorporated most of the suggested revisions in the record formats released with this notice. A description of the technical revisions is contained in the attached Appendix A. Staff is also releasing with this notice a final draft of the hard copy filing formats that must accompany the certificate filing.

Persons representing companies required to make certificate filings with the Commission and any other interested parties should indicate in their comments whether or not the format for each record is adequate to satisfy the applicable statement or exhibit content requirements for certificate filings. If a particular format is not adequate, then commenters should propose all necessary technical additions or revisions.

In addition to publishing the text of this notice in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice, the associated record formats and the hard copy filing formats, during normal business hours in Room 1000 at the Commission's headquarters, 825 North Capitol Street NE., Washington, DC 20426.

This notice is also available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, eight data bits and one stop bit. The text of the notice will be available on CIPS for 30 days from the date of issuance.

Due to the size of the record format and hard copy print format files for certificate filings, these formats will not be available through CIPS. However, the revised formats are available 1) on a single 5.25" (1.2MB) double-sided, high density diskette in ASCII text file format or 2) on paper and may be purchased from the Commission's copy contractor, La Dorn Systems Corp., located in Room 1000, 825 North Capitol Street NE., Washington, DC. 20426. To order the diskette or paper copy, you must refer to: RM–87–17–000, Record Formats for Certificate Filings (March 29, 1989). Specify diskette, paper copy or both.

The diskette contains a copy of this notice and an INFO file which describes the files on the diskette and specifies the margin, font and orientation required to print each file after importing the file into a word processing program.

Lois D. Cashell,

Secretary.

Appendix A—Revisions to the Certificate Filing Record Formats

This appendix identifies the major technical changes to the draft formats presented at the implementation conference on February 1 and 2, 1989. Most of the records have been revised or corrected (new items or character positions, deletions, expanded codes, etc.). In addition, several new record formats have been added.

General Instructions

Revised Nos. 1, 2, and 8; changed Nos. 3 and 6; added Nos. 13–20.

Schedules

All data items have been numbered. See below for specific changes.

(1) General Information Record
Type of case code has been moved from CA02 to CA01; code list is extended; codes are simplified; and space included for four separate type of case codes.

(2) Certificate Application—Customer/Shipper and Services (Sales, Transportation, Exchange, Storage, or Abandonment)
New record that replaces old records CA05, CA06, CA07, and CA08. This record will identify all customers and shippers and will indicate all proposed services by type, character (firm/interruptible), rate schedule, term of service and commencement date, and will include peak day, average day, and annual volumes.

(3) Certificate Application—Environmental Report—(Part 380 Environmental Factors)
New record.

(4) Certificate Application—Total Gas Supply—(Exhibit H)
New record.

(5) Certificate Application—Total Gas Requirements—(Exhibit I—Market Data, Part 1)
New record.

(6) Certificate Application—Customer Market Data—(Exhibit I—Market Data, Part 2)—Gas Supply
New record.

(7) Certificate Application—Customer Market Data—(Exhibit I—Market Data, Part 2)—Requirements
New record.

(8) Certificate Application—Customer Market Data—(Exhibit I—Market Data, Part 3)—Number of Customers)
New record.

(9) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary)
Title has been changed; record also to be used for abandonments; new items added for cost of pipeline segments, other facilities cost (CA11), non-facility cost (CA12) and maximum daily capacity. All references to transportation and shippers have been deleted from this record.

(10) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary—Pipeline Segments)
Title has been changed; new items added to identify pipeline segment by numbers, beginning and ending mile posts, outside diameter, cost of segment, type of segment (mainline/lateral), maximum allowable operating pressure, and county location.

(11) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary—Compressors)
Title has been changed; items for location description have been revised.

(12) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary—Other Facilities)
New record; identifies facilities other than pipe and compressors, their location, and cost.

(13) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary—Non-Facility Costs)
New record; identifies costs for overheads, AFUDC, and regulatory fees.

(14) Footnotes Record
Number of character positions has been revised (previously schedule/record CA09.

(15) Standardized Format Header Record
Title has been changed; pitch items have been revised (previously schedule/record CA10).

(16) Non-standard Format Header Record
Title has been changed (previously schedule/record CA11).

(17) Non-standard Format Trailer Record
Title has been changed (previously schedule/record CA12).
Exhibit A: Magnetic Tape Procedures
File structure has been revised.
Exhibit B: Diskette Filing Procedures
File structure has been revised.
Exhibit C: Certificate Applications: Filing Requirements
Code numbers have been revised and compressed to coincide with complete exhibits where practicable. Structured data records column has been added to assist applicants. New Code 502 has been added: "Alternative Method and Preferred Format for Filing Environmental Report Text" (see new Exhibit G).
Exhibit D: FERC Geographic Area Names
New exhibit; these codes are to be used to identify production areas of gas supply in Schedule/Record CA04.
Exhibit E: State Codes
New exhibit.
Exhibit F: Special Instructions for Schedule/Record CA03—Environmental Factors
New exhibit.
Exhibit G: Alternative Method and Format for Filing Environmental Report (Code 502)
New exhibit.
Exhibit H: Hard Copy Filing Formats
New exhibit, consisting of:
1. General Information Summary
2. Customer/Shipper and Services, Schedule 1
3. Customer/Shipper and Services, Schedule 2
4. Environmental Report—Part B—Environmental Factors
5. Gas Supply and Requirements—Actual & Estimated—Annual
6. Gas Supply and Requirements—Actual & Estimated—Winter period
7. Gas Supply and Requirements—Actual & Estimated—Summer Period
8. Gas Supply and Requirements—Actual & Estimated—Winter Peak Day
10. Customer Market Data—Gas Supply and Requirements—Annual
11. Customer Market Data—Gas Supply and Requirements—Winter Period
12. Customer Market Data—Gas Supply and Requirements—Summer Period
13. Customer Market Data—Gas Supply and Requirements—Winter Peak Day
14. Customer Market Data—Number of Customers—Annual
15. Customer Market Data—Number of Customers—Winter Period
16. Customer Market Data—Number of Customers—Summer Period
17. Customer Market Data—Number of Customers—Winter Peak Day
18. Exhibit K—Facilities—Project Summary.

[FR Doc. 89-8083 Filed 4-4-89; 8:45 am]
BILLING CODE 6717-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Procedures Relating to Assessment of Fees and Waiving of Fees Under the Freedom of Information Act and Requests for Information in Cases To Which the Commission is Not a Party

AGENCY: U.S. International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: This notice sets forth final rules which the U.S. International Trade Commission has adopted relating to: (1) Assessment of fees and waiving of fees under the Freedom of Information Act (5 U.S.C. 552), and (2) requests for information in cases or matters in which the Commission is not a party. The rules amend § 201.20 (relating to fees) and § 201.21 (relating to availability of specific records).

Notice of proposed rulemaking was published in the **Federal Register** of January 23, 1989 (54 FR 3079) and interested persons were given until February 22, 1989, to submit comments. None were submitted. The final rules adopted are the same as those proposed and published in the **Federal Register** of January 23, 1989, with the exception of technical corrections to the title and to the authority citation of Subpart C of Part 201 to delete reference to a 1979 amendment to the Freedom of Information Act.

The revised rules with respect to fees under the Freedom of Information Act (5 U.S.C. 552) reflect the new fee provisions of the Freedom of Information Act of 1986 (Pub. L. No. 99-570, section 1803) and conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget (52 FR 10011, March 27, 1987). These revised rules also contain procedures and guidelines for determining when such fees should be waived or reduced. They parallel rules on fees and waivers of fees promulgated by the U.S. Department of Justice (*see* 28 CFR Part 16). The recommended charges in rule § 201.20(b)(1)(ii) for document searches follow such guidelines. They reflect distinctions between lower grade clerical/professional and higher grade professional/managerial staff costs. They are based on January 1989 salary levels for GS-8, step 1, and GS-12, step 1, respectively, as calculated by the Commission's Finance Division, which the Commission estimates are the average staff grades in each of these two categories of personnel likely to be doing such searches. The fees for computer searches (§ 201.20(b)(1)(iii)) and review (§ 201.20(b)(3)) are also based on salary level GS-12, step 1, which the Commission estimates is the average staff grade of personnel likely to be doing such computer searches or review.

The rules governing requests for information in cases or matters to which the Commission is not a party specify the Commission's procedures with respect to such requests. The rules are intended to prevent the harm that may result from inappropriate disclosure of nonpublic information or inappropriate allocation of Commission resources.

EFFECTIVE DATE: March 31, 1989.

ADDRESS: Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Assistant General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1091.

SUPPLEMENTARY INFORMATION: None of the amendments constitutes a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Relations), and none exerts a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Freedom of Information, Investigations.

PART 201—[AMENDED]

1. The title and the authority citation for Subpart C of Part 201 is revised to read as follows:

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

Authority: 19 U.S.C. 1335, 5 U.S.C. 552, unless otherwise noted.

2. Section 201.20 is revised to read as follows:

§ 201.20 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by agency personnel in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. The Secretary will collect all applicable fees. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media as defined in paragraphs (j)(6), (7), and (8) of this section, respectively. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. The secretary may assess fees for time spent searching even if agency personnel fail to locate any respective record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by agency personnel in salary grades GS–2 through GS–10 in searching for and retrieving a requested record, the fee shall be $3.00. When the time of agency personnel in salary grades GS–11 and above is required, the fee shall be $5.00 for each quarter hour of search and retrieval time spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requester shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $5.00 per quarter hour of time so spent). Agency personnel are not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, the Secretary shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, the Secretary shall charge the actual direct costs of duplicating a record.

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $5.00.

(ii) Review fees shall be assessed only for the initial record review, i.e., all of the review undertaken when a component analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), the Secretary shall provide without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $25.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search is in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $25.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Secretary determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Secretary that disclosure of the requested information is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Secretary shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution of an understanding of the subject by the public likely to result from disclosure:*

Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—shall be considered. It will be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The Secretary shall not make separate judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Secretary shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Secretary shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. The Secretary shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* Where the Secretary determines or estimates that the fees to be assessed under this section may amount to more than $25.00, he shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Secretary shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice of the requester pursuant to this paragraph shall offer him the opportunity to confer with agency personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* Where the Secretary reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. The Secretary may presume that multiple requests of such type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, the Secretary shall aggregate them only where there exists a reasonable basis for determining that said aggregation is warranted, e.g., where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated

(g) *Advance payments.* (1) Where the Secretary estimates that a total fee to be assessed under this section is likely to exceed $250.00, the Secretary may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where the Secretary receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Secretary may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before he begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g) (1) and (2) of this section, the Secretary shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed on work already completed is not an advance payment.

(4) Where the Secretary acts under paragraph (g) (1) or (2) of this section, the administrative time limits described in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the Secretary has received payment of the assessed fee.

(h) *Charging interest.* The Secretary may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was

sent to the requester. Once a fee payment has been received by the Secretary, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of title 31 U.S.C. and shall accrue from the date of the billing. The Secretary shall follow the provisions of the Debt Collection Act of 1982, Pub. L. 97–265 (Oct. 25, 1982), and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—i.e., any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriate funds used to pay the costs of desseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the Secretary shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures which the agency actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Secretary shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the Secretary shall not engage in line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication" refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, e.g., doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The Secretary shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because the Secretary otherwise has reasonable cause to doubt a requester's stated use, the Secretary shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a clear basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Secretary shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, where the Secretary elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

3. Section 201.21 is amended by adding paragraph (c) to read as follows:

§ 201.21 Availability of specific records.

* * * * *

(c) *Information requested in cases or matters to which the Commission is not a party.* (1) The procedure specified in this section will apply to all demands directed to Commission employees for the production of documents or for testimony that relates in any way to the employees' official duties. These procedures will also apply to demands directed to former employees if the demands seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (c)(2) of this section will also apply to demands directed to the agency. For purposes of this section, the term "demand" means any request, order or subpoena for testimony or production of documents; the term "subpoena" means any compulsory process in a case or matter to which the Commission is not a party; the term "nonpublic" includes any material or information which, under § 201.21(b), is exempt from availability for public inspection and copying; the term "employee" means any current or former officer or employee of the Commission; the term "documents" means all records, papers or official files, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analysis, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions; the term "case or matter" means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a legal or administrative proceeding in which the Commission is not a named party.

(2) Prior to or simultaneously with a demand to a Commission employee for the production of documents or for testimony concerning matters relating to official duties, the party seeking such production or testimony must serve upon the General Counsel of the Commission an affidavit, or if that is not feasible, then a statement which sets forth the title of the case, the forum, the party's interest in the case, the reasons for the request, and a showing that the desired testimony or documents are not reasonably available from any other source. Where testimony is sought, the party must also provide a summary of the testimony desired, the intended use of the testimony, and show that Commission records could not be provided and used instead of the requested testimony. A subpoena for testimony from a Commission employee concerning official matters or for the production of documents shall be served in accordance with Rule 45 of the Federal Rules of Civil Procedure and a copy of the subpoena shall be sent to the General Counsel.

(3) Any employee or former employee who is served with a subpoena or other demand shall promptly advise the General Counsel of the service of the subpoena or other demand, the nature of the documents or information sought, and all relevant facts and circumstances.

(4) Absent written authorization from the Chairman of the Commission ("Chairman"), the employee shall respectfully decline to produce the requested documents, to testify, or to otherwise disclose requested information. If a court rules that the demand must be complied with despite the absence of such written authorization, the employee upon whom the demand is made shall respectfully refuse to comply based upon these regulations and *Touhy* v. *Ragan*, 340 U.S. 462 (1951).

(5) The Chairman will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account such factors as the need to conserve employees' time for conducting official business, the need to prevent the expenditure of the United States government's time and money for private purposes, the need to maintain impartiality between private litigants in cases where no substantial governmental interest is involved, and the relevant legal standards for determining whether justification exists for the disclosure of nonpublic information and documents. If the Chairman determines that the subpoenaed documents or information are protected by a privilege or that the Commission has a duty in law or equity to protect such documents or information from disclosure, the General Counsel shall move the court to quash the subpoena or for other appropriate action.

(6) The General Counsel may consult or negotiate with counsel or the party seeking testimony or documents to refine and limit the demand so that compliance is less burdensome, or obtain information necessary to make the determination described in paragraph (c)(5) of this section. Failure of the counsel or party seeking the testimony or documents to cooperate in good faith to enable the General Counsel to make an informed recommendation to the Chairman under paragraph (c)(5) of this section may serve as the basis for a determination not to comply with the demand.

(7) Permission to testify will, in all cases, be limited to the information set forth in the affidavit as described in paragraph (c)(2) of this section, or to such portions thereof as the Chairman deems proper.

(8) If the Chairman authorizes the testimony of an employee, then the General Counsel shall arrange for the taking of the testimony by methods that are least disruptive of the official duties of the employee. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law. Costs of providing testimony, including transcripts, will be borne by the party requesting the testimony. Such costs shall also include reimbursing the Commission for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges and any necessary travel expenses.

(9) The Secretary in consultation with the General Counsel is further authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the government for the expense of responding to such demand, may include the costs of time expended by Commission employees to process and respond to the demand, attorney time for reviewing the demand and for related legal work in connection with the demand, and expenses generated by equipment used to search for, produce and copy the responsive information. In general, such fees will be assessed at the rates and in the manner specified in § 201.20 of this part.

(10) This section does not affect the rights and procedures governing the public access to official documents pursuant to the Freedom of Information Act or the Privacy Act.

(11) This section is intended to provide instructions to Commission employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Commission.

By order of the Commission.

Issued: March 31, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-8103 Filed 4-4-89; 8:45 am]

BILLING CODE 7020-02-M

19 CFR Part 201

Procedures Relating To Appeals of Denial of Requests for Confidential Treatment, Notification of Intent To Use Certain Equipment at Hearings, and Notification To Submitters of Confidential Business Information of a Request Under the Freedom of Information Act

AGENCY: U.S. International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The U.S. International Trade Commission has adopted as final rules the following rules relating to (1) the definition of the term "confidential business information"; (2) information and argumentation presented in conjunction with appeals to the Commission of denials of requests for confidential treatment; (3) notification of intent to use audio-visual or other equipment at hearings; and (4) notification to submitters of confidential business information of a request for disclosure of such information under the Freedom of Information Act (FOIA).

Notice of proposed rulemaking was published in the **Federal Register** of January 3, 1989 (54 FR 37), and interested persons were given until February 2, 1989, to submit comments. One comment was submitted. The submitter, the Reporters Committee for Freedom of the Press, addressed the part of the proposed rules relating to notification to submitters of confidential business information of requests under FOIA for such information. The Committee urged that the proposed rules be adopted in final form and expressed the hope that the Commission would resist any suggestions it might receive that would effectively extend the time limits for response.

The final rules adopted are the same as the proposed rules published on January 3, with the exception of a correction to the authority citation to Part 201. The final rules amend § 201.6 (relating to confidential business information), § 201.13 (relating to conduct of nonadjudicative hearings), and §§ 201.18, 201.19 (relating to denials of requests for information under the Freedom of Information Act and appeals thereof) of the Commission's Rules of Practice and Procedure (19 CFR 201.6, 201.13, 201.18, and 201.19). Former § 201.19, which related to appeals from denial of requests for records, has been combined with former § 201.18, which relates to denial of requests for records. New § 201.18 is entitled "Denial of requests, appeals from denial".

Promulgation of new rules with respect to notification to submitters of confidential business information, the fourth item identified above, is required by Executive Order 12600 of June 23, 1987 (52 FR 23781). The final rules largely reflect longstanding Commission practice and paralled final rules issued by the Department of Justice and published in the **Federal Register** of July 19, 1988 (53 FR 27161).

EFFECTIVE DATE: March 31, 1989.

ADDRESS: Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Assistant General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1091.

SUPPLEMENTARY INFORMATION: The Commission's part 201 rules are of general application. The Commission's rules concerning requests for confidential treatment of business information are set forth in § 201.6, rules concerning conduct of nonadjudicative hearings are set forth in § 201.13, and rules relating to requests for agency records under the Freedom of Information Act are set forth in §§ 201.17–201.20.

None of the amendments constitutes a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations), and none exerts a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Definition of Term "Confidential Business Information"

The first of the amendments makes clear the fact that "proprietary information" in section 777(b) of the Tariff Act of 1930 (19 U.S.C. § 1677f(b)) is the equivalent of "confidential business information" in § 201.6(a) of the rules. The term "proprietary" in section 777(b) was substituted for "confidential" by the Tax Reform Act of 1986 to "clarify that the reference always is to sensitive company commercial and financial data rather than national security information at the 'confidential' level." Mudge Rose Guthrie Alexander & Ferdon v. U.S. International Trade Commission (Civil Action No. 87–5312, D.C. Cir., May 20, 1988). Section 777(b) provides for the submission and nondisclosure (except under limited circumstances) of proprietary information submitted to the Commission in connection with investigations conducted under the antidumping and countervailing duty laws (19 U.S.C. 1671 et seq.).

Section 1886(a)(13)(A) of the Tax Reform Act of 1986 (Pub. L. No. 99–514, 100 Stat. 2922) substituted the terms "proprietary", "non-proprietary", and "proprietary status" for the terms "confidential", "nonconfidential", and "confidentiality" in § 777(b) and changed the title of § 777(b) to "proprietary information" from "confidential information".

Appeals of Denials of Requests for Confidential Treatment

The second of the amendments adds to the end of § 201.6(e) a new paragraph (3) providing that, (i) in the case of an appeal to the Commission of a denial by the Secretary or Acting Secretary of a request for confidential treatment, that justification for confidential treatment submitted to the Commission by the appealing party with the appeal shall be limited to that submitted to the Secretary; (ii) when the Secretary or Acting Secretary has denied a request for confidential treatment on the ground that the submitter failed to provide adequate justification, the submitter may file any such additional justification with the Secretary as part of an amended request for confidential treatment; and (iii) with respect to the 20-day period for filing an appeal set forth in paragraph (1) of § 201.6(e), that such period be considered to recommence as of the date any amended request had been denied, or approval or denial had not been forthcoming within 10 days of the filing of the amended request.

The Commission's rules provide that requests for confidential treatment shall be submitted to the Secretary and that appeals shall be filed with the Chairman for consideration by the full Commission. However, previously Commission rules were silent on the question of whether an appellant may submit additional justification with his appeal. It is estimated that about half the appeals filed in recent years have contained justification in addition to that submitted to or considered by the Secretary. In many cases it appears that the Secretary would have granted the request if he had considered the additional justification. As a result, the Commissioners have frequently become, in effect, a first level rather than second level reviewer of requests for confidential treatment. This submitting of new justification at the appeal level unnecessarily adds to the time it takes to dispose of a request (under the rules appeals are decided by the Commissioners in 20 working days, but

initial requests are disposed of by the Secretary in 10 working days), unnecessarily adds to the Commissioners' dockets, and deprives submitters of a level of agency review (the second level of review effectively becomes the Federal courts).

Notification of Intent To Use Certain Equipment at Hearings

Section 201.13 of the rules is amended by adding at the end thereof a new subsection (l) that directs parties wishing to use audio-visual equipment, easels, and other equipment in the course of their hearing presentation to advise the Secretary that they intend to use such equipment at least three (3) days in advance of the hearing. Parties in recent years have increasingly used such equipment in their hearing presentations.

Notification to the Secretary will (1) facilitate the conduct of hearings by giving the Secretary advance notice of the number and kinds of equipment to be used in order that he might anticipate and coordinate setups, (2) enable the Secretary to determine in advance whether Commission facilities can accommodate the equipment, and (3) enable the Secretary to advise parties as to the availability of Commission equipment, thus obviating the need in some instances for parties to bring their own equipment.

Notification to Submitters of Business Information of a Request for such Information Under the Freedom of Information Act

Executive Order 12600 of June 23, 1987 (52 FR 23781) requires that agencies publish rules with respect to notification to submitters of confidential business information of requests for such information under the Freedom of Information Act (5 U.S.C. 552). The new Commission rules, set forth in revised § 201.19, provide for such notification, parallel rules issued by the U.S. Department of Justice and published in the **Federal Register** of July 19, 1988 (53 FR 27161), and largely reflect existing agency practice.

In addition, the authority citation for Part 201 is revised to reflect present statutory authority by deleting a reference to a provision in the Trade Expansion Act of 1962 that has been repealed and adding a reference in the Trade Act of 1974.

PART 201—[AMENDED]

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

§ 201.6 [Amended]

2. Section 201.6(a) is amended by removing the designations "(1)" and "(2)" and by adding the following sentence to the end of the paragraph: The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)).

3. Section 201.6 is amended by adding the following paragraph (e)(3):

(e) * * *

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for his consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

§ 201.13 [Amended].

4. Section 201.13 is amended by adding the following paragraph (l):

(l) To facilitate the conduct of hearings, parties intending to use easels, audio visual, and similar equipment in the course of hearing presentations should advise the Secretary of their intent to use such equipment at least three (3) working days before the hearing.

5. The authority citation for Subpart C is revised to read as follows:

Authority: 19 U.S.C. 1335, 5 U.S.C. 552.

§§ 201.18 and 201.19 [Amended]

5a. Section 201.18 is amended as follows:

(a) The title of § 201.18 is amended to read: "Denial of requests, appeals from denial."

(b) The text of present § 201.18 is redesignated as § 201.18(a).

(c) Paragraphs (a) through (d) of present § 201.19 are redesignated as paragraphs (b) through (e), respectively, of § 201.18.

6. Section 201.19 is revised to read as follows:

§ 201.19 Notification regarding requests for confidential business information.

(a) *In general.* Business information provided to the Commission by a business submitter which the Commission has designated as "confidential business information" will not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section.

(b) *Definitions.* The following definitions are to be used in reference to this section:

"Confidential business information" means commercial or financial information that has been designated as confidential business information by the Commission under § 201.6 of this part.

"Submitter" means any person or entity who provides confidential business information, directly or indirectly, to the Commission. The term includes, but is not limited to, corporations, producers, importers, and state and foreign governments.

(c) *Notice to submitters.* Except as provided for in paragraph (e) of this section, the Commission will, to the extent permitted by law, provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its confidential business information whenever required under paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice will describe the nature of the confidential business information requested. The requester will also be notified that notice and opportunity to object to are being provided to a submitter.

(d) *When notice is required.* Notice will be given to a submitter in writing at submitter's last known address whenever:

(1) The information the subject of the FOIA request or appeal has been designated by the Commission as confidential business information; and

(2) The Commission has reason to believe that the information may not be protected from disclosure under FOIA Exemptions 3 or 4.

(e) *Exceptions to notice requirment.* The notice requirements of paragraph (c) of this section will not apply if:

(1) The Commission determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(f) *Opportunity to object to disclosure.* In general, the Commision has 10 working days in which to respond to a FOIA request. Through the notice described in paragraph (c) of this section, the Commission will afford a submitter an opportunity, within the period afforded to the Commission to make its decision in response to the FOIA request, to provide the Commission with a detailed written statement of any objection to disclosure. Such statement shall be filed at least one working day before the Commission is required to respond to the FOIA request, and it shall specify all grounds for withholding any of the information under any exemption of FOIA. In the case of FOIA Exemptions 3 or 4, it shall demonstrate why the information should continue to be considered confidential business information within the meaning of § 201.6 of this part and should not be disclosed. The submitter's claim of continued confidentiality should be supported by a certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* The Commission will consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information. Whenever the Commission decides to disclose such information over the objection of a submitter, the Commission will forward to the submitter a written notice which will include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose will be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester will be notified likewise.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of information that the Commission has designated as confidential business information, the Commission will promptly notify the submitter at its last known address. For the purpose of this paragraph, the Secretary may assume such address to be that given on the submission.

By order of the Commission.

Issued: March 31, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-8104 Filed 4-4-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8247]

Requirement for Certain Partnerships and S Corporations To Separately State Meal, Travel, and Entertainment Expenses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document provides final regulations relating to the requirement for certain partnerships and S corporations to separately state meal, travel, and entertainment expenses. These regulations are necessary because of changes made to prior law by the Tax Reform Act of 1986. These regulations provide the public with guidance needed to comply with the law.

EFFECTIVE DATE: The regulations are effective for taxable years beginning on or after January 1, 1987.

FOR FURTHER INFORMATION CONTACT: David R. Haglund, 202-377-9470 (not a toll-free call).

SUPPLEMENTARY INFORMATION: On March 2, 1988, the **Federal Register** published (53 FR 6670) proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 702 and 1366 of the Internal Revenue Code, as well as temporary regulations (T.D. 8182, 53 FR 6602) containing the same rules. The amendments to the regulations were made necessary because of amendments to the Code by section 142 of the Tax Reform Act of 1986 (the Act). Three comments were received on the notice of proposed rulemaking. A public hearing was not requested or held. After consideration of the comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. These regulations supersede the temporary regulations issued under §§ 1.702-1T and 1.1366-1T.

Section 142 of the Act made significant changes to the rules for deducting meal, travel, and entertainment expenses. These changes are effective for taxable years beginning on or after January 1, 1987. On March 2, 1987, the Internal Revenue Service published Notice 87-23 in the Internal Revenue Bulletin (1987-1 C.B. 467). The notice announced special effective date rules that required partnerships and S corporations that have taxable years beginning before January 1, 1987, and ending with or within partners' or shareholders' taxable years beginning on or after January 1, 1987, to separately state meal, travel, and entertainment expenses paid or incurred after December 31, 1986. With respect to skybox rentals, partnerships and S corporations that have taxable years beginning before January 1, 1989, and ending with or within partners' or shareholders' taxable years beginning on or after January 1, 1987, are required to separately state rents paid or incurred after December 31, 1986. On June 22, 1987, the Service published Notice 87-45 in the Internal Revenue Bulletin (1987-1 C.B. 502). Notice 87-45 provided additional instructions to Form 1065 and Form 1120S concerning certain expenses for meals, travel, and entertainment of 1986-87 fiscal year corporations. The temporary regulations and cross-referencing notice of proposed rulemaking implemented the special effective date rules announced in the notices.

Three comments were received on the notice of proposed rulemaking. All three commentators stated that the special effective date rules in the proposed regulations are inconsistent with the statutory effective date for section 142 of the Act. The commentators suggested that the limitations imposed by section 142 of the Act should not apply to expenses paid or incurred by a partnership or an S corporation until the first day of the partnership's or S corporation's taxable year beginning after December 31, 1986. This suggestion was not adopted by the final regulations because the limitations imposed by section 142 of the Act should be applied to expenses incurred after the statutory effective date of section 142 of the Act and deducted on the returns of partners and shareholders in taxable years beginning on or after January 1, 1987. This effective date rule is consistent with congressional intent in the Act of applying the reductions of tax rates and the restrictions on deductions as of the same date.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is David R. Haglund, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.701–1 through 1.771–1

Income taxes, Partnerships.

26 CFR 1.1361–OA through 1.1388–1

Income taxes, Small business, S corporations, Electing small business corporations, Cooperatives.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.702.1T [Removed]

Par. 2. Section 1.702–1T is removed.

Par. 3. Section 1.702–1 is amended by redesignating paragraph (e) as paragraph (f), and by adding a new paragraph (e) to read as set forth below.

§ 1.702–1 Income and credits of partner.

* * * * *

(e) *Special rules on requirement to separately state meal, travel, and entertainment expenses.* Each partner shall take into account separately his or her distributive share of meal, travel, and entertainment expenses paid or incurred after December 31, 1986, by partnerships that have taxable years beginning before January 1, 1987, and ending with or within partner's taxable years beginning on or after January 1, 1987. In addition, with respect to skybox rentals under section 274 (1) (2), each partner shall take into account separately his or her distributive share of rents paid or incurred after December 31, 1986, by partnerships that have taxable years beginning before January 1, 1989, and ending with or within partners' taxable years beginning on or after January 1, 1987.

§ 1.1366–1T [Removed]

Par. 4. Section 1.1366–1T is removed.

§ 1.1366–1 [Reserved]

Par. 5. Section 1.1366–1 is added and reserved, and new § 1.1366–2 is added at the appropriate place to read as follows:

§ 1.1366–2 Special rules on requirement to separately state meal, travel, and entertainment expenses.

Each shareholder shall take into account separately his or her pro rata share of meal, travel, and entertainment expenses paid or incurred after December 31, 1986, by S corporations that have taxable years beginning before January 1, 1987, and ending with or within shareholders' taxable years beginning on or after January 1, 1987. In addition, with respect to skybox rentals under section 274 (l) (2), each shareholder shall take into account separately his or her pro rata share of rents paid or incurred after December 31, 1986, by S corporations that have taxable years beginning before January 1, 1989, and ending with or within shareholders' taxable years beginning on or after January 1, 1987.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

Dennis E. Ross,

(Acting) Assistant Secretary of the Treasury.

[FR Doc. 89–8039 Filed 4–4–89; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF–287]

Importation of Articles on the United States Munitions Import List

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR Part 47 to implement amendments to the Arms Export Control Act to allow the importation of United States manufactured surplus military firearms (curios and relics) previously furnished to foreign governments under any foreign assistance or sales program of the United States, provided that such firearms are still owned by the country to which the firearms were furnished; increases criminal penalties for violations of section 38(c) of the Arms Export Control Act; and a reference is added to the regulations to prohibit the importation of arms, ammunition, and military vehicles produced in South Africa.

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT: John E. Struewing, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, ((202) 566–7591).

SUPPLEMENTARY INFORMATION:

Background

Section 233 of the Trade and Tariff Act of 1984 Pub. L. 98–573, 98 Stat. 2991 amended the Gun Control Act of 1968 by adding a new section 925(e) to Title 18, U.S.C., allowing federally licensed importers to import surplus military firearms, either of foreign or United States manufacture, provided they were classified as curios or relics. This amendment did not affect other laws concerning the importation of firearms. Thus, the Arms Export Control Act of 1976 still prohibited the return of United States manufactured military firearms and ammunition which had been furnished to foreign governments under any foreign assistance or sales program of the United States (22 U.S.C. 2778(b)(1)). Accordingly, the regulations implementing the Arms Export Control Act continued to require in 27 CFR 47.57 that importers desiring to import military firearms and ammunition which were manufactured in the United States, including curio and relic firearms, must certify that the importation would not violate the Arms Export Control Act and provide documentary information on the original foreign source of the firearms and ammunition.

In 1987, the Arms Export Control Act was amended by Section 8142 of the Joint Resolution making further continuing appropriations for the fiscal year 1988 (Pub. L. 100–202, 101 Stat. 1329) to provide an exception to the prohibition against the importation of United States manufactured military firearms and ammunition in section 2778(b)(1). As amended, the statute now permits the importation of military firearms (including ammunition and other specified items) of United States manufacture furnished to a foreign government under any foreign

assistance or sales program of the United States if the firearms are importable under 18 U.S.C. 925(e) as curios or relics and the foreign government to which the firearms were furnished certifies that it owns the firearms.

This final rule amends 27 CFR 47.57 to implement the above amendment to the Arms Export Control Act. At the same time, it amends 27 CFR 47.61 and 47.62 to reflect an amendment of that Act made by section 119 of the International Security and Development Cooperation Act of 1985 (Pub. L. 99–83, 99 Stat. 190), which increased the criminal penalties for violations of the Act. The final rule also amends 27 CFR 47.52(c) to reflect the prohibition in section 302 of the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440, 100 Stat. 1086) against the importation into the United States of arms, ammunition, and military vehicles produced in South Africa.

Administrative Procedure Act

Under 27 CFR 47.54, the functions conferred under Section 38 of the Arms Export Control Act of 1976 are excluded from the operation of Chapter 5 (Administrative Procedure) of Title 5, United States Code, with respect to rulemaking and adjudicating.

Such functions are concerned with "a military or foreign affairs function of the United States." Accordingly, this regulation may be adopted without prior notice of proposed rulemaking or opportunity for hearing.

Regulatory Flexibility Act

Because a Notice of Proposed Rulemaking is not required for this final rule under 5 U.S.C. 553(b), the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq.) relating to the preparation of a regulatory flexibility analysis are not applicable to this final rule.

Executive Order 12291

This document is not subject to Executive Order 12291 of February 17, 1981 (46 FR 13193 (1981)), because it concerns a military or foreign affairs function of the United States.

Paperwork Reduction Act

The information collection requirements contained in this final rule were previously approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (OMB Control No. 1512–0017).

Drafting Information

The principal authors of this final rule are John E. Struewing and Carmen L. Alston, Firearms and Explosives Division, Bureau of Alcohol, Tobacco & Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegations, Customs duties and inspection, Imports, Penalties, Reporting and Recordkeeping requirements.

Authority and Issuance

PART 47—[AMENDED]

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

Authority: 22 U.S.C. 2778.

Par. 2. Section 47.52(c) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

* * * * *

(c) * * * In addition, section 302 of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5052) prohibits the importation into the United States of arms, ammunition, and military vehicles produced in South Africa as well as any manufacturing data for such articles.

Par. 3. Section 47.57 is revised to read as follows:

§ 47.57 U.S. military firearms.

(a) Notwithstanding any other provision of this part or of 27 CFR Part 178, no military firearms or ammunition of United States manufacture may be imported for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) if such articles were furnished to a foreign government under a foreign assistance or sales program of the United States.

(1) The restrictions in paragraph (a) of this section covers firearms which are advanced in value or improved in condition in a foreign country, but it does not include those which have been substantially transformed as to become, in effect, articles of foreign manufacture.

(2) A person desiring to import into the United States military firearms and ammunition which were manufactured in the United States must submit a statement with the application for a permit certifying that the importation of such firearms or ammunition is not prohibited by the provisions of paragraph (a) of this section. The certification statement must be accompanied by documentary information on the original foreign source of the firearms or ammunition.

(b) Paragraph (a) of this section shall not apply if such firearms are curios or relics under 18 U.S.C. 925(e) and the person seeking to import such firearms provides a certification of a foreign government that the firearms were furnished to such government under a foreign assistance or sales program of the United States and that the firearms are owned by such foreign government. (See 27 CFR 178.118 providing for the importation of certain curio or relic handguns, rifles and shotguns.)

(c) For the purpose of this section, the term "military firearms and ammunition" includes all firearms and ammunition furnished to foreign governments under a foreign assistance or sales program of the United States as set forth in paragraph (a) of this section. The term does not include component parts of firearms and ammunition.

(Approved by the Office of Management and Budget under OMB Control No. 1512–0017)

§ 47.61 [Amended]

Par. 4. Section 47.61 is amended by removing "$100,000" and "2" and replacing them with "$1,000,000" and "10", respectively.

§ 47.62 [Amended]

Par. 5. Section 47.62 is amended by removing "$100,000" and "2" and replacing them with "$1,000,000" and "10 ", respectively.

Signed: January 31, 1989.

Stephen E. Higgins,

Director.

Approved: March 6, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–7985 Filed 4–4–89; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

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

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS PENNSYLVANIA (SSBN–735) and USS WEST VIRGINIA (SSBN–736) are vessels of the Navy which, due to their special construction and purpose,

cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval submarines. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PENNSYLVANIA (SSBN–735) and USS WEST VIRGINIA (SSBN–736) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessels. The Judge Advocate General of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS PENNSYLVANIA (SSBN–735) and USS WEST VIRGINIA (SSBN–736) are members of the SSBN–726 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS PENNSYLVANIA (SSBN–735) and USS WEST VIRGINIA (SSBN–736).

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

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

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

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessels:

Vessel	Number	Distance [1]
USS PENNSYLVANIA.	SSBN–735	3.70
USS WEST VIRGINIA.	SSBN–736	3.70

[1] Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex 1.

3. Table Three of § 706.2 is amended by adding the following vessels:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; section 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; section 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; section 2(k), Annex I
USS Pennsylvania	SSBN–735			211.5°	5.3	9.0	3.8	4.0 below.
USS West Virginia	SSBN–736			211.5°	5.3	9.0	3.8	4.0 below.

Dated: March 27, 1989.

Approved.

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 89–8013 Filed 4–4–89; 8:45 am]

BILLING CODE 3810–AE–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3550–4; EPA Docket No. AM606PA]

Disapproval of State Implementation Plan Revision; Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving a September 23, 1985 request for a State Implementation Plan (SIP) revision (referred to as Supplement No. 2), submitted by the Commonwealth of Pennsylvania. The area affected by the request is Southeast Pennsylvania; i.e., the Pennsylvania portion (Bucks, Montgomery, Philadelphia, Chester and Delaware Counties) of the Metropolitan Philadelphia Interstate Air Quality Control Region (AQCR). Supplement No. 2 claims that cited volatile organic compound emission reductions are sufficient to fulfill commitments made by the Commonwealth to support the attainment demonstration required under Sections 172 and 110(a)(2) of the Clean Air Act (Act). EPA is disapproving Supplement No. 2 because the Commonwealth has not documented the permanence and enforceability of the emission reductions claimed therein.

This disapproval reaffirms the current SIP requirement for the Commonwealth to make up a 5.5 percent shortfall in the total amount of enforceable emission reductions originally projected to be necessary to provide for attainment. It is not intended to address future emission reductions (beyond the 44 percent committed to in the current SIP) that may be required because of the failure of the Metropolitan Philadelphia Interstate AQCR to attain the National Ambient Air Quality Standard (NAAQS) for ozone by December 31, 1987. The 44 percent reduction requirement was previously estimated to be necessary in order for the ozone standard to be met by December 31, 1987 in the areas affected by emissions from the Metropolitan Philadelphia Interstate AQCR. This notice discusses EPA's disapproval of Supplement No. 2 and responds to public comments on EPA's September 8, 1987 proposed disapproval action (52 FR 33840).

EFFECTIVE DATE: This rule will become effective on May 5, 1989.

ADDRESSES: Copies of the submitted SIP revision proposal and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: David L. Arnold.

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Gary Triplett.

FOR FURTHER INFORMATION CONTACT: Larry Budney (3AM13) at the EPA, Region III address above or call (215) 597-0545. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION: In response to provisions of the 1977 Amendments to the Clean Air Act, the Commonwealth of Pennsylvania submitted to EPA several revisions to its SIP for ozone and carbon monoxide. EPA approved some of these revisions on May 20, 1980. However, because the Commonwealth requested and received an extension to December 31, 1987, for the attainment of the ozone standard in the Southeast Pennsylvania area, the Commonwealth was required to submit another SIP revision by July 1, 1982.

The Commonwealth submitted the required revisions to its ozone and carbon monoxide SIP on June 30, 1982. For Southeast Pennsylvania, that SIP revision acknowledged a 5.5 percent shortfall in planned VOC emission reductions (estimated by modeling) needed to attain the ozone standard; i.e., measures leading to a 38.5 percent reduction were specified in the SIP revision as contrasted with the 44 percent reduction predicted by modeling to be necessary to attain the ozone standard.

The National Ambient Air Quality Standard (NAAQS) for ozone is specified in 40 CFR Part 50 as 0.12 part per million (ppm) one hour average ozone concentration. The primary (and secondary) standard is defined to be violated when the annual average expected number of daily exceedances of the standard is greater than 1.0. A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 ppm.

Due to deficiencies in the 1982 SIP revision, including the 5.5 percent shortfall in planned VOC emission reductions in Southeast Pennsylvania, on February 3, 1983 (48 FR 5096), EPA proposed to disapprove certain portions of the revision. In a letter dated July 26, 1983, the Secretary of the Pennsylvania Department of Environmental Resources reaffirmed the Commonwealth's commitment to achieve the 44 percent VOC emission reduction requirement stipulated in the 1982 SIP revision.

On October 24, 1983, the Commonwealth submitted a SIP revision correcting the deficiencies noted in the February 3, 1983 **Federal Register** proposed disapproval. Among the actions to correct the deficiencies in the 1982 SIP revision, it committed to adopt and implement sufficient additional emission reduction measures to achieve the full 44 percent emission reduction requirement by December 31, 1987. Specifically, in the SIP revision, the Commonwealth stated that it "commits to adopt and implement sufficient additional emission reduction measures to achieve a 44 percent emission reduction by December 31, 1987." It listed seven regulatory measures and five accounting measures under examination, and stated that "a combination of these measures will be used to make up the emission reduction shortfall." It further stated that any new regulations that may be needed would be formally adopted (published in the *Pennsylvania Bulletin*) by March 15, 1985. Given those commitments by the Commonwealth, EPA approved the portions of the June 30, 1982 and October 24, 1983 SIP revisions (previously proposed for disapproval) on February 26, 1985 (50 FR 7772).

On September 23, 1985, the Commonwealth submitted a proposed revision (Supplement No. 2) to its 1982 ozone and carbon monoxide SIP. Supplement No. 2 is the subject of today's action. It contains an update of the point source emission inventory and projected (1987) total point, area and mobile source emissions inventory for Southeast Pennsylvania. It identifies specific VOC point sources and respective emissions for each year from 1980 through 1983 and revised source-specific emission projections for 1987. Supplement No. 2 states that there is no longer any need to implement additional control measures to make up the 5.5 percent VOC emission reduction shortfall projected in the 1982 SIP revision. That conclusion is based on a revised projection of 1987 VOC emissions, which the Commonwealth is using as the basis for its claim that control measures already implemented and planned, without any additional measures, will be sufficient to support the prior demonstration of attainment (i.e., that there is no longer a shortfall). The revised projection is primarily based on estimates that VOC emissions between 1980 and 1983 have decreased much more than originally anticipated.

EPA asked the Commonwealth to document the unexpectedly large emission reductions cited in Supplement No. 2, and to demonstrate that they are due to permanent enforceable measures. Documentation of specific emission control measures that have been or are being implemented, along with specific reductions attributable to each measure, are necessary in order to assure that any claimed emission reductions can be relied upon to continue beyond 1987. Such assurance is necessary to ensure the credibility of the proposed SIP revision and the 1987 emission projection contained therein. The Clean Air Act requires that a SIP "includes * * * such * * * measures as may be necessary to *insure* attainment and *maintenance* of [the National Ambient Air Quality Standards]" Section 110(a)(2)(B), and "includes a program to provide for the enforcement of emission limitations and regulation of * * * any stationary source * * * to *assure* that national ambient air quality standards are achieved and *maintained*" Section 110(a)(2)(D) (emphasis added).

For the majority of the claimed emission reductions, the Commonwealth has failed to demonstrate that they result from permanent enforceable measures. It appears that most of the claimed reductions are based on production decreases and other factors that do not constitute permanent enforceable measures. Consequently, there is nothing to prevent emissions from increasing to previous levels as economic conditions and other factors change. Therefore, on September 8, 1987 (52 FR 33840), EPA proposed to disapprove the proposed SIP revision, and comments were solicited.

Three responses with comments were received by EPA. The Delaware Valley Citizen's Council for Clean Air and the Bicycle Coalition of the Delaware Valley submitted comments supporting EPA's proposed disapproval, and the Commonwealth of Pennsylvania opposed it. After consideration of those comments, and the fact that the deficiencies of the proposed SIP revision have not been rectified, EPA has determined that the Act requires disapproval of the proposed SIP revision.

I. Public Comments

A. Supporting EPA's Action

1. *Comment:* EPA is strongly encouraged to disapprove Supplement No. 2, even though the disapproval is occurring too late to have any effect on

attainment of the ozone NAAQS by the December 31, 1987 statutory date.

Response: EPA is disapproving Supplement No. 2 because it does not demonstrate that the 5.5 percent shortfall in planned VOC emission reductions in Southeast Pennsylvania will be made up through permanent enforceable measures, as mandated by the Clean Air Act. It is necessary to disapprove Supplement No. 2 to affirm EPA's position that any claimed emission reductions in a SIP revision must be demonstrated to be permanent and enforceable, and to formally establish the status of the control strategy originally approved by EPA as the SIP for Southeast Pennsylvania.

2. *Comment:* Since approving the ozone SIP revision, it appears that EPA has done nothing to apply pressure on the Commonwealth of Pennsylvania to meet its commitment to make up the 5.5 percent emission reduction shortfall. Disapproving Supplement No. 2 at this time is too little action too late.

Response: In the October 24, 1983, SIP supplement, EPA obtained specific commitments from the Commonwealth of Pennsylvania to implement the control measures necessary to make up the shortfall. Since then, EPA has continued communications with the Commonwealth to encourage them to meet those commitments. Some additional permanent control measures were subsequently implemented, but only enough to make up a small fraction of the shortfall. Regarding the remainder of the shortfall, the Commonwealth of Pennsylvania chose to take the approach described in Supplement No. 2, using revised emission inventory information to contend that the required emission reductions are occurring without implementation of additional enforceable emission control requirements. However, despite continuing efforts by EPA to obtain from the Commonwealth a demonstration that the emission reductions are occurring as a result of specific, permanent, enforceable control measures, the Commonwealth has not provided an acceptable demonstration for most of the claimed emission reductions. As a result, EPA must now act to disapprove Supplement No. 2.

3. *Comment:* More emphasis on transportation control measures is needed, particularly on improving mass transit. Also, more significant measures to encourage increased use of bicycles is recommended.

Response: This action does not address measures other than those already committed to in the October 24, 1983, SIP revision. It is limited in scope to the technical adequacy of Supplement No. 2 in addressing the VOC control strategy specified in that SIP revision.

B. Opposing EPA's Action

1. *Comment:* It is incorrect for EPA to state that "the majority of the purported emission reductions are not enforceable", which implies that the reductions are not real. The annual Reasonable Further Progress (RFP) emission inventories are prepared in compliance with EPA guidance, and EPA has been satisfied with the RFP reports.

Response: For the purpose of SIP revisions, and as contrasted with the purpose of past RFP reports, it is necessary to demonstrate that any claimed emission reductions are permanent and enforceable. That has not been done for the majority of the claimed reductions described in Supplement No. 2 as making up the 5.5 percent emission reduction shortfall. Instead, based on the information provided by the Commonwealth, most of the reductions identified in the SIP supplement to make up the shortfall apparently are due to temporary factors such as production decreases. Since current regulations allow production and associated emissions to increase significantly, there is no assurance that the claimed reductions will continue beyond the December 31, 1987, statutory ozone standard attainment date. EPA is making the important distinction between observed reductions and those that are permanent and enforceable. The Clean Air Act requires the latter.

2. *Comment:* To judge a plan (i.e., Supplement No. 2) that was based on 1984 data, two years after submission of the plan, by referring to 1987 air quality data seems inappropriate.

Response: The continuing air quality problem in and downwind of the Metropolitan Philadelphia Interstate AQCR is not the basis for EPA's proposed disapproval of Supplement No. 2. The 1987 air quality is referenced only to highlight the continuing need for emission control measures to make up the 5.5 percent emission reduction shortfall.

3. *Comment:* EPA implies that the Commonwealth has done nothing additional to control emissions (beyond the specific 1982 ozone SIP regulations, which are expected to result in a 38.5 percent emission reduction).

Response: EPA recognizes that the Commonwealth is in the process of implementing Round III Control Techniques Guideline (CTG) source regulations for which there are applicable sources, and that certain transportation control measures have been implemented. However, the total demonstrated emission reduction from those measures only results in achieving a small fraction of the reductions needed to make up the 5.5 percent emission reduction shortfall. Other additional measures listed by the Commonwealth in its October 24, 1983 SIP supplement have not been implemented, including Stage II vapor recovery, barge and tanker ballasting, architectural coatings and automobile anti-tampering programs. In that SIP supplement, the Commonwealth stated that a combination of those measures "will be used to make up the emission reduction shortfall," and that any new regulations that may be needed would be adopted by March 15, 1985. That has still not been accomplished.

4. *Comment:* Stage II Vapor Recovery: The delay by EPA in requiring onboard controls for automobiles and New Jersey's inability to implement a Stage II program have deterred the Commonwealth from proceeding with development of such a program.

Response: The Clean Air Act provides that each state shall adopt required (Reasonably Available Control Technology) measures in combination with additional control measures necessary to achieve and maintain the NAAQS. Stage II controls would yield emission reductions in a relatively short time frame compared to the reductions expected from onboard controls. Therefore, independent of EPA actions regarding onboard controls, Stage II is considered to be a viable control option. Also, on September 24, 1987, a New Jersey District Court ruling (*American Lung Assn. of N.J., et al.,* v. *Kean,* Civil Action No. 87-288 (DNJ 1987)) required that Stage II and certain other controls (discussed in other responses) be implemented in that state.

5. *Comment:* Architectural Coatings: The Commonwealth is not taking action to implement controls on architectural coatings because it is their opinion that such a strategy would not be practical, given concerns about technological feasibility, political practicality, and enforceability. The Commonwealth states that no action on any such strategy has been proposed for any other part of the interstate AQCR.

Response: Architectural coatings are the second largest category of area source emissions, and there is the potential for significant emission reductions from that category. Questions about enforcement problems, technological difficulties, and political unpopularity are resolvable and should not deter the Commonwealth from actively seeking to develop appropriate regulations. The argument that no other

jurisdictions in the interstate AQCR are taking action in this category of control measures no longer holds, given the September 24, 1987 New Jersey Court ruling requiring implementation of such controls in that state. If the Commonwealth maintains that architectural coatings or other measures listed in the SIP supplement are inappropriate, then alternative measures should be submitted to EPA for consideration.

6. *Comment:* Automobile Antitampering: Given evidence that the Southeast Pennsylvania antitampering rate is apparently below the national average, the Commonwealth is hesitant to develop such a program because it envisions limited resulting emission reduction benefits.

Response: It is EPA's opinion, based on model estimates, that significant emission reductions are obtainable through an antitampering program, and that the Commonwealth should actively investigate the practicality and effectiveness of such a program.

7. *Comment:* EPA's proposed disapproval of Supplement No. 2 ignores the fact that the currently approved ozone SIP has not been successful, given current air quality levels, and that more reductions than indicated by the 5.5 percent shortfall will be necessary to attain the ozone NAAQS.

Response: Whether or not current air quality levels suggest deficiencies in the currently approved ozone SIP, even if it were fully implemented, the Commonwealth is bound by the terms of the SIP and is obligated to implement the controls necessary to fulfill those commitments. EPA is not disapproving Supplement No. 2 on the basis of new or different air quality information. EPA is proceeding with the disapproval because Supplement No. 2 has been determined to be an unacceptable modification to the approved control strategy. The fact that additional reductions may ultimately be necessary is not a rationale for failing to provide the emission reductions committed to in the 1982 SIP.

C. Miscellaneous Comments

1. *Comment:* The logic of using a 1980 emission inventory (which was projected from a 1978 inventory) for projecting 1987 emissions is flawed. More recent inventories should be used as the basis for future year projections.

Response: There have not been any more recent inventories from the Commonwealth that have been found to be acceptable by EPA for SIP planning and related emission projections. Any modifications to the approved SIP baseline inventory would require that the entire point, area and mobile source inventory be updated, that the emission reduction requirement be recomputed, and that a control strategy to meet that emission reduction requirement be developed.

2. *Comment:* It has been requested that EPA specifically respond to the question of whether disapproval of Supplement No. 2 will lead to a SIP nonimplementation decision by EPA for Southeast Pennsylvania, and therefore, the imposition of sanctions.

Response: Disapproval of Supplement No. 2 will not, in itself, constitute a finding by EPA (pursuant to the Act) that the Commonwealth has failed to implement its SIP, although the basic problem underlying Supplement No. 2 is relevant to the question of whether the June 30, 1982 and October 24, 1983 approved SIP revisions have been implemented. However, the issue of nonimplementation is not the subject of this action.

Final Action

EPA is disapproving the September 23, 1985 SIP revision submitted by the Commonwealth of Pennsylvania relating to control of VOC emissions in Southeast Pennsylvania. The consequence of this action is that the Commonwealth remains subject to its SIP commitment to make up the 5.5 percent VOC emission reduction shortfall through implementation of additional control measures.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

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 June 5, 1989. 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, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Date: March 29, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89–8035 Filed 4–4–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3481–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Reynolds Metal Company in Pickaway County, Ohio. This revision would allow the Reynolds Metal Company (RMC) to meet the emission limit specified in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1)(a)(iii) as a monthly average, in lieu of the daily average otherwise specified by OAC 3745–21–09(B). USEPA's action is based upon a November 7, 1985, revision request that was submitted by the State. USEPA is approving this revision because the source is located in Pickaway County which is a rural attainment area for ozone. The Clean Air Act does not require States to impose RACT level VOC control in areas that have always been designated attainment for the National Ambient Air Quality Standards (NAAQS) for ozone.

EFFECTIVE DATE: This rule will become effective on May 5, 1989.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: (It is recommended that you telephone the contact person provided below before visiting the Regional V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 Watermark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M. Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 353–3849.

SUPPLEMENTARY INFORMATION: On November 7, 1985, the Ohio Environmental Protection Agency (OEPA) submitted, as a revision to its ozone SIP, a request for monthly averaging of its emission limits for the Reynolds Metal Company in Pickaway County, Ohio.

RMC applies paint coatings to architectural aluminum extrusions. It operates one coating line by which it

applies a wide variety of coatings (14 in the first quarter of 1985) to aluminum extrustion products. This line is subject to the requirements of OAC Rule 3745–21–09(U)(1)(a)(iii) for surface coating of miscellaneous metal parts and products, which limits the volatile organic compound (VOC) content of any coating used on the line to 3.5 pounds of VOC per gallon of coating, excluding water. Additionally, OAC Rule 3745–21–09(B) requires that this limit be met as a daily volume-weighted average. USEPA approved these rules as meeting the reasonably available control technology (RACT) [1] requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

OEPA requested the following allowable VOC emission limitation for the coating line, in lieu of the requirements of OAC Rules 3745–21–09(U)(1)(a)(iii) and 3745–21–09(B):

(a) The VOC content of the coatings employed in this coating line shall not exceed 3.5 pounds of VOC per gallon of coating applied, excluding water, on a monthly volume-weighted average basis.

(b) The VOC content of any high performance architectural aluminum coating [2] employed in this coating line shall not exceed 6.31 pounds of VOC per gallon of coating, excluding water. The usage of such coatings shall not exceed 2,000 gallons in any year.

Guidance for evaluating requests for extended averaging time to determine compliance is contained in a January 20, 1984, memorandum on "Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy." This policy memorandum states that long-term averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined or where the application of RACT is not economically or technically feasible on a daily basis. Although this revision request does not meet the specific requirements of this memorandum (see technical support document dated November 18, 1986 (which is available at the Region V office), it can be approved as a relaxation from RACT emission levels. Although RACT VOC regulations are required by Part D in all ozone nonattainment areas, Ohio's RACT VOC rules are applicable to both attainment and nonattainment areas, and RACT regulations are not required in attainment areas.

On December 15, 1987 (52 FR 47619), USEPA proposed to approve this SIP revision for the following reasons:

(1) RMC has located in an area (Pickaway County) that would always have been an attainment area under the current ozone standard (see *Air Quality* below);

(2) the relaxation from RACT will not jeopardize continued attainment since the source is small; and

(3) RACT-level VOC control is not a requirement of the Clean Air Act in this area.

Air Quality

Pickaway County was originally designated as nonattainment for the ozone National Ambient Air Quality Standard (NAAQS). This was based on the assumption that nonattainment of the 0.08 parts per million (ppm) ozone standard (the level of the standard prior to 1979) was widespread around major urban areas. As requested by OEPA, USEPA designated Pickaway County as nonattainment, although no in-county monitoring data were available. After the ozone standard was changed to 0.12 ppm, OEPA recognized that the assumption of widespread ozone nonattainment was no longer valid and initiated the redesignation of Pickaway County to attainment of the ozone standard. USEPA approved this redesignation on June 12, 1984 (49 FR 24124).

Review of ozone monitoring data for Ohio, as recorded in the National Aerometric Data Bank, shows that no current monitoring data exists for Pickaway County. Even though no monitoring data exists for the area, certain logical assumptions can be made concerning its ozone air quality. Pickaway County is a rural county located immediately south of Columbus, Ohio. No other major urban areas are located near Pickaway County. Because prevailing summertime winds in Ohio are from the southwest, one can assume Pickaway County is generally upwind of Columbus and, thus, is not significantly impacted by the urban plume from Columbus.

Additionally, USEPA is not aware of significant levels of VOC and oxides of nitrogen (NOx) emissions from Pickaway County. It is assumed that this area is not a significant source area of ozone precursors, and is not internally generating high ozone concentrations. Based on this information, USEPA believes that Pickaway County is not currently experiencing an ozone standard violation.

As noted earlier, because Pickaway County is classified as attainment for ozone, USEPA can approve a relaxation from RACT for sources in that area, so long as it can be demonstrated that such relaxation will not jeopardize continued attainment. This SIP revision will result in only a 6.31 tons per year increase in actual VOC emissions; therefore, USEPA believes it will not interfere with continued attainment and maintenance of the ozone standard.

Because this rulemaking relaxes a stationary source reasonably available control technology (RACT) emission limitation in an area that is designated as attainment/unclassifiable for ozone, approval of this revision will eliminate the accommodative ozone SIP for Pickaway County. The original principle of this accommodative ozone SIP for areas classified as attainment/unclassifiable was to require RACT-level controls on existing sources in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring is normally required of new major sources in attainment/unclassificable areas under USEPA's Prevention of Significant Deterioration (PSD) Regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas. This action will cancel the accommodative SIP for Pickaway County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements.

Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas. Sources wishing to locate in nonattainment areas must comply with the State's federally approved Part D new source review program.

Final Action

USEPA did not receive any public comments during the comment period provided in the notice of proposed rulemaking. As a result, USEPA is approving this SIP revision for the following reasons:

(1) RMC is located in an area that would always have been an attainment area under the current standard (Pickaway County);

(2) The relaxation from RACT will not jeopardize continued attainment

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

[2] High performance architectural aluminum coatings means a coating that is applied to aluminum used on architectural subsections and that meets the requirements of the Architectural Aluminum Manufacturer's Association publication number AAMA 605.2–1985.

because the predicted increase is small, i.e., 6.3 tons per year; and

(3) RACT-level control is not a requirement of the Clean Air Act in this area. (The current accommodative SIP in Pickaway County will be cancelled as a result of this approval).

Therefore, for the reasons stated above, USEPA is taking final action to approve this SIP revision for the Reynolds Metal Company in Pickaway County, Ohio.

This SIP revision was submitted to USEPA in the form of a variance issued by the State to the Reynolds Metal Company. This variance expires after final approval by USEPA. Therefore this SIP revision is only effective until April 6, 1992. After this date, the SIP for Reynolds Metal Company reverts to the USEPA-approved Ohio SIP regulation(s) generally applicable to this type of source at that time.

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 June 5, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 25, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the code of Federal Regulation, Chapter I, Part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding new paragraph (c)(82) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(82) On November 7, 1985, the Ohio Environmental Protection Agency submitted a revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Reynolds Metal Company in Pickaway County, Ohio. This variance shall expire on May 6, 1992.

(i) Incorporation by reference.

(A) State of Ohio Environmental Protection Agency Variance to Operate an Air Contaminant Source (except for Conditions No. 2, No. 3, and No. 6); Date of Issuance: October 29, 1985, Issued to: Reynolds Metal Company; Constitutes a Variance to Operate: miscellaneous metal parts coating line—Ransburg Disc spray booths No. 1 and No. 2; and Signed by Warren W. Tyler, Director, Ohio Environmental Protection Agency.

* * * * *

[FR Doc. 89–8002 Filed 4–4–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 8E3650/R1016; FRL–3550–1]

Pesticide Tolerance for Ethyl 3-Methyl-4-(Methylthio)Phenyl(1-Methylethyl)Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl(1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity eggplants. The Interregional Research Project No. 4 (IR–4) petitioned for this tolerance.

EFFECTIVE DATE: April 5, 1989.

ADDRESS: Written objections, identified by the document control number, [PP 8E3650/R1016], may be submitted to: Public Docket and Freedom of Information Section, Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (H–7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of February 15, 1989 (54 FR 6937), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 8E3650 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Alabama, Florida, New Jersey, North Carolina, Oklahoma, and the U.S. Department of Agriculture.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the nematicide fenamiphos and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl(1-methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the raw agricultural commodity eggplant at 0.1 part per million.

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

The date submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: March 24, 1989.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.349(a), by adding and alphabetically inserting the raw agricultural commodity eggplant, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Eggplant	0.1
* * * * *	

[FR Doc. 89-7934 Filed 4-4-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-00273; FRL-3548-9]

Pesticide Tolerances for Pendimethalin; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is reinstating tolerances for residues of the herbicide pendimethalin in 40 CFR 180.361 for the raw agricultural commodities (RAC) potatoes and sorghum (fodder, forage, and grain), which were added in 1980 but were inadvertently omitted in a 1981 revision of the section and, hence, from the 1981 and subsequent yearly revisions of the Code of Federal Regulations (CFR).

DATE: Effective April 5, 1989.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 1980 (45 FR 49600), EPA issued notice of pesticide petitions (PP) 9F2134 and 9F2246 submitted by the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, proposing to amend 40 CFR 180.361 by establishing tolerances for residues of the herbicide pendimethalin (*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzeneamine) and its metabolite (4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol) in or on the raw agricultural commodities potatoes and sorghum (fodder, forage, and grain) at 0.1 part per million (ppm). The final rule adding the commodities to § 180.361 was published in the **Federal Register** of October 2, 1980 (45 FR 65209).

In the **Federal Register** of April 14, 1981, at page 21770 (46 FR 21770; April 14, 1981), EPA revised § 180.361 to add tolerances for various RAC's, including peanuts, peanut hay, peanut forage, and peanut hulls; sunflower seeds; and rice grain. The revision inadvertently omitted the RAC potatoes and sorghum (fodder, forage, and grain), which had been added at 45 FR 65209 (Oct. 12, 1980); hence, the yearly revision of the CFR in 1981 and subsequent years has not carried the commodities that were inadvertently omitted.

This document reinstates in 40 CFR 180.361 the inadvertently omitted commodities; potatoes and sorghum (fodder, forage, and grain) at 0.1 ppm. As this document merely reinstates commodities that were previously issued but inadvertently omitted from the CFR, advance notice and public participation as prerequisites to issuance are not necessary, and this rule is effective upon publication in the **Federal Register.**

List of Subjects in 40 CFR Part 180

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

Dated: March 25, 1989.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.361(a), by reinstating in alphabetical order the following raw agricultural commodities, to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Potatoes	0.1
* * * * *	
Sorghum, fodder	0.1
Sorghum, forage	0.1
Sorghum, grain	0.1
* * * * *	

[FR Doc. 89-7787 Filed 4-4-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2956/R986; FRL-3549-1]

Pesticide Tolerance for Glyphosate; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 88-26940 appearing at page 47534 in the **Fedeal Register** of November 23, 1988, establishing a tolerance for residues of the herbicide glyphosate and its metabolite aminomethyl phosphoric acid (AMPA) in or on the raw agricultural commodity shellfish, the following typographical error is corrected: In 40 CFR 180.364(b) in the table therein, "3.5" parts per million is changed to read "3.0."

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

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

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

Dated: March 25, 1989.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 89-7785 Filed 4-4-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-68, FCC 89-73]

Broadcast Service; Clarification of Report and Order Abolishing the Carroll Doctrine

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This decision responds to a petition seeking reconsideration and/or clarification of the *Report and Order (R&O)* issued in MM Docket 87-68 (53 FR 5214, February 22, 1988), eliminating the Carroll Doctrine and the related UHF Impact Policy. That petition, filed by the National Association of Broadcasters (NAB), asserts that the *R&O* goes beyond the scope of the initiating *Notice of Inquiry* (52 FR 20432, June 1, 1987) and requests the Commission to reconsider or clarify certain portions of the final decision.

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Douglas Minster, Mass Media Bureau, Policy and Rules Division, 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in MM Docket 87-68, adopted February 22, 1989, and released March 10, 1989.

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 Services (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC, 20037.

Summary of the Memorandum Opinion and Order

1. The *R&O* in this proceeding abolished the Carroll Doctrine and the related UHF Impact Policy which required the Commission to consider evidence of detrimental economic impact on an existing licensee from a new station. The NAB, in its petition for reconsideration and/or clarification, asked that the Commission reconsider portions of that decision which, the NAB interpreted as meaning that the Commission will no longer consider economic impact in general rule makings and policy statements. Alternatively, NAB requested that the Commission clarify that the *R&O* was not meant to preclude consideration of economic impact issues in proceedings other than those involving individual licensees. Finally, NAB argued that the one source the Commission relied on to conclude that ruinous competition is no longer a valid theory in broadcasting was a general economic analysis that did not take into account the specifics of the broadcast industry.

2. In response to NAB's concern that the *R&O* addressed more generalized issues of economic injury, the Commission observed that the *R&O* explicitly stated that such issues were beyond the scope of the proceeding, which was limited to consideration of the economic impact of new entrants on existing full service broadcast stations in individual licensing proceedings. However, to eliminate any confusion on the matter, the Commission reiterated that the action taken in this proceeding is limited to licensing and allotment proceedings. The Commission also addressed NAB's argument that it relied on only one source to conclude that ruinous competition is no longer a valid theory in broadcasting. In this regard, the Commission noted that its decision to abandon the underlying reasoning of the *Carroll* doctrine was based not only on the source in question but also on the Commission's independent economic analysis of ruinous competition in a broadcasting context. Beyond this, NAB merely reasserted issues previously considered by the Commission and disposed of or deemed to be beyond the limited scope of the proceeding.

3. Thus, with respect to NAB's request for reconsideration, the Commission concluded that it is unnecessary to revisit its decision to eliminate the *Carroll* doctrine and the related UHF Impact Policy. The Commission did, however, clarify the *R&O* issued in this proceeding to the extent indicated above.

4. Accordingly, *it is ordered*, That the Petition for Reconsideration and/or Clarification filed by the National Association of Broadcasters *is granted* To the extent indicated and otherwise *is denied*.

5. Authority for this action is contained in section 4(i), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, and §§ 1.106 and 1.429 of our rules.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-7903 Filed 4-4-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 90392-9092]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency rule to amend the regulations for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This rule places a limit of 1,500 pounds per vessel per day on the commercial landings of Spanish mackerel from the Atlantic migratory group through May 30, 1989. The intended effect of this rule is to prevent excessive harvest of Atlantic group Spanish mackerel.

EFFECTIVE DATES: This rule is effective April 1, 1989 through May 30, 1989.

ADDRESS: Copies of documents supporting this action may be obtained from Mark F. Godcharles, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The king and Spanish mackerel fisheries are managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Reportedly, the Florida east coast gill net fleet is preparing for an intensive spring fishing effort on Atlantic group Spanish mackerel at the beginning of the 1989/90 fishing year. Operating from a proposed temporary landing facility in the Cape Canaveral area, the runaround gill net fishery intends to increase spring harvest by expanding operations northward to non-traditional fishing areas north of Cape Canaveral. In view of these preparations, the Councils and NOAA are concerned that under favorable conditions, net fishermen could take a multimillion pound catch of Spanish mackerel this spring. Although such catches in April and May, the beginning of the fishing year, would be legal under existing regulations, the

Councils and NOAA are concerned that such large unprecedented catches would be taken in contravention of Objective 1 of the FMP:

The primary objective of the FMP is to *stabilize yield at MSY,* allow recovery of overfished populations and maintain population levels sufficient to ensure adequate recruitment.

Given the fishing power of the Florida east coast gill net fleet and its planned intensification of spring fishing activities, excessive catches could be taken if large schools of Spanish mackerel are available. This is a distinct possibility if atmospheric/oceanic conditions prolong low water temperatures and delay until April the northerly spring migration from overwintering grounds off southeast Florida. This potential excessive spring harvest could cause overfishing and erode gains achieved by the stock rebuilding program initiated by Amendment 2 to the FMP.

Commercial fishing for Atlantic group Spanish mackerel in Federal waters was closed for the 1989/89 fishing year on December 30, 1988, when the commercial allocation of 3.04 million pounds was taken. An estimated 2.3 million pounds of that allocation were taken in December off southeast Florida by gill nets; weekly catches of 1.1 and 0.8 million pounds were landed within a three-week period.

The crux of the problem is that a second multimillion pound harvest could be taken within the 4–5 month period prior to the onset of spawning in late spring. The precarious condition of this resource may not withstand this excessive removal of dominant year classes and diminution of their subsequent spawning contribution. Such removal could seriously decrease spawning stock biomass and recruitment.

The best scientific information available from the 1988 stock assessment indicates mixed stock characteristics for Atlantic group Spanish mackerel. Increased commercial catches north of the management area (New England and Middle Atlantic) suggest an expanding population, and increased recruitment is also apparent. However, the strength of new year classes is uncertain and increases in spawning stock biomass are not apparent. Current fishing success and stock availability appear to be supported by one or two strong year classes between the ages of II and V. Recent landings indicate that these dominant year classes have been subjected to unsafe levels of fishing. Preliminary landings for Atlantic group Spanish mackerel for the past two years indicate the commercial and recreational allocations have been exceeded; the total allowable catch (TAC) and upper range of the acceptable biological catch (ABC) have also been exceeded, as shown in pounds in the following table:

	Landings	Allocation	Upper limit ABC
1987/88			
Commercial	3,089,987	2,360,000	.....
Recreational	2,051,433	740,000	.....
Total	5,141,420	[1] 3,100,000	3,100,000
1988/89			
Commercial	[2] 3,137,927	3,040,000	.....
Recreational	[3] 2,635,348	960,000	.....
Total	5,773,275	[1] 4,000,000	5,500,000

[1] TAC.
[2] Landings through 2/28/89.
[3] Landings through 11/30/88.

The fishing power of the 13–15 large runaround gill net vessels, a previous high catch in March 1982, and the proposed effort to target Spanish mackerel this spring, makes high catches during April/May 1989 a distinct possibility. This scenario is unacceptable to the Councils and NOAA. They propose to prevent this potential excessive harvest by implementing a 1,500-pound daily vessel limit for a 60-day period.

The Councils favor the emergency implementation of a 1,500-pound daily vessel limit because it would allow an acceptable catch for small boat net fishermen who traditionally fish for Spanish mackerel this time of year. Furthermore, the daily vessel limit backs up existing Florida regulations. Implementation of the same catch limit for adjacent Federal waters would preclude the opportunity for excessive catches to occur in Federal waters in a manner incompatible with Florida's management regime. It would also facilitate enforcement.

Emergency implementation of a 1,500 pound per day vessel limit is necessary because no mechanism exists within the FMP or promulgated regulations to prevent an excessive spring harvest. Historical landings do not indicate, and Councils did not foresee, the potential for such a harvest. NOAA Fisheries will recommend that the Councils permanently address this potential problem through the plan amendment process.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

NOAA prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the address above.

The Secretary determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by responsible State agencies under section 307 of the Coastal Zone Management Act.

The Secretary finds for good cause (i.e., to prevent a resource emergency that would jeopardize the recovery of the Atlantic migratory group Spanish mackerel stocks) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule, or to delay for 30 days its effective date, under the provisions of section 553(b)(B) and (d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: March 31, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.7, effective from April 1, 1989 through May 30, 1989, a new paragraph (x) is added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(x) Possess or land Atlantic migratory group Spanish mackerel in an amount exceeding the daily vessel limit, as specified in § 642.24(e).

3. In § 642.24, effective from April 1, 1989 through May 30, 1989, a new paragraph (e) is added to read as follows:

§ 642.24 Vessel, gear, equipment limitations.

* * * * *

(e) *Daily vessel limit.* From April 1, 1989 through May 30, 1989, an owner or operator of a vessel fishing under the commercial allocation may not possess or land Atlantic migratory group Spanish mackerel taken in the EEZ in an amount exceeding 1,500 pounds per vessel per day. Such owner or operator may not combine this daily vessel limit with any daily commercial vessel limit for Spanish mackerel in State waters.

[FR Doc. 89-8057 Filed 3-31-89; 3:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 64
Wednesday, April 5, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1007

[DA-89-017]

Milk in the Georgia Marketing Area; Notice of Proposed Suspension of a Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would suspend a provision of the producer milk definition of the Georgia milk order for an indefinite period. The suspension would increase the amount of milk that may be shipped directly from the farm to nonpool plants and still be priced under the order. The suspension was requested by Land-O-Sun Dairies, Inc., the operator of three pool plants under the Georgia milk order. The plant operator contends the suspension is necessary due to changed marketing conditions and to permit the efficient marketing of milk of dairy farmers delivering milk to the company's three plants.

DATE: Comments are due on or before April 12, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the ciriteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Georgia marketing area is being considered for an indefinite period:

In § 1007.13(b)(5), the provision "who are not members of a cooperative association" as it appears the second time in that paragraph of the order.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days to permit the completion of the required procedures to make the action effective as soon as possible, if this is found necessary.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend a provision of the producer milk definition of the Georgia milk order for an indefinite period. The proposal would allow more milk of producers who are not members of a cooperative association (nonmembers) to be shipped directly from farms to nonpool plants and still be priced and pooled under the order.

The order provides that the operator of a pool plant other than a cooperative association may divert for the operator's account only the milk of nonmember producers in an amount not to exceed 25 percent of the milk physically received at the plant from such nonmember producers. In addition, 10 days' production of each producer whose milk is diverted must be physically received at a pool plant.

Under the requested suspension, a plant operator could divert only the milk of nonmember producers. However, the plant operator would be able to divert up to 25 percent of the plant's physical receipts from cooperative associations and from nonmember producers. The plant operator would still need to receive 10 days' milk production at the pool plant from each nonmember whose milk is diverted.

The suspension was requested by Land-O-Sun Dairies, Inc., the operator of three pool plants regulated under the Georgia order. The company indicated that the three plants process between 30 and 40 percent of the total bulk milk receipts of the Georgia market. During the spring months of this year, Land-O-Sun expects that it will need to divert two million pounds of milk in excess of the amount allowable under the current order provisions. The company estimates that its total diversions in the coming months will approximate 12 percent of the total receipts of milk at its three plants from cooperative associations and nonmember producers.

Land-O-Sun indicated that marketing conditions at its three plants have changed markedly since July 1988. Prior to that time, a major cooperative association had completely balanced the supply of milk at the company's Spartanburg, South Carolina, plant and partly balanced the supply at the company's plants at Atlanta and Waycross, Georgia. Presently, Land-O-Sun obtains milk from cooperative associations other than its previous supplier and from nonmember producers at each of its three plant locations. The nonmember producers are located in Kentucky, Tennessee, and Georgia. None of the cooperatives supplying the Land-O-Sun plants are balancing the supply of milk at such plants. Instead, the operator of each plant must divert the milk of nonmembers to balance the milk supply for that plant.

Land-O-Sun requested that the suspension be made effective April 1, 1989. The company indicated that the two principal plants available for

balancing its milk supply are the Cumberland Creamery in Nashville, Tennessee, and Hart County Cheese plant in Hart County, Kentucky. In the absence of the requested suspension, the company can pool all of its nonmember milk only if it moves about 2 million pounds of milk from Kentucky and Tennessee to the Atlanta or Spartanburg plant, and then returns the milk to manufacturing plants located in the same area where the milk was produced. The suspension would eliminate the need to move the milk to the central market locations and then return such milk to the production area solely for the purpose of having the milk priced under the order.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

PART 1007—[AMENDED]

The authority citation for 7 CFR Part 1007 continues to read as follows:

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

Signed at Washington, DC, on March 30, 1989.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 89–8025 Filed 4–4–89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

Forms, Instructions, and Reports

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to substitute for its current regulation on reporting fully insured brokered deposits and fully insured deposits placed directly by other depository institutions (12 CFR 304.6) a new requirement calling for the reporting of planned rapid growth by whatever means, including the solicitation and acceptance of brokered deposits and direct deposits by other depository institutions. Essentially, the new proposal would require an insured bank to report by means of a check-off question on its Reports of Condition and Income any intention to grow rapidly, that is, by more than nine percent during the following three months. Any bank reporting an intention to grow that rapidly would be prohibited from implementing its plans for a period of 30 days from the submission of its Reports of Condition and Income. As an interim measure, unless and until a question regarding planned rapid growth can be included on the Reports of Condition and Income, insured banks would be required to report their intention to grow rapidly by means of a letter or other written communication mailed or otherwise directed to the appropriate FDIC regional director for bank supervision. Moreover, whenever rapid growth occurs that was not planned and covered by a prior notice given through a Reports of Condition and Income submission or separate letter or other communication, the bank would be required to report promptly the fact of that growth to the appropriate FDIC regional director for supervision.

DATES: Comments must be received by June 5, 1989.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6092 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6092 between 8:30 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Bank Supervision, (202) 898–6892, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The notice requirements contained in the proposed regulation do not constitute "collections of information" for purposes of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and therefore are not subject to the Office of Management and Budget ("OMB") clearance provisions of that Act. This is because the notice requirements fall within the exception to the definition of "information" set out in § 1320.7(j)(1) of OMB regulations implementing the "collection of information clearance" provisions of the Act (5 CFR Part 1320). It is recognized, however, that the notice requirements do place an affirmative obligation on a bank to notify the FDIC of its intended action to grow rapidly or that rapid growth has occurred. Any costs associated with these notices would appear, however, to be minimal. The proposed regulation does not specify the content of the written notices or require the bank to provide any more specific information beyond that indicated.

Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the proposed regulation will not have a significant economic impact on a substantial number of small entities because it will simply require occasional reporting by a relatively small percentage of insured banks regarding their intent to grow rapidly or the fact that they have grown rapidly. These types of communications have always been a routine part of the bank supervisory process. Moreover, the additional economic impact will be more than offset by the elimination of explicit reporting requirements calling for the special compilation and periodic reporting of data on fully insured brokered deposits and direct deposits of other depository institutions. Overall, the net impact of the change may be a significant reduction in the cost and burden on small banks. Consequently, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

Discussion

A number of instances have developed over the last few years where insured banks have grown very rapidly in a short period of time and have concurrently developed serious asset and/or other problems. In fact, some of these institutions have failed very quickly thereafter, even though these same banks had operated satisfactorily prior to the unwise growth.

Various mechanisms have been used to fund that growth, including brokered deposits, direct borrowings, use of repurchase agreements, direct solicitation of deposits throughout the country by a "money desk" operation, and simply paying above market rates. The FDIC believes it necessary to enhance its ability to monitor rapid growth in time to apply appropriate supervision.

Since a bank may obtain its funding from a variety of sources in addition to brokered deposits, the FDIC believes that any effort to monitor and control rapid growth in insured banks should not focus solely or even principally on brokered deposits. Instead, the focus should be on rapid growth *per se* as an indication of the need for close monitoring and supervisory oversight. Moreover, in order to assess its insurance risk, the FDIC believes that, insofar as practical, it should receive as much prior notice of anticipated rapid growth as possible in order to deter and perhaps forestall imprudent loans and investments before the fact rather than

attempting to control and limit abuses and losses after the fact.

To this end, the FDIC proposes to substitute in lieu of its current requirements on quarterly reporting of fully insured brokered deposits and fully insured direct deposits of other depository institutions (§ 304.6 of FDIC's regulations), a new section 304.6 that essentially would require 30 days advance written notification of an insured bank's intent to grow rapidly, i.e., by more than nine percent of assets over any consecutive three-month period. The notification would be filed as part of the bank's Reports of Condition and Income submission by means of a check-off question asking whether the bank intended to grow rapidly during the following three months. Until and unless such a question is included on the Reports of Condition and Income, a notice of intent to grow rapidly would be given by letter or other written communication directed to the appropriate FDIC regional director for supervison. No special funding plan or arrangement designed to rapidly increase the assets of a bank could be implemented until 30 days following written notice given either through the submission of a Reports of Condition and Income or a separate letter or other written communication. A written notification would also be required within seven days whenever an insured bank increased its assets by more than nine percent during any period unless the growth was pursuant to a previously reported notice of intent to grow rapidly.

The proposed regulation makes clear that the reporting requirements are not intended to cover situations in which the growth threshold is exceeded as a result of normal growth expected of a new bank during its first year of operation (unless pursuant to a special funding plan or arrangement for which notice was not previously given), a merger or consolidation, or seasonal changes in deposit growth or lending and repayment patterns customary for the particular bank.

The FDIC is also soliciting comment on any other possible reporting scheme designed to inform the FDIC in advance of planned rapid growth in a more efficient and less burdensome manner.

Confidential Treatment of Notices

All notices or other information received in accordance with the regulation outside the Reports of Condition and Income will be treated as confidential by the FDIC. It is the agency's opinion based upon a review of relevant case law that such notices or other information will be exempt from required public disclosure under the Freedom of Information Act. The notices or information will contain or constitute confidential commercial or financial information within the meaning of 5 U.S.C. 552(b)(4) and also fall within the parameters of 5 U.S.C. 552(b)(8) which exempts from public disclosure information contained in or related to examination, operating or condition reports prepared for the use of the FDIC or any other agency responsible for the supervision of financial institutions.

Statutory Authority

In order to properly discharge its supervisory responsibilities and to adequately administer and protect the deposit insurance fund, it is essential that the FDIC have accurate, up-to-date information regarding actions taken by insured banks that may pose a threat to bank safety and soundness and/or pose a threat to the insurance fund. The FDIC's purpose in proposing a prior notice requirement before an insured bank may institute any special funding plan and notice otherwise whenever rapid growth occurs is to provide the FDIC with a mechanism to obtain in a timely fashion information that is needed in order that the FDIC may assess the risks posed to the insurance fund, coordinate with other bank regulatory authorities, prepare for and schedule examinations of insured banks when and where they are most needed, and properly evaluate bank management, current and future capital and liquidity needs, etc. in light of plans which may substantially alter the nature of a bank's balance sheet.

The FDIC's action in proposing to amend Part 304 of the FDIC's regulations to provide for such notice is fully consistent with the FDIC's purpose and is authorized by sections 7, 8, 9(Eighth), and 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1818, 1819, 1820(b)). Under section 9 of the FDI Act the FDIC has broad general authority to issue regulations "as it may deem necessary to carry out the provisions of the [Federal Deposit Insurance Act] or of any other law which it has the responsibility of administering or enforcing * * *" 12 U.S.C. 1819(Tenth). It is settled that binding legislative-type rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purposes of the enabling legislation containing the general rulemaking authority. *Mourning v. Family Publications Services*, 411 U.S. 336, 369 (1973) (quoting *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 269, 280–281 (1969)). The preamble to the legislation placing federal deposit insurance on a permanent basis states that the Banking Act of 1935 was "[t]o provide for the sound, effective, and uninterrupted operation of the banking system . . ." Pub. L. No. 74–305, 49 Stat. 684 (1935). The clear goal of the FDI Act as demonstrated by the express language of the statute and its legislative history is to protect the safety and soundness of insured banks. In order to do so, the FDIC must be fully informed of what actions insured banks plan to take that may present risks to their safety or soundness and may ultimately endanger the deposit insurance fund. The ability of a federal bank regulatory agency to adopt regulations in harmony with safety and soundness concerns based upon general rulemaking authority was judicially recognized long ago, *Continental Bank and Trust Company v. Woodall*, 239 F.2d 707, 710 (10th Cir.), *cert. denied*, 353 U.S. 909 (1957), and recently reaffirmed by the D.C. Circuit in a case involving a challenge to a regulation by another federal insurer of deposits, *Lincoln Savings and Loan Association v. Federal Home Loan Bank Board*, 856 F.2d 1558 (D.C. Cir. 1988).

As the safety and soundness of the deposit insurance fund is inextricably connected with bank safety and soundness, *Federal Deposit Insurance Corporation v. Citizens State Bank*, 130 F.2d 102, 104 n. 6 (8th Cir. 1942) and the FDIC has a congressional mandate to pay insured deposits whenever a bank is closed "on account of inability to meet the demands of its depositors" (12 U.S.C. 1821 (f)), the FDIC must preserve the solvency of the insurance fund in order to fulfill its mandate when called upon. It is not surprising, therefore, that the FDIC's authority to protect the deposit insurance fund by the adoption of substantial regulations applicable to all insured banks has been judicially recognized. *National Council of Savings Institutions v. Federal Deposit Insurance Corporation*, 664 F. Supp. 572 (D.D.C. 1987). Furthermore, the FDIC is authorized under section 8 of the FDI Act (12 U.S.C. 1818) to initiate cease-and-desist proceedings whenever a bank is engaging in an unsafe or unsound banking practice and to terminate deposit insurance whenever a bank is engaging in such practices or is in an unsafe or unsound condition. The FDIC is not confined to initiating individual enforcement or termination actions under section 8 but may, at its discretion, adopt substantive regulations defining what constitutes an unsafe or unsound banking practice and what circumstances will warrant the termination of deposit insurance.

Independent Bankers Association v. Heimann, 613 F. 2d 1161, 1169 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980). As the FDIC is authorized to adopt substantive regulations for the purpose of protecting bank safety and soundness and for the prupose of protecting the deposit insurance fund, the FDIC clearly has the authority to adopt regulations simply requiring that the FDIC receive prior notice of a bank's plans to take certain actions that may adversely affect bank safety and soundness and the deposit insurance fund.

Not only does it logically follow from the above that the FDIC may require the reports proposed herein, the FDIC is expressly authorized to do so with respect to insured state nonmember banks. Section 7 of the FDI Act (12 U.S.C. 1817) provides that the FDIC may collect reports of condition "and such other reports as the Board [of Directors] may from time to time require." These reports are necessary in order that, among other things, the FDIC can properly discharge its responsibility under section 10(b) of the FDI Act (12 U.S.C. 1820 (b)) to schedule and undertake a special examination of an insured bank other than a state nonmember bank when the FDIC has reason to believe that such examination is necessary to determine the condition of the bank. It follows, therefore, based on section 9, that the FDIC has the authority to require the reports from insured banks other than state nonmembers in order that it might fulfill its responsibility to undertake such examinations.

Accordingly, for the reasons stated in this notice, and pursuant to the FDIC's authority under sections 7, 8, 9(Eighth), and 10(b) of the Federal Deposit Insurance (12 U.S.C. 1817, 1818, 1819(Eighth), 1820(b)), the FDIC proposes to delete § 304.6 of its regulations (12 CFR 304.6) and substitute in lieu thereof the following new § 304.6.

List of Subjects in 12 CFR Part 304

Banks, banking; Bank reports.

Accordingly, the FDIC hereby proposes to amend Part 304 of Title 12 *Code of Federal Regulations* as follows.

PART 304—FORMS, INSTRUCTIONS, AND REPORTS

1. The authority citation for Part 304 continues to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 1817, 1818, 1819, 1820.

2. It is proposed that § 304.6 be revised to read as follows:

§ 304.6 Notification of rapid growth.

(a) Until and unless a question regarding planned rapid growth is included on the Reports of Condition and Income filed by insured banks, an insured bank may not undertake any special funding plan or arrangement designed to increase its assets by more than nine percent during any consecutive three-month period without first notifying the appropriate FDIC regional director for supervision in writing at least 30 days in advance of the implementation of the special funding plan or arrangement. For purposes of this requirement, a special funding plan or arrangement is any effort to rapidly increase the assets of the bank by any means. Such means may include, for example, borrowings, solicitation and acceptance of deposits from or through the intermediation of brokers or affiliates, solicitation of deposits outside the bank's normal trade area, or paying rates on deposits that are higher than locally competing depository institutions. A notification filed pursuant to this requirement need only state the bank's intention to grow rapidly and shall be considered given on the date post-marked or delivered to the FDIC regional office if by means other than placement in the mails.

(b) In the event a question is included on the Report of Condition and Income asking whether the reporting bank intends to grow rapidly, i.e., grow by more than nine percent during the following three months, the bank would by check-mark indicate affirmatively that it plans to grow rapidly and the submission of its Report of Condition and Income shall satisfy the notification requirement prescribed in paragraph (a) of this section. The bank may not implement its growth plans for 30 days following the date of submission of its Reports of Condition and Income. For this purpose, date of submission means the date on which the Reports were mailed, transmitted electronically or by fax machine to the FDIC or other federal banking authority.

(c) In the event a question concerning rapid growth is included on the Reports of Conditions and Income and an insured bank between filing dates determines to grow rapidly, it may not implement any special funding plan or arrangement designed to achieve rapid growth without first notifying the appropriate FDIC regional director for supervision in writing at least 30 days in advance. The notice need only state the bank's intent to grow rapidly and shall be considered given on the date post-marked or delivered to the FDIC regional office if by means other than placement in the mails.

(d) Unless rapid growth occurs pursuant to a plan or arrangement for which notice was previously given, an insured bank shall notify the appropriate FDIC regional director in writing within seven days whenever its assets increase by more than nine percent during any consecutive three-month period. The notice need only report the fact of that growth and shall be considered given on the date post-marked or delivered to the FDIC regional office if by means other than placement in the mails.

(e) The reporting requirements prescribed in this section are not intended to apply to situations in which the growth threshold of nine percent during any consecutive three-month period is exceeded as a result of normal growth expected of a newly chartered bank during its first year of operation (unless it has implemented a special funding plan or arrangement for which no prior notification has been given), a merger or consolidation, or seasonal changes in deposit growth or lending and repayment patterns that are customary for the particular bank.

(f) Additional information regarding growth plans and activities may be required from time to time through direct inquiry.

By order of the Board of Directors.

Dated at Washington, DC this 21st day of March 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-8090 Filed 4-4-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 871 0025]

Texas Board of Chiropractic Examiners; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Texas licensing Board to repeal existing rules that prohibit truthful, nondeceptive

advertising or solicitation, and also prohibits respondent from adopting similar rules or policies in the future. In addition, respondent would be prohibited from taking or threatening disciplinary action against any person or organization that advertises truthfully.

DATE: Comments must be received on or before June 5, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Thomas Carter or Gary Kennedy, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX, 75201. (214) 767–5503.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

List of Subjects in 16 CFR Part 13

Chiropractors, Trade practices.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Texas Board of Chiropractic Examiners (hereafter sometimes referred to as "proposed respondent") and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed By and between the Texas Board of Chiropractic Examiners, by its duly authorized officers and its attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent is organized, exists, and transacts business under and by virtue of the laws of the State of Texas. The Board's principal office and place of business is located at Building C, Suite 245, 1300 East Anderson, Austin, Texas 78752.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commision, both it and the draft of complaint contemplated thereby will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order. It understands that once the order contemplated thereby has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered That for the purposes of this Order, the following definitions shall apply:

A. "Board" shall mean the Texas Board of Chiropractic Examiners, its members, officers, agents, representatives, employees, successors, and assigns.

B. "Disciplinary action" shall mean: (1) A refusal to grant, or the revocation or suspension of, a license to practice chiropractic in Texas; (2) a refusal to admit a person to examination for a license to practice chiropractic; (3) the issuance of a formal or informal warning, reprimand, censure, or cease and desist order against any person or organization; (4) the imposition of a fine, probation, or other penalty or condition; or (5) the initiation of an administrative, criminal, or civil court proceeding against any person.

C. "Person" shall mean any natural person, corporation, partnership, governmental entity, association, organization, or other entity.

II.

It is further ordered, That the Board, directly or indirectly, or through any device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Prohibiting, restricting, impeding, or discouraging any person from providing information about any chiropractic product or service, including (i) displaying any product or product information, (ii) publishing or advertising, or (iii) soliciting or attempting to solicit patients. The practices from which the Board shall cease and desist include, but are not limited to:

(1) Adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits or seeks to prohibit chiropractors from advertising or solicitation;

(2) Taking or threatening to take any disciplinary action against any chiropractor for advertising or solicitation; or

(3) Declaring it to be an illegal, unethical, unprofessional or otherwise improper or questionable practice for any chiropractor to advertise or solicit patients.

B. Inducing, urging, encouraging or assisting any nongovernmental person to take any action that if taken by the Board would be prohibited by part IIA above.

Provided that, nothing contained in this part shall prohibit the Board from formulating, adopting, disseminating and enforcing reasonable rules or taking disciplinary or other action, to prohibit advertising that the Board reasonably believes to be false, misleading or deceptive within the meaning of Section 17b of the Chiropractic Act of Texas, or to prohibit uninvited, in-person solicitation of actual or potential patients who because of their particular circumstances are vulnerable to undue influence.

III.

It is further ordered That the Board shall:

A. Distribute by first-class mail a copy of the announcement attached hereto as Appendix A, a copy of this Order and a copy of the accompanying Complaint in the following manner:

(1) Within thirty (30) days after the date this Order becomes final, to each person licensed to practice chiropractic in Texas as of such date and to each person whose application for, or a request for reinstatement of, a license is pending on such date; and

(2) For five (5) years after the date this Order becomes final, to each person who applies for a license to practice chiropractic in Texas within (30) days after the Board receives such application;

B. Within thirty (30) days after the date this Order becomes final, remove or revise Rules 75.1(1), 75.1(3), 75.1(5), 75.1(6), 77.2(1), 77.2(2), 77.2(3), 77.2(4), 77.2(5), 77.2(8), 77.2(9), 77.2(10), 77.3, 77.4(b), and 77.7(b) of the Rules and Regulations of the Board and any other provision of the Rules and Regulations of the Board and any policy statement or guideline, provision, interpretation, or statement that is inconsistent with Part II of this Order;

C. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the practice of chiropractic in Texas that may affect compliance obligations arising out of this Order, such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of (or other relevant change in) the Board;

D. Within sixty (60 days) after the date of service of this Order, submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which the Board has complied and is complying with this Order; and

E. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this Order, including but not limited to any advice or interpretations rendered with respect to chiropractors engaging in advertising or solicitation.

Appendix A—Announcement

As you may be aware, the Federal Trade Commission has issued a consent order against the Texas Board of Chiropractic Examiners that became final on (date). The order provides that the Board may not prohibit chiropractors from engaging in truthful, nondeceptive advertising or solicitation.

As a result of the order, the Board may not (1) adopt or maintain rules, regulations or policies that prohibit truthful, nondeceptive advertising or solicitation; (2) take or threaten disciplinary action against any person or organization that so advertises or solicits; or (3) declare it to be illegal, unethical, unprofessional, or otherwise improper or questionable for persons to engage in truthful, nondeceptive advertising or solicitation. The order also prohibits the Board from encouraging any person or organization to take actions that the order prohibits the Board from taking.

The order does not affect the Board's authority to prohibit advertising that is likely to deceive or mislead the public, nor does the order prevent the Board from disciplining licensees for engaging in such advertising. In addition, the order does not restrict the Board's ability to prohibit uninvited, in-person solicitation of actual or potential patients who because of their particular circumstances are vulnerable to undue influence.

For more specific information, you should refer to the FTC order itself. A copy of the order and accompanying complaint is enclosed.

(Title)
Texas Board of Chiropractic Examiners

Dissent of Commissioner Mary L. Azcuenaga

Texas Board of Chiropractic Examiners

[File No. 871–0025]

I dissent from the decision to accept this consent order for public comment. The Order requires the Texas Board of Chiropractic Examiners to delete or revise fifteen rules. Some of those rules relate to matters of public health and safety or to the prevention of consumer fraud or deception. These are matters that the Texas legislature authorized the Board to regulate and appear to be protected from antitrust challenge under the state action doctrine. In deciding whether finally to accept this consent order, I would welcome public comment on the scope of the Board's statutory authority and whether the Order threatens to impair the Board's ability to implement state policy. Comment also would be useful on the propriety of the balance that has been struck between protecting competition and protecting consumers against fraud, deception and potential health and safety risks. In particular, I would welcome comment on rules 75.1(5), 75.1(6), 77.2(2), 77.2(8), 77.2(9), 77.2(10), 77.4(b), and 77.5(b).

Dissenting Statement of Commissioner Andrew J. Strenio, Jr.

Texas Board of Chiropractic Examiners

[File No. 871–0025]

Even though much of this consent order could be supported on the basis of the Commission's jurisdiction over "unfair acts or practices," [1] I voted not to accept it for public comment. My concern is that in some important respects the order appears to expand FTC power without due regard for the tenets of federalism and to the possible detriment of Texas patients.

This concern is most evident in the portion of the order that strikes down Rule 77.2(8) of the Texas Board of Chiropractic Examiners. Rule 77.2(8) prohibits the advertisement of free x-rays as a means of soliciting patients. Clearly, the Texas Board may have intended the rule to be a bona fide safety measure even if it wrote the rule more broadly than necessary to achieve that purpose.

Yet, the FTC would eliminate this particular rule in the absence of evidence that it has an anticompetitive application or effect—let alone a convincing showing that legitimate safety considerations are not involved. I question whether it is wise, even if it is legal, for the FTC to second-guess the Texas Board under these circumstances.

In reaching a conclusion on whether finally to accept this consent order, I particularly would be interested in public comment on

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[1] *See Massachusetts Board of Registration in Optometry*, 5 Trade Reg. Rep. (CCH) ¶ 22,555, at 22,253–60.

this issue as well as comment on the issues raised by Commissioner Azcuenaga.

Texas Board of Chiropractic Examiners

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Texas Board of Chiropractic Examiners ("the Board").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

A complainant prepared for issuance by the Commission along with the proposed order alleges that the Board has acted as a combination of its members or conspired with at least some of its members or others to place unreasonable restraints on competition among chiropractors in Texas by prohibiting them from disseminating through advertising and solicitation truthful, nondeceptive information about chiropractic services.

The Board is subject to the Commission's jurisdiction pursuant to Section 5 of the Federal Trade Commission Act.

The Board is organized and exists under the laws of the State of Texas. It is composed of nine members, six of whom must be chiropractors who have practiced chiropractic for five years before becoming a Board member and who must continue to be engaged in the practice of chiropractic while serving their membership terms. Thus, a majority of the Board's members compete with each other and with the chiropractors they regulate.

The Board is the sole licensing authority for chiropractors in Texas. Under state law, the Board is responsible for establishing standards governing the examination and licensing of chiropractors in Texas. The Board may adopt rules and regulations, and it may refuse to issue a license to, or to suspend or revoke an existing license of, any person found guilty of one or more of sixteen enumerated offenses. The State of Texas has no articulated policy to restrict truthful, nondeceptive advertising and solicitation by chiropractors. Indeed, many of the Board's Rules conflict with Section 17b of the Texas Chiropractic Act, which forbids the Board from restricting advertising "except to prohibit false, misleading or deceptive practices by the person."

In furtherance of this combination or conspiracy, the Board has restrained competition among chiropractors in Texas by adopting, maintaining, and enforcing rules that prohibit a large number of methods of advertising and solicitation. Specifically, the Board's Rules prohibit chiropractors from:

(1) Making damaging statements about another chiropractor or group of chiropractors;

(2) Using such terms in advertising as "most modern," "scientific," or "any other like words or phrases";

(3) Soliciting patients by demonstrating chiropractic "in public places";

(4) Publicly displaying food supplements or food supplement brochures in chiropractors' offices;

(5) Using advertising that contains self-laudatory statements;

(6) Using advertising that contains statements of opinion as to the quality of chiropractic practices or services, that, although truthful and nondeceptive, are not "susceptible of reasonable verification" by the public;

(7) Using advertising that contains statistical data or other information based on past performance or prediction of future success;

(8) Using advertising that contains testimonials about or endorsements of chiropractors, or contains case histories of chiropractors' patients;

(9) Using advertising that contains statements that are intended or are likely to attract patients by the use of showmanship or self-laudation, including but not limited to the use of drawings, illustrations, and slogans;

(10) Offering free x-rays as a means of soliciting patients;

(11) Indicating that they specialize in any field of chiropractic, such as by use of the term "chiropractic orthopedist" or any other term indicating a specialty, except that chiropractors may indicate their status as diplomates of the American Board of Chiropractic Roentgenology and/or the American Board of Chiropractic Orthopedics;

(12) Charging for any service performed within 72 hours after a patient responds to an advertisement for free or token fee services;

(13) Using advertising that is not "dignified" and which contains information not included in twelve specified categories;

(14) Honoring fees advertised on radio or television, or in a publication with no fixed periodic publication date, for a period of less than 90 days; and

(15) Failing to ensure that there is a separate recording preserved, for a period of not less than two years, of each transmission of each radio and television commercial for chiropractic services.

Chiropractors have been prevented from engaging in truthful, nondeceptive advertising and solicitation. The Board's restraints on advertising and solicitation have deprived consumers of the benefits of vigorous competition and of truthful, nondeceptive information about the fees, services, and products offered by chiropractors.

Description of the Proposed Consent Order

The proposed consent order would require the Board to cease and desist from prohibiting, restricting, impeding or discouraging any person from providing information about any chiropractic product or service, including (1) displaying any product or product information, (2) publishing or advertising, or (3) soliciting or attempting to solicit patients. Thus, the order would require the Board to repeal its prohibitions on truthful, nondeceptive advertising and solicitation and to refrain from adopting any other rule or policy that would prohibit or discourage such advertising or solicitation. The order would further prohibit the Board from inducing, urging, encouraging or assisting others to take any of the actions prohibited by the order.

The proposed order provides, however, that the Board may adopt and enforce reasonable rules and take disciplinary action to prohibit advertising that the Board reasonably believes to be false, misleading or deceptive within the meaning of Texas state law or to prohibit uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence. Nothing in the proposed complaint or order should be taken as condoning unnecessary or unwarranted use of x-rays, or overreaching or coercive behavior by chiropractors in recommending services to pateints; or as suggesting that it is permissible for a chiropractor to make false or misleading statements about his or her board certification.

The proposed order would require that within thirty (30) days after the order becomes final the Board distribute a copy of the order and an explanatory announcement notifying all licensees, as well as all persons with license applications pending, of the existence and terms of the consent agreement. The proposed order would also require the Board to send the same notice to each person who applied for a license during the five (5) year period thereafter. To ensure that the proposed order is obeyed, the proposed order would require the Board to file a written report with the Commission setting forth the manner and form of its compliance within sixty (60) days after the order becomes final and, for a period of five (5) years, make its records available to the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-8033 Filed 4-4-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 85N-0280]

Medical Devices; Reclassification of the Automated Differential Cell Counter

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify from class III (premarket

approval) to class II (performance standards) the automated differential cell counter (ADCC). The ADCC is a device intended to identify and classify one or more of the formed elements of the blood. The proposed reclassification is based on new information regarding the device contained in a reclassification petition submitted by the Health Industry Manufacturers Association (HIMA). This proposed rule summarizes the basis for the agency's proposed finding that sufficient valid scientific evidence is available to support reclassification of the ADCC and to establish a performance standard to provide reasonable assurance of the safety and effectiveness of the device.

DATE: Comments by June 5, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION:

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I. Regulatory Scheme for Classification and Reclassification

Classification of medical devices in commercial distribution is required by the Medical Device Amendments of 1976 (Pub. L. 94–295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301–392). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. Classification of a device is determined by the level of regulatory control needed to provide reasonable assurance of the safety and effectiveness of the device. In the preamble, FDA is using the term "preamendments devices" to refer to both the ADCC devices that were on the market before May 28, 1976, and the substantially equivalent ADCC devices that were marketed on or after that date.

Additionally, section 513(e) (21 U.S.C. 360c(e)) of the act provides that a preamendment device's classification may be changed by regulation upon a showing of "new information" respecting the device. Reclassification of a device may be initiated by the agency or upon petition of any interested person. In the proceeding for promulgation of a regulation to change a device's classification. FDA may obtain a reclassification recommendation from one of FDA's advisory committees (panels). (See 21 CFR Part 14.) FDA must publish in the **Federal Register** any reclassification recommendation by such a panel.

The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when a device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966). Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where an evaluation is made in light of changes in "medical science." (See *Upjohn* v. *Finch, supra*, 442 F.2d at 951). Whether data before the agency is past or new data, the "new information" upon which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act and 21 CFR 860.7(c). FDA relies upon "valid scientific evidence" in the classification process to determine the appropriate level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies is required to be publicly available; i.e., it may not be based on trade secret or confidential commercial information in premarket approval applications (PMA's) or on the detailed summaries of information respecting the safety and effectiveness of devices for which there are approved PMA's. (See section 520(c) and (h) of the act (21 U.S.C. 360j(c) and (h)).

II. History of the Proceedings

In the **Federal Register** of September 12, 1989 (45 FR 60576 at 60580), FDA issued a final rule classifying the ADCC into class III (21 CFR 864.5220). The preamble to the proposal to classify the device (44 FR 52950; September 11, 1979) included the recommendation of the Hematology and Pathology Devices Panel (the Panel), regarding the classification of the device. The Panel's recommendation at that time included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended that a high priority for the application of section 515 of the act (21 U.S.C. 360e) be assigned to the ADCC.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA considered in establishing priorities for initiating proceedings under section 515(b) of the act (21 U.S.C. 360e(b)) for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed product development protocols (PDP's). Using these factors, FDA concurred with the Panel that the ADCC should be subject to a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA commenced a proceeding under section 515(b) of the act to require that the ADCC have an approved PMA or a PDP that has been declared completed.

In the **Federal Register** of November 20, 1985 (50 FR 48058), FDA issued a proposed rule to require the filing of a PMA or a notice of completion of a PDP for the ADCC. Further, FDA announced an opportunity for interested persons to request the agency to change the classification of the device based on new information.

On November 27, 1985, HIMA submitted to FDA under section 515(b) of the act a petition to reclassify the generic type of device, ADCC, from class III into class II. FDA referred the petition to the Panel for its recommendation on the change in classification requested by the petitioner. Subsequently, during an open meeting of the Panel on April 24, 1986,

the Panel recommended that the ADCC be reclassified from class III into class II.

Accordingly, on December 15, 1986 (51 FR 44924), FDA announced in the **Federal Register** its intent to initiate a proceeding to reclassify the ADCC from class III into class II. FDA also invited public comments regarding any impact that reclassification of the ADCC device would have on: (1) Manufacturers, distributors, or licensed practitioners; (2) the costs or prices paid by consumers; (3) governmental agencies or geographic regions; (4) whether the rulemaking would have significant or adverse effects on competition, employment, investment, productivity, innovation; or (5) the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of the comments received and FDA's responses to them are located under "VI. Comments."

III. Summary of Reasons for the Recommendation

The Panel gave the following reasons in support of its recommendation to reclassify the ADCC device intended to identify specimens containing abnormal cells from class III into class II:

(1) The device is not an implant.

(2) General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

(3) There is sufficient new, publicly available scientific evidence to demonstrate that the risks to health have been determined. The relationship between the device's performance characteristics and risks have been established by valid scientific evidence, and there is sufficient publicly available information to establish a performance standard to assure the safety and effectiveness of the device.

(4) A tentative voluntary standard developed by the National Committee for Clinical Laboratory Standards (NCCLS) is satisfactory and applicable to each of the ADCC technologies represented in the petition. The Panel and FDA believe that all manufacturers of the ADCC can comply with this tentative NCCLS standard (Ref. 5).

FDA tentatively concurs with the recommendation of the Panel that ADCC's should be classified into class II. The agency also tentatively concludes that "new information" in the form of publicly available, valid scientific evidence exists for establishing a performance standard to provide reasonable assurance of the safety and effectiveness of the current ADCC for its intended use. Consistent with the purpose of the act, class II controls as defined by section 513(a)(1)(B) of the act would provide the least amount of regulation necessary to reasonably assure that current ADCC devices are safe and effective for their intended use.

IV. Risks to Health

The Panel identified the risks to health presented by the ADCC. These risks fall into two categories: (1) Hepatitis infection; and (2) misdiagnosis and resultant inappropriate therapy.

The ADCC does not directly contact patients. Therefore, the ADCC is not the type of device that can directly injure a patient whose blood is being analyzed. If the device properly performs its intended functions, it is safe and effective.

Since the ADCC was classified into class III in 1980 (45 FR 60594; September 12, 1980), the Panel's concern about the device's misclassification of abnormal cells has been substantially reduced. The ADCC devices currently marketed only flag a specimen containing abnormal cells. The flagging function tells the device operator that a specimen should be reviewed by a laboratory technician. It is the responsibility of the laboratory technician to reexamine the specimen and classify the abnormal cells. Under the flagging procedure, the laboratory technician has the major responsibility for checking and identifying abnormal cells, and the probability of misclassification of abnormal cells from use of the device is reduced. Therefore, the Panel believes that use of the ADCC itself does not present a potential unreasonable risk to the public health.

V. Summary of Data on Which the Proposed Reclassification is Based

The Panel based its reclassification recommendation on the manner in which the potential risks to health may be controlled, as supported by the data presented in the petition (Ref. 1). Some of the data in the petition were based on extensive clinical studies of the performance of the device conducted over several years. A primary reason FDA classified the ADCC into class III in 1980 was the concern that the device would misclassify abnormal cells. In the late 1970's, at the time of FDA's original classification of the ADCC, some of the ADCC's in commercial distribution were intended to classify and count abnormal cells; however, none of the ADCC's now in commercial distribution are intended for this use. The only intended use of current ADCC's related to abnormal cells now in commercial distribution is to flag or identify specimens containing such cells. Medical technologists, not the ADCC, are now responsbile for checking, classifying, and counting abnormal cells.

The ADCC identified in 21 CFR 864.5220 encompasses devices that operate using one of six different fundamental scientific technologies: image processing and pattern recognition, flow cytochemistry, light scattering, centrifugal analysis, aperture impedance, and aperture resistance. Evidence of the safety and effectiveness of each of these six technologies is discussed below. Each technology is compared to the Tentative Standard for Leukocyte Differential Counting (H20–T). This tentative voluntary standard was developed by NCCLS and released in 1984 (Ref. 5). The NCCLS Standard (H20–T) is a scientifically valid and adequate basis for differential leukocyte counting to which test methods, either manual or automated, may be compared. The H20–T reference method defines in detail how to conduct differential leukocyte counts. It includes directions for specimen collection, blood film preparation, staining, and examining samples. It also defines the different kinds of leukocytes commonly found in peripheral blood.

A. Image Processing and Pattern Recognition

The HEMATRAK® system, manufactured by the Geometric Data Division of Smithkline Beckman, utilizes the principles of image processing and pattern recognition. HEMATRAK® using a bloodsmear, differentiates cells through a high-resolution, three-color video scanning system which detects significant morphological features of the formed elements in blood.

The HEMATRAK® system has been evaluated by numerous investigators over a number of years, and it performs its intended function as well as, or better than, the manual-visual method for performing differentials. A list of references documenting the findings with HEMATRAK® is provided in Appendix A–2 of the petition (Ref. 1).

In addition, the H20–T was applied to the HEMATRAK®. The petitioner found that a HEMATRAK® is capable of performing differentials in a manner comparable with the H20–T. Summaries of these data on the HEMATRAK® are in Appendix A–4 of the petition (Ref. 1) and in Ref. 3.

B. Flow Cytochemistry

The Technicon Hemalog D/90™ and Technicon H6000™ systems utilize principles of flow cytochemistry technology. Cytochemically-stained white blood cells are caused to flow in a

liquid stream past an optical detection system that characterizes the cells on the basis of staining characteristics and size. Flow cytometer differential cell counters have been in clinical use since 1974. Characteristics of these systems are well established. A list of references documenting the flow cytochemistry findings can be found in Appendix B–1 of the petition (Ref. 1).

In addition, the H20–T was applied to the Technicon H6000™ system. The petitioner found that the Technicon H6000™ is capable of performing differentials in a manner comparable with the H20–T Summaries of these safety and effectiveness data are in Appendix B–4 of the petition (Ref. 1) and in Ref. 3.

C. Laser Light Scattering

Ortho's ELT series of automated hematology analyzers provide a three-part differential. These analyzers are flow systems which use the principles of hydrodynamic focusing and laser light scattering to analyze and count individual cells in a diluted whole blood sample. The Ortho ELT–800/WS was compared with the manual reference method in accordance with the H20–T. The petitioner found that the Ortho ELT–800/WS performs a three-part differential as accurate, or better than, the manual method of the H20–T. Summaries of these data are in Appendix C–7 of the petition (Ref. 1) and in Ref. 3.

D. Centrifugal Analysis

The QBC Centrifugal Hematology System, manufactured by the Clay Adams Division of Becton Dickinson and Co., anaylzes blood cells by volumetric expansion and linear measurement of packed cell layers in a spun-fluorochrome-coated microtube of blood. The QBC system derives counts of two white cell subgroups, granulocytes and nongranulocytes. The H20–T was applied to the QBC centrifugal system. The peititioner found that the QBC system is equivalent in performance to the H20–T when the manual method counts were grouped according to the white blood cell subpopulations reported by QBC. Summaries of these data are in Appendix D–1 of the petition (Ref. 1) and in Ref. 3.

E. Aperture Impedance

Coulter Electronics COULTER COUNTER S–PLUS® series of automated cell counters provide a three-part differential utilizing principles of aperture impedance. The theory of aperture impedance counting and sizing is discussed in Appendix E–5 of the petition. Coulter systems have been evaluated by numerous investigators over a number of years and perform their intended function as well as, or better than, the manual-visual method of performing differentials.

In addition, the H20–T was applied to the Coulter S–PLUS IV®. The petitioner found that the instrument is as accurate and provides more reproducible results than the manual method of the H20–T. Summaries of these data are in Appendix E–2 of the petition (Ref. 1) and in Ref. 3.

F. Aperture Resistance

The Sysmex E–5000® hematology analyzer system, manufactured by TOA Medical Electronics, Inc., uses the principle of aperture resistance with computer-controlled discriminators to produce a three part differential. The H20–T was applied to the Sysmex E–5000® system. The petitioner found that the Sysmex E–5000® performs a three-part differential as accurately, or better than, the manual method of the H20–T. Summaries of these data are found in Appendix F–1 of the petition (Ref. 1).

The data comparing the various automated differential leukocyte technologies and the H20–T were presented at a symposium sponsored by NCCLS and held in Arlington, VA from November 26 to 28, 1984 (Refs. 2 and 3).

In 1986 a study was performed at the Mayo Cinic in Rochester, MN 55903, which compared the H20–T with a routine 100-cell visual count, a 100-cell differential count performed on a Hematrak 590®, a three-part differential performed on a Coulter S–PLUS IV®, and a three-population differential performed on a TOA Sysmex E–5000® instrument. This study compared the standard and the test methods with the same group of patients. The authors of the study found that the Hematrak 590®, Coulter S–PLUS IV®, and TOA Sysmex E–5000® are safe and effective methods for performance of differential counts when instrument results and laboratory flagging methods are combined (Ref. 4).

VI. Comments

In response to the November 20, 1985, proposed rule to require the filing of a PMA or a notice of completion of a PDP, and the December 15, 1986, notice of intent to initiate a proceeding to reclassify the ADCC, FDA received comments from a mnaufacturer, a trade association, and the academic and user community. None of the comments objected to the proposed reclassification. A summary of these comments and the agency's responses follow:

1. One comment said that FDA has stated that the accuracy and reliability of the ADCC have not been established, particularly with respect to identifying abnormal cells. The comment further noted that the preamble contained references which are out of date.

FDA advises that at the time of its original classification of the ADCC in the late 1970's some of the ADCC's in commercial distribution were intended to classify and count abnormal cells. However, FDA recognizes that ADCC's currently marked are intended to flag only specimens containing abnormal cells. FDA agrees that some of the references contained in the preamble are out of date (50 FR 48058 and 48062). Subsequently, FDA has reviewed and evaluated current and more recent references.

2. One comment supported reclassification of the ADCC, but recommended that each instrument be evaluated on its own merit and be classified separately, because of different methods employed in differential counting.

FDA advises that the agency is proposing to reclassify the generic type of device, which includes the individual devices within that generic type, in accordance with 21 CFR 860.120(b). FDA recognizes that certain ADCC's may have special operational parameters. These parameters can be addressed in the labeling of the devices and by premarket notification applications.

3. Two additional comments supported the reclassification of the ADCC. One comment noted the advantages of reclassification to manufacturers; e.g., the elimination of PMA submissions, savings in financial resources, and the promotion of competitiveness in the industry, with resulting benefits to patients.

FDA agrees with the comment.

VII. References

The following references have been placed on file in the Dockets Management Branch (address above) and may be received by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Health Industry Manufacturers Association's petition.

2. National Committee for Clinical Laboratory Standards (NCCLS), The White Blood Cell Differential I: A Symposium, *Blood Cells* 11(1):1–159, 1985.

3. National Committee for Clinical Laboratory Standards (NCCLS), The White Blood Cell Differential II: A Symposium, *Blood Cells* 11(2):161–338, 1985.

4. Pierre, R.V., B.A. Payne, W.K. Lee, B.A. Hyma, L.M. Melchert, R.M. Scheidt, "Comparison of Four Leukocyte Differential

Methods with the National Committee for Clinical Laboratory Standards (NCCLS) Reference Method," *American Journal of Clinical Pathology*, 87:201–209, 1987.

5. National Committee for Clinical Laboratory Standards (NCCLS), Tentative Standard for Leukocyte Differential Counting (H20–T), 1984.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) and (e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Economic Impact

In a notice of intent of December 15, 1986 (51 FR 44924), FDA invited interested persons to comment on the economic impact of the reclassification of the ADCC device, intended to identify and classify one or more of the formed elements of the blood, from class III into class II. None of the comments received mentioned any adverse economic impact. Generally, reclassification of preamendments devices from class III into class II should not have any adverse economic impact because manufacturers are relieved of the cost of complying with the premarket approval requirements in section 515 of the act. Although there may be offsetting costs that a manufacturer of the device could incur to comply with the provisions of a performance standard under section 514 of the act (21 U.S.C. 360d), any economic impact would be the result of actions taken to comply with the standard and not the act of reclassification. The economic impact of the establishment and promulgation of a performance standard will be assessed prior to its actual proposal as part of the agency's regulatory planning process under Executive Order 12291.

After considering the economic consequences of reclassifying the device as discussed above, FDA concludes that this proposal would not be a major rule as specified in Executive Order 12291. Further, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354), that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons may, on or before June 5, 1989, submit to the Dockets Management Branch (address above) written comments on this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers, Hematology and pathology devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 864 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR Part 864 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 864.5220 is amended by revising paragraph (b) to read as follows:

§ 864.5220 Automated differential cell counter.

* * * * *

(b) *Classification.* (1) Class II (performance standards) when the device is intended to flag or identify specimens containing abnormal blood cells.

(2) Class III (premarket approval) when the device is intended for other uses, including to count or classify abnormal cells of the blood.

* * * * *

Dated: March 19, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–8055 Filed 4–4–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF VETERANS' AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AD62

Veterans Education; Restrictions on Making VEAP Payments to Servicepersons

AGENCIES: Department of Veterans' Affairs [1] and Department of Defense.

[1] On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (see 54 FR 10476).

ACTION: Proposed regulations.

SUMMARY: The law requires that, generally, an individual must contribute to the Post-Vietnam Veterans Education Assistance Program (VEAP) fund for twelve months in order to receive educational assistance. So as to encourage participation by servicemembers, the Department of Veterans' Affairs (VA) has permitted a servicemember who meets all the other eligibility requirements to receive educational assistance after he or she has completed three months of contributions to the fund or has made a lump-sum payment which is the equivalent of at least three months of contributions to the fund. In order to comply with the law it has been VA's policy to require these servicemembers to establish a continuing allotment so that they eventually will contribute to the fund for twelve months.

However, the regulation which mentions the three months' contributions does not mention the twelve months' participation requirement. This has led to instances where servicemembers, who have been paid educational assistance, have never participated for twelve months. This regulatory amendment is designed to correct this by putting both requirements in the same regulation.

DATES: Comments must be received on or before May 5, 1989. Comments will be available for public inspection until May 15, 1989.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until May 15, 1989.

FOR FURTHER INFORMATION CONTACT: William C. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233–2668.

SUPPLEMENTARY INFORMATION: VA and the Department of Defense are proposing an amendment to § 21.5134 so that the requirement that a servicemember participate in the VEAP fund for twelve months is mentioned as one of the restrictions on paying educational assistance to servicemembers.

VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities; i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 18, 1989.

Thomas K. Turnage,

Administrator.

Approved: March 3, 1989.

Donald W. Jones,

Major General, USA, Deputy Assistant Secretary, (Military Manpower & Personnel Policy).

In 38 CFR Part 21, Vocational Rehabilitation and Education, § 21.5134 is proposed to be amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 21.5134 Restrictions on paying benefits to servicepersons.

* * * * *

(a) Has completed 3 months of contributions to the fund or has made a lump-sum payment which is the equivalent of at least 3 months of contributions to the fund;

(b) Has agreed either to have a monthly deduction from his or her military pay, or has made a lump-sum contribution to the fund, or both, so that the 12 months participation requirement of § 21.5052(a) of this part will be met; and

(c) Is serving on active duty in an enlistment period subsequent to the initial period of active duty defined in § 21.5040(b)(3) of this part.

(Authority: 38 U.S.C. 1621, 1631, Pub. L. 94–502)

[FR Doc. 89–8009 Filed 4–4–89; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AD98

Loan Guaranty: Determination of Net Value

AGENCY: Department of Veterans Affairs.

ACTION: Correction; Proposed Regulations.

SUMMARY: On March 31, 1989, commencing on page 13320 (54 FR 13320), the Department of Veterans Affairs published a proposed rule to revise the definition of "net value" of a property to the Secretary of Veterans Affairs. Through a typograpical error in the **"DATES"** section of the preamble, the proposed effective date of the regulation was inadvertently published as being October 1, 1989. The actual proposed effective date of the regulations is August 1, 1989. This notice hereby corrects the error.

FOR FURTHER INFORMATION CONTACT: Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, (202) 233–6376.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Dated: March 31, 1989.

M'Liz McLendon,

Acting Chief, Directives Management Division.

[FR Doc. 89–8111 Filed 4–4–89; 8:45 am]

BILLING CODE 8320–01–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM89–3]

Rules of Practice and Procedure Relating to Documentation of Statistical and Volume Evidence; Notice of Informal Conference

March 29, 1989.

AGENCY: Postal Rate Commission.

ACTION: Notice of informal conference.

SUMMARY: The Commission, at the request of the Postal Service, will hold an informal conference to discuss the Notice of Proposed Rulemaking in Docket No. RM89–3, 54 FR 9848–52 (March 8, 1989), on Friday, April 7, 1989, at 1:30 p.m.

DATE: April 7, 1989, at 1:30 p.m.

ADDRESS: Commission Hearing Room, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268. (Telephone 202/789–6800.)

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268: (202) 789–6820.

SUPPLEMENTARY INFORMATION: The Commission has received a letter from the Assistant General Counsel, Rates Division, United States Postal Service requesting an informal conference to discuss the Notice of Proposed Rulemaking in Docket No. RM89–3, 54 **Federal Register** 9848–52 (March 8, 1989). The Service suggest that technical experts of interested parties would be in attendance to informally discuss the following provisions of the Notice of Proposed Rulemaking: Sections 31(k)(2)(iii) (d), (e), and (j); 54(j)(5)(iii); 54(j)(5)(iv); 54(j)(5)(v); 54(j)(6); 102(b) (4) and (5); and other topics of interest to the parties.

The Commission will schedule such a conference on Friday, April 7, 1989, at 1:30 p.m. in the Commission Hearing Room, 1333 H Street NW., Suite 300, Washington, DC 20268. The conference and any discussions are open to all interested parties. The request letter of the Postal Service may be examined in the Commission's Docket Room at the above address between 8:00 a.m. and 5:00 p.m., Monday through Friday.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89–8102 Filed 4–4–89; 8:45 am]

BILLING CODE 7715–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 90367-9067]

Foreign Fishing

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

ACTION: Proposed Rule.

SUMMARY: NOAA issues this proposed rule to amend fishery specifications for the Hake Fisheries of the Northwest Atlantic Preliminary Fishery Management Plan (PMP). This rule proposes to adjust specifications now in place for the 1989 fishing year which began on January 1. This amendment, which was prepared by NMFS, addresses recent developments in the fishery.

DATE: Comments will be accepted through May 1, 1989.

ADDRESS: Send comments to Richard B. Roe, Regional Director, 14 Elm Street, Gloucester, MA 01930-3799. Mark on the outside of the envelope, "Comments—Hake Specifications". The information used to justify these specifications is available for public inspection during business hours at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, 508-281-3600, ext. 272.

SUPPLEMENTARY INFORMATION: NOAA publishes specifications of optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), reserve and the total allowable level of foreign fishing (TALFF). Specifications are accomplished periodically by ordinary rulemaking for fisheries governed under Part 611, which does not contain a framework process for development of specifications, to inform the public or implement any changes based on new scientific information or on NMFS and Regional Fishery Management Councils' consultations on domestic and foreign fishing. In the past, estimates of maximum harvest levels were presented for three stocks of hakes; Gulf of Maine, Georges Bank, and Southern New England. Recent survey and assessment data support a 2-stock, rather than the 3-stock, population structure for silver and red hake. The data indicate sufficient intermixing of Georges Bank hake with the two adjacent stock areas to justify a 2-stock approach for assessment and management purposes. These new stocks are comprised of (1) Gulf of Maine/Northern Georges Bank, and (2) Southern Georges Bank/Mid-Atlantic. Initially for 1989, the specifications were identical to those in 1988. However, NMFS is submitting this amendment to (1) adjust these specifications based on new stock assessment information and, (2) reduce or eliminate total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) based on the recommendations of the New England and Mid-Atlantic Fishery Management Councils.

Parties interested in TALFF or joint ventures should be mindful that, if adopted, the amendment will replace the specifications published at 51 FR 25704 (July 16, 1986). Public comments will be accepted on the amendment.

The table published for the Hake Fisheries in the Northeast Region, Northwest Atlantic Ocean, is proposed to be amended as follows:

Species	Species Code	Area	OY	DAH	DAP	JVP	Reserve	TALFF
1. NW Atlantic Ocean Fisheries:								
A. Hake Fisheries:								
Hake, Silver	104	S. Georges Bank Mid-Atlantic.	14,000	12,000	12,000	0	1750	250
		N. Georges Bank Gulf of Maine.	13,000	7,000	7,000	0	5750	250
Hake, Red	105	S. Georges Bank Mid-Atlantic.	1,000	600	600	0	300	100
		N. Georges Bank Gulf of Maine.	1,500	800	800	0	600	100

Classification

The Assistant Administrator for Fisheries, NOAA, determined that the proposed rule appears to be necessary for the conservation and management of the hake fisheries governed by the PMP prepared by the Secretary and that it is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

This action is categorically excluded from the requirement to prepare an environmental assessment pursuant to NOAA Directive 02-10.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291 because it would not have an annual effect on the economy of $100 million or more; would not result in an increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because it does not regulate domestic fishing interests. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This rule will be implemented in a manner that does not directly affect the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina and South Carolina.

Management measures in the PMP are not likely to affect endangered species or marine mammals.

The rulemaking for this action complies with the requirements for general notice and opportunity for interested persons to participate.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.* unless otherwise noted.

Dated: March 31, 1989.

James W. Brennan,

Assistant Administrator For Fisheries, National Maritime Fisheries Service.

[FR Doc. 89-8045 Filed 3-31-89; 2:12 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 64
Wednesday, April 5, 1989

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

Agricultural Marketing Service

[No. FV-89-203]

Perishable Agricultural Commodities Act; Industry Advisory Committee Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463 and Pub. L. No. 100-414), notice is hereby given of the first meeting of the Perishable Agricultural Commodities Act (PACA) Industry Advisory Committee on May 3, 1989, beginning at 8:30 a.m., at the Holiday Inn, 4441 Highway 114, Dallas/Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: John D. Flanagan, (202) 447-2272.

SUPPLEMENTARY INFORMATION: The 20-member Perishable Agricultural Commodities Act Industry Advisory Committee, appointed by the Secretary of Agriculture, represents fruit and vegetable growers, shippers, brokers, processors, wholesalers, and retailers. The Committee's first meeting will be on May 3, 1989, beginning at 8:30 a.m., at the Holiday Inn, 4441 Highway 114, Dallas/Fort Worth, Texas. The Committee was established pursuant to P.L. 100-414. It will discuss policies and procedures relating to the administration of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a *et seq.*) and identify areas where the law and program might be enhanced to ensure program efficiency and equitable treatment among the various segments of the fruit and vegetable industry. The Committee will report on its findings and develop recommendations for consideration by Congress and the Secretary of Agriculture. Its interim report will be submitted to the Secretary of Agriculture, the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition, and Forestry no later than September 30, 1989. A final report containing the results of the Committee's review and its recommendations will be submitted no later than May 1, 1990. The Committee's meeting will be open to the public. Due to the limitation of time, the public will not be allowed to participate in the meeting. Statements may be submitted before or after the meeting to Mr. John D. Flanagan at the address listed below.

The names of Committee members, agenda, and other information pertaining to the meeting may be obtained from John D. Flanagan, Chief, PACA Branch, Room 2095 So., Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Washington, DC 20090-6456, telephone (202) 447-2272.

Done at Washington, DC, this 30th day of March, 1989.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 89-8024 Filed 4-4-89; 8:45 am]

BILLING CODE 3410-05-M

[TB-89-006]

Subcommittee of the National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Subcommittee of the National Advisory Committee for Tobacco Inspection Services.

Date: April 26, 1989.

Time: 1:00 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Training Laboratory, Room 402, 333 Waller Avenue, Lexington, Kentucky 40504.

Purpose: To study the burley tobacco market scheduling situation, the need for a burley advisory committee, uniform packaging and other problems related to the marketing of burley tobacco.

The meeting is open to the public. However, due to time constraints of the subcommittee, public participation will be limited to written statements submitted prior to the meeting. Any person desiring to submit a written statement should send it to: Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments must be received by April 21, 1989.

Dated: March 30, 1989.

J. Patrick Boyle,

Agricultural Marketing Service.

[FR Doc. 89-8023 Filed 4-4-89; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

Proposed Determinations With Regard to the 1990 Wheat Program and Common Program Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1990 crop of wheat: (a) The percentage reduction under an acreage reduction program (ARP); (b) whether an optional paid land diversion (PLD) should be established and, if so, the percentage of diversion under the program; (c) whether a marketing loan program should be implemented; (d) if a marketing loan program is implemented, whether the inventory reduction program should also be implemented; and (e) other related provisions.

The Secretary of Agriculture also proposes to make the following common program determinations with respect to the 1990 crops of wheat, feed grains, cotton (extra long staple (ELS) and upland) and rice: (a) Whether the production of approved nonprogram crops (ANPC) should be allowed on underplanted program crop permitted acreage (0/92 and 50/92 conservation use (CU) acreage); (b) whether the production of alternative crops should be allowed on reduced acreage (acreage conservation reserve (ACR)); (c) whether haying and grazing of CU and ACR should be permitted; (d) whether to require offsetting or cross compliance; (e) whether advance recourse commodity loans should be made available; (f) whether producers should be permitted to increase a crop acreage

base (CAB) by an amount not to exceed 10 percent of the farm acreage base (FAB) if such producers decrease one or more other CAB's on such farm by a corresponding amount; (g) whether soybeans or sunflowers should be allowed on permitted acreage; (h) whether interest payment certificates should be issued to producers who repay price support loans; and (i) whether cost reduction options should be implemented.

These determinations are made pursuant to the Agricultural Act of 1949, as amended (the 1949 Act), the Food Security Act of 1985, as amended (the 1985 Act), and the Commodity Credit Corporation (CCC) Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before May 15, 1989 in order to be assured of consideration.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3744, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4635. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major."

It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.058
Rice Production Stabilization	10.065

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is 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 these determinations.

It has been determined by 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.

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

Certain determinations set forth in this notice with respect to the 1990 Wheat Program are required to be announced by the Secretary by June 1, 1989. In addition, it is necessary that the determinations for the 1990 crop be made in sufficient time for wheat producers to make planting decisions for their 1990 crop. Accordingly, the public comment period is limited to 45 days from the date this notice is filed with the Director, Office of the Federal Register. This will allow the Secretary time to consider the comments received before the program determinations are made. The comments received with respect to this notice of proposed determination will be reviewed in determining the provisions of the 1990 Wheat Program and Common Program Provisions.

1990 Crop of Wheat

Accordingly, the following program determinations are proposed to be made by the Secretary with respect to the 1990 crop of wheat.

a. Acreage Reduction Program (ARP)

Section 107D(f) of the 1949 Act provides, with respect to the 1990 crop of wheat, that if the Secretary estimates, not later than June 1, 1989, that the quantity of wheat on hand in the United States on the first day of the marketing year (June 1, 1990) for such crop (not including any quantity of wheat of such crop) will be more than 1 billion bushels, the Secretary shall provide for an ARP under which the acreage planted to wheat for harvest on a farm would be limited to the wheat CAB for the farm for the crop reduced by not less than 20 percent nor more than 30 percent.

If the quantity is estimated to be 1 billion bushels or less, the Secretary may provide for an ARP under which the acreage planted to wheat for harvest on a farm would be limited to the wheat CAB for the farm for the crop reduced by not more than 20 percent.

If a wheat ARP is announced, such limitation shall be achieved by applying a uniform percentage reduction to the wheat CAB for the crop for each wheat-producing farm. Producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be ineligible for wheat loans, purchases, and payments with respect to wheat produced on that farm. An acreage on the farm shall be devoted to ACR determined by dividing: (1) The product obtained by multiplying the number of acres required to be withdrawn from the production of wheat times the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the ARP announced by the Secretary.

The quantity of wheat on hand on June 1, 1990, is currently estimated to be below 1 billion bushels. Based upon such estimates, the Secretary may announce an ARP of not more than 20 percent.

Comments are requested as to the percentage level, if any, at which an ARP should be implemented for the 1990 crop of wheat.

b. Paid Land Diversion (PLD)

Section 107D(f)(5)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of wheat, whether or not an ARP, set-aside program, or marketing quotas for wheat are in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved ACR an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to adversely affect the economy of the county or local community.

Any additional acreage reduction under a PLD would be at a producer's option.

The Secretary does not intend to implement a PLD for the 1990 crop of

wheat, since stocks are expected to be considerably below 1.0 billion bushels on June 1, 1990. Accordingly, comments are requested with respect to the Secretary's intention or as to whether a need exists for an optional PLD and, if implemented, the provisions of such program.

c. Marketing Loans and Loan Deficiency Payments

Section 107D(a)(5) of the 1949 Act provides that the Secretary may permit a producer to repay a loan at a level that is the lesser of: (1) The announced loan level or (2) the higher of: (i) 70 percent of the basic loan level or (ii) the prevailing world market price for wheat, as determined by the Secretary.

If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation: (1) A formula to define the prevailing world market price for wheat and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for wheat.

Section 107D(b) provides that the Secretary may, for the 1990 crop of wheat, make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments. The payment shall be computed by multiplying: (1) The loan payment rate by (2) the quantity of wheat the producer is eligible to place under loan. For purposes of this section, the quantity of wheat eligible to be placed under loan may not exceed the product obtained by multiplying: (1) The individual farm program acreage for the crop by (2) the farm program payment yield established for the farm. The loan payment rate shall be the amount by which the announced loan level exceeds the level at which a loan may be repaid.

The Secretary does not intend to implement a marketing loan and other related provisions for the 1990 crops of wheat since other price support authorities permit adjustments in support levels that generally make wheat competitive in domestic and international markets. Accordingly, comments are requested with respect to the Secretary's intentions or whether the Secretary should implement marketing loans and loan deficiency payments for the 1990 crop of wheat and the formula and methodology for determining the prevailing world market price to be used if marketing loans are implemented.

d. Inventory Reduction Program

Section 107D(g) of the 1949 Act provides that the Secretary may, for the 1990 crop of wheat, make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency payments; and (3) do not plant wheat for harvest in excess of the CAB reduced by one-half of any acreage required to be diverted from production under the announced ARP. Such payments shall be made in the form of wheat owned by CCC. Payments under this program shall be determined in the same manner as established with respect to the marketing loan program.

Accordingly, the implementation of this program is dependent on whether a marketing loan program is instituted.

Comments are requested on whether the inventory reduction program should be implemented for the 1990 crop of wheat.

e. Other Related Provisions

A number of other determinations must be made in order to carry out the wheat price support program such as: (1) Commodity eligibility; (2) premiums and discounts for grades, classes, and other qualities; and (3) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that are received relating to these issues.

Common Program Provisions

The following program determinations are proposed to be made by the Secretary with respect to the common program provisions that are applicable to the 1990 crops of wheat, feed grains, cotton, and rice:

a. 0/92 and 50/92 Provisions: Planting of Approved Nonprogram Crops (ANPC) on Underplanted Program Permitted Acreage

Sections 103A(c)(1) (B) and (G) and 101A(c)(1) (B) and (G) of the 1949 Act provide that if an ARP is in effect for upland cotton or rice and the producers on a farm: (1) Devote a portion of the permitted commodity acreage of the farm equal to more than 8 percent of the permitted commodity acreage of the farm for the crop to CU or ANPC and (2) actually plant on the farm the respective program crop for harvest on an acreage equal to at least 50 percent of the permitted acreage for such crop, such portion of the permitted program commodity acreage of the farm (i.e., the CAB minus reduced diverted acreage), in excess of 8 percent of such acreage which is devoted to CU or ANPC shall be considered to be planted to such program commodity for the purpose of determining the individual farm program acreage and for the purpose of determining the acreage on the farm required to be devoted to CU and producers shall be eligible for payments on such acreage.

Sections 107D(c)(1) (C) and (K) and 105C(c)(1) (B) and (I) of the 1949 Act provide with respect to wheat and feed grains, if an ARP is in effect and the producers on a farm devote a portion of the permitted acreage equal to more than 8 percent of the permitted or all of such permitted to CU or ANPC, such portion of the permitted acreage in excess of 8 percent devoted to CU or ANPC shall be considered to be planted and shall receive deficiency payments on such acreage at a per bushel rate not less than the projected deficiency payment rate for such crop. The Secretary is required to implement the 0/92 program in such a manner as to minimize the adverse effect on agribusiness taking into consideration the total amount of wheat and feed grain acreage that has or will be removed from production under other price support, production adjustment, or conservation program activities. No restrictions on the amount of acreage that may be taken out of production shall be imposed in the case of a county in which producers were eligible to receive disaster emergency loans.

For rice and upland cotton, if a State or local agency has imposed in an area of a State or county a quarantine on the planting of a program commodity for harvest on farms in such area, the State Agricultural Stabilization and Conservation (ASC) committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)] may recommend to the Secretary that deficiency payments be made, without regard to the 50 percent planting requirement for rice and cotton, to producers in such area who were required to forgo the planting of the program commodity for harvest on acreage in order to alleviate or eliminate the condition requiring such quarantine. If the Secretary determines that such condition exists, the Secretary may make such payments to such producers. To be eligible for the payments such producers must devote that acreage to CU or ANPC.

The program commodity CAB and farm program payment yield of the farm shall not be reduced due to the fact that such portion (or all) of the permitted acreage of the farm was devoted to CU.

Any acreage considered to be planted to a program commodity may not also be designated as CU acreage for the purpose of fulfilling any provisions under any ARP, set-aside program or PLD requiring that the producers devote a specified acreage to CU.

The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of acreage otherwise required to be devoted to CU as a condition of qualifying for payments to be devoted to sweet sorghum or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or commodities for which no substantial domestic production or market exists but that could yield industrial raw materials that are being imported, or likely yield industrial raw material that is being imported, or likely to be imported, into the United States, or commodities grown for experimental purposes (including kenaf), except that the Secretary may permit such acreage to be devoted to such production only if the Secretary determines that:

(1) The production is not likely to increase the cost of the price support program and will not affect farm income adversely; and

(2) The production is needed to provide an adequate supply of the commodity or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States industry.

Comments are requested as to whether the Secretary should permit the production of ANPC on acreage otherwise required to be devoted to CU under the 0/92 and 50/92 programs.

b. Uses of Reduced and Diverted Acreage

Sections 107D(f)(4), 105C(f)(4), 103A(f)(3), 103(h)(8)(A), and 101A(f)(3) of the 1949 Act provide that the regulations issued by the Secretary with respect to acreage required to be devoted to ACR under the acreage limitation and diversion programs shall assure protection of such acreage from weeds and winds and water erosion.

The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to sweet sorghum, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not adversely affect farm income.

In determining the amount of land to be devoted to ACR under an ARP for wheat and feed grains with respect to land that has been farmed utilizing summer fallow practices, as defined by the Secretary, the Secretary shall consider the effects of soil erosion and such other factors as the Secretary considers appropriate.

The Secretary proposes: (1) That the planting of alternate crops on acreage required to be devoted to ACR for the 1990 wheat, feed grains, cotton and rice ARP and diversion programs would not be permitted and (2) that regulations concerning ACR remains unchanged from those in effect for the 1990 crops, including summer fallow rules. The summer fallow rules provide that land, in an area determined to be an area in which summer fallow is a common practice, is eligible for designation as ACR if such land has been planted to a crop in at least 1 of the previous 2 years. For all other areas, land is eligible for designation as ACR if it has been planted to a crop in at least 2 of the previous 3 years.

Comments on the planting of alternate crops on reduced or diverted acreage are requested.

c. Haying and Grazing of 0/92 and 50/92 CU, ARP and PLD Acreage

Sections 107D(f)(4)(c), 103A(f)(3)(c), 105C(f)(4)(c) and 101A(f)(3)(c) of the 1949 Act provide with respect to wheat, feed grains, upland cotton and rice, except as otherwise noted below, that haying and grazing of acreage designated as ACR or CU for the purpose of meeting any requirements established under an ARP, PLD or 0/92 and 50/92 programs shall be permitted, except during any 5-consecutive-month period that is established by the State ASC committee for a State. Such 5-month period shall be established during the 7-month period beginning April 1 and ending October 31 of a year. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing of such acreage. Haying and grazing shall not be permitted for any crop, if the Secretary determines that haying and grazing would have an adverse economic effect.

Section 103h(8)(A)(i) of the 1949 Act provides with respect to ELS cotton that the Secretary may permit all or any part of the ACR acreage to be devoted to haying and grazing if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program and will not adversely affect farm income.

Comments are requested on whether haying and grazing of ARP, PLD and 0/92 and 50/92 CU acreages should be prohibited due to an adverse economic effect.

d. Cross And Offsetting Compliance Requirements

Sections 107D(n)(1–2), 105C(n)(1–2), 103A(n)(1–2), 103(h)(16), and 101A(n)(1–2) of the 1949 Act provide, with respect to wheat, feed grains, upland cotton, ELS cotton and rice, that the Secretary may not require as a condition of eligibility for loans, purchases, or payments, compliance on a farm with the terms and conditions of any other commodity program (strict cross compliance). However, if an ARP is established for a crop of wheat, feed grains, upland cotton, or rice, the Secretary may require that, as a condition of eligibility of producers on a farm for loans, purchases, or payments for such crops, the acreage planted for harvest on the farm to any other commodity for which an ARP is in effect shall not exceed the CAB for that commodity. This requirement is referred to as limited cross compliance.

With respect to ELS cotton, compliance with the terms and conditions of the ELS cotton program may not be required as a condition of eligibility for loans, purchases or payments under any other commodity program. The Secretary shall ensure that the total of the CABs established on a farm which is enrolled in a production adjustment program for any commodity shall not be increased as a result of the application of the provisions set forth in the preceding sentence.

Sections 103A(n)(3) and 101A(n)(3), which are applicable to upland cotton and rice, provide that the Secretary may not require producers on a farm, as a condition of eligibility for loans, purchases, or payments, to comply with the terms and conditions of the upland cotton and rice programs with respect to any other farm operated by such producers (offsetting compliance). No similar requirements are applicable to wheat, feed grains, and ELS cotton. However, in accordance with sections 107D(i), 105C(i) and 103(h)(13) of the 1949 Act, the Secretary may issue regulations the Secretary determines necessary to carry out the wheat, feed grains, and ELS cotton programs. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would

have to ensure that all of the farms in which they have an interest were either in compliance with the program requirements or the acreages of wheat, feed grains or ELS cotton planted to harvest on each of such farms did not exceed the wheat, feed grain or ELS cotton CAB established for such farms.

The Secretary intends to implement limited cross compliance requirements for the 1990 crops of wheat, feed grains (except oats), upland cotton, and rice and does not intend to impose offsetting compliance requirements for any program crops.

Comments are requested concerning limited cross compliance for wheat, feed grains, upland cotton and rice and offsetting compliance for wheat, feed grains and ELS cotton.

e. Advance Recourse Loans

Section 424 of the 1949 Act provides that the Secretary may make advance recourse loans to producers of those commodities for which nonrecourse loans are available if it is determined such a program is necessary to ensure that adequate operating credit is available to producers. These recourse loans may be made available under terms and conditions prescribed by the Secretary, except that the producer shall be required to obtain crop insurance for the crop as a condition of eligibility for a loan.

The Secretary does not intend to make advance recourse loans to producers for the 1990 crops. Accordingly, comments are requested with respect to the Secretary's intentions, or as to whether advance recourse loans should be offered for those commodities for which nonrecourse loans are available for the 1990 crops.

f. Adjusting CAB's by Up to 10 Percent of FAB

Section 503(b)(2) of the 1949 Act requires the establishment of an FAB for the 1990 crops of wheat, feed grains, upland cotton, and rice.

The FAB shall include: (1) The sum of the CAB's established for a farm and (2) the sum of (a) the average of the acreage planted to soybeans in 1986 through 1989 and (b) the average of the acreage on the farm devoted to CU in the normal course of farming operations in 1986 through 1989.

Section 505(a) of the 1949 Act provides that the Secretary may allow an upward adjustment of any CAB except such adjustment may not exceed 10 percent of the FAB. Any upward adjustment in a CAB established for a farm must be offset by an equivalent downward adjustment in one or more other CAB's established for such farm.

The Secretary proposes not to implement the option of adjusting CAB's by an amount not to exceed 10 percent of the FAB. Comments are requested on whether this option should be implemented.

g. Planting of Soybeans or Sunflowers on Permitted Acreage

Section 504(e) of the 1949 Act authorizes the Secretary to permit producers on a farm to plant soybeans or sunflowers on a portion (not less than 10 percent nor more than 25 percent) of the producers' 1990 wheat, feed grain, upland cotton, extra long staple cotton, and rice permitted acreage, if the Secretary determines there will be insufficient supplies of soybeans. The Secretary is required to establish a signup period during which producers state their intentions regarding the planting of soybeans and sunflowers on permitted acreage.

If the Secretary estimates the average market price for the 1990 crop of soybeans will be less than 115 percent of the 1989 soybean loan rate, the Secretary is required to reduce the percentage of permitted acreage that may be planted to soybeans and sunflowers so as to ensure that the average soybean market price does not fall below 115 percent of the 1989 soybean loan rate.

For the purposes of determining the farm acreage base or the crop acreage bases for the farm, any acreage on the farm on which soybeans or sunflowers are planted under this provision is considered to be planted to the program crop for which soybeans or sunflowers are substituted.

The Secretary may not make program benefits other than soybean or sunflower seed price support loans and purchases available to producers with respect to acreage planted to soybeans or sunflowers under this provision and must ensure that the crop acreage bases established for the farm and the farm acreage base are not increased due to such plantings.

Comments are requested as to the manner in which the Secretary will authorize the planting of soybeans or sunflowers on permitted acreage.

h. Interest Payment Certificates

Section 405 of the 1949 Act authorizes the Secretary to provide any producer, who repays a price support loan for the 1986 through 1990 crops of feed grains, wheat, rice, or upland cotton, with interest, a negotiable certificate that is equal in value to the amount of interest paid.

Such certificates may be redeemed for CCC-owned feed grains, wheat, rice, or upland cotton. Thus, issuance of interest payment certificates depends on the availability of such CCC-owned commodities.

Comments on whether to issue interest payment certificates are requested.

i. Cost Reduction Options

Section 1009 of the 1985 Act provides with respect to wheat, feed grains, upland cotton and rice that, whenever the Secretary determines that any of the following three actions will reduce commodity program costs without adversely affecting income to small- and medium-sized producers participating in the program, such action shall be taken regarding the program involved.

(1) Purchases in Commercial Market

When a nonrecourse loan program is in effect for a commodity program crop the Secretary may make purchases in the commercial market, if it is determined that the cost of such purchases, plus carrying charges, will likely be less than the cost of later acquiring the commodity through loan forfeitures.

(2) Interest Forgiveness at Loan Repayment

When a nonrecourse loan program is in effect and the market price is less than the summation of principal and accrued interest, thereby encouraging forfeiture, the Secretary may allow the producer to repay the loan for less than the principal plus interest amount, but not less than the principal portion, if such action will result in Government cost savings due to:

a. Government receipt of at least a portion of the interest expense rather than none,

b. Avoidance of default, or

c. Elimination of storage, handling, and carrying charges on the forfeited commodity.

(3) Additional PLD Program

When a production control or loan program is in effect, the Secretary may, at any time prior to harvest, reopen the program to participants for the purpose of accepting producer bids for converting planted acres to diverted acres in return for in-kind payments from CCC surplus stocks of the commodity to which the acreage was planted, if the Secretary determines that:

1. Changes in supply or demand conditions have substantially changed after program announcement, and

2. Without action to further adjust production, Government and producers would be faced with a burdensome and costly surplus.

Such in-kind payments shall (1) be limited to a total of $20,000 per commodity per year per producer, and (2) are not subject to the payment limitation provisions of section 1001 of the 1985 Act.

The Secretary reserves the right to initiate at a later date any of the three preceding actions, including the right to reopen and change a contract entered into by a producer under the program, if the producer voluntarily agrees to the change.

Consideration will be given to any data, views and recommendations that are received relating to these issues.

Authority: 7 U.S.C. 1308a, 1445b–2, 1445b–3, 1445b–4, 1445b–5, 1445d and 1445e; 15 U.S.C. 714b and 714c.

Signed at Washington, DC on March 30, 1989.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–8032 Filed 3–31–89; 12:25 pm]

BILLING CODE 3410–05–M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: May 8–10, 1989.

Time: 8:00 a.m.–5:00 p.m., May 8, 1989; 8:00 a.m.–5:00 p.m., May 9, 1989; 8:00 a.m.–12:00 Noon, May 10, 1989.

Place: Holiday Inn of Fargo, 3803 13th Avenue South, Fargo, North Dakota 58109.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will review rural economic development programs that have had an impact on the State.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684. Done in Washington, DC, this 28th day of March 1989.

John Patrick Jordan,

Administrator.

[FR Doc. 89–8026 Filed 4–4–89; 8:45 am]

BILLING CODE 3410–22–M

Food and Nutrition Service

National Advisory Council on Commodity Distribution; Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Council on Commodity Distribution is scheduled for May 10–12, 1989. The council, established by the Commodity Distribution Reform Act and WIC Amendments of 1987, mets biannually to assist the Secretary of Agriculture in the development of commodity specifications.

DATES: The meeting will take place on Wednesday and Thursday, May 10 and 11 from 8:30 a.m. to 5:00 p.m.; and on Friday, May 12 from 8:30 a.m. to 3:00 p.m.

ADDRESS: The meeting will be held at the Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly King, Deputy Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3682.

SUPPLEMENTARY INFORMATION: This is the second meeting of the National Advisory Council on Commodity Distribution, as established by section 3(a)(3) of Pub. L. 100–237. The purpose of the council is to provide guidance to the Secretary of Agriculture on regulations and policy development with respect to specifications for commodities. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Ms. Alberta C. Frost, Executive Secretary, National Advisory Council on Commodity Distribution, USDA, Food and Nutrition Service, 3101 Park Center Drive, Room 502, Alexandria, Virginia 22302. Comments may be filed with Alberta C. Frost before or after the meeting.

Date: March 31, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89–8042 Filed 4–4–89; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Gilt Edge Expansion, Black Hills National Forest, Lawrence County, SD; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement in response to a Plan of Operations submitted by Brohm Mining Corporation for an open-pit gold mine, four miles southwest of Deadwood, South Dakota. The proposed project calls for the construction of the tailings dam, tailings pond and portions of the waste rock dumps, mill buildings and slurry conveyors to be built on unpatented National Forest System lands.

The proposed project is a large-scale, open-pit mine development. The development of open pit mining in the Black Hills is currently a controversial issue in the state of South Dakota. For these reasons, it was deemed that this project was a major Federal action that could significantly affect the quality of the human environment, and that an environmental impact statement would be prepared.

Some of the issues and alternatives to be analyzed in the environmental impact statement include various alternative locations for the mining structures, impacts to surface and ground water, reclamation of the site, effects on wildlife, effects on other land owners, and the social and economic impacts on local communities.

Further defining of issues, concerns, opportunities and alternatives will occur through scoping with other Federal, State and local agencies, and with interested individuals and organizations. Contacts with these other groups will be through the news media, by letter or personal contact. If public meetings are held, they will be announced through the local media and by personal contact.

Darrel L. Kenops, Forest Supervisor, Black Hills National Forest, Custer, South Dakota, is the responsible official. The Forest Service is the lead agency.

The analysis is expected to take about one year. The draft environmental impact statement should be available for public review by March 1990. The final environmental impact statement is scheduled to be completed in the summer of 1990.

Written comments and suggestions concerning the analysis should be sent to David E. Blackford, District Ranger, Nemo Ranger District, Black Hills National Forest, 460 Main, Deadwood, SD 57732 by May 15, 1989.

Questions about the proposed action and environmental impact statement should be directed to Mr. Blackford at (605) 578–2744.

Darrel L. Kenops,

Forest Supervisor.

Date: March 7, 1989.

[FR Doc. 89–8095 Filed 4–4–89; 8:45 am]

BILLING CODE 3410–11–M

Environmental Impact Statement for the Proposed Anderson-Three Mile Timber Sale Within the Anderson Mountain Area, Salmon National Forest, Lemhi County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft environmental impact statement (DEIS) for a proposal to develop a transportation system and harvest timber in the Smithy Creek, Anderson Creek, and Elk Creek drainages on the North Fork Ranger District, Salmon National Forest, Lemhi County, Idaho. The agency has concluded preliminary public scoping on the proposal and has received written comment and suggestions. The agency invites further comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that is occurring on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by May 5, 1989.

ADDRESS: Direct comments and suggestions concerning the scope of the analysis to District Ranger, North Fork Ranger District, P.O. Box 780, North Fork, Idaho 83466.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and DEIS to Robert Taylor, Timber Management Officer, North Fork Ranger District, P.O. 780, North Fork, Idaho 83467, telephone 208–865–2383.

SUPPLEMENTARY INFORMATION: The Salmon National Forest Land and Resource Management Plan (1988) provides guidance for achieving timber productive potential on specific portions of the Salmon National Forest. Plan direction for the proposal area includes transportation system development and timber harvest, while maintaining anadromous fish habitat.

In preparing the DEIS, the Forest Service will identify and consider alternatives with development designs of road construction ranging from 3 to 11 miles, acres treated from 350 to 650, and volume harvested from 2 to 5 million board feet, and no action. Mick Kessel, Acting Forest Supervisor, Salmon National Forest, Salmon, Idaho is the responsible official.

During the period of May through August of 1983 management intent for the proposal area was made through public meetings and by letter to the Idaho Department of Fish and Game and other organizations and individuals with possible interest in, or who may be affected by, the proposal. Information and comments were sought regarding the proposed timber sale. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous relevant environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental impacts.

The following issues and concerns have been identified relative to this proposal through the public and other agency responses to management intent, and analysis by Forest Service resource specialists.

1. Impact of resources constraints on sale viability.
2. Effects of this entry on long-term development of the timber resource.
3. Effects of roading and timber harvest on water yield and quality in the Anderson Creek watershed. Specifically, as it relates to potable water supplies to Gibbonsville.
4. Effect on big game habitat and resident deer and elk population.
5. Effect on migratory deer and elk herds.
6. Effect on calving and fawning.
7. Effect on big game goals as stated in Idaho Fish and Game's Species Management Plan.
8. Effects on small game and non-game habitat.
9. Effects on the visual resource.
10. Effects on the local economy.
11. Effects on the fisheries resource.
12. Effects on both consumptive and non-consumptive recreational opportunities.
13. Approximately 70 percent of the proposal area is part of the Anderson Mountain Roadless Area, which has been released for uses other than wilderness with the Salmon National Forest Land and Resources Management Plan.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in May 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Smithy, Anderson, and Elk Creek drainages participate at this time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the final EIS (FEIS) which is scheduled to be completed in July 1989. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

M.L. Kessel,

Acting Forest Supervisor.

Date: March 28, 1989.

[FR Doc. 89–8096 Filed 4–4–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Export Administration Bureau

[Docket Nos. 8114–01 and 8114–02]

Actions Affecting Export Privileges; Yuri Geifman (Also Known as Yuri Geller), Individually and Doing Business as Industrial & Scientific Parts Services, Inc.

Summary

Pursuant to the February 28, 1989 recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Yuri Geifman, a/k/a/ Yuri Geller, individually and doing business as Industrial and Scientific Parts Services, Inc., 350 Fort Washington Avenue, Apt. 5–H, New York, New York 10033 (hereinafter Respondents) is, and the Respondents collectively are denied for a period of twenty years from the date hereof all privileges of participating, directly or indirectly, in

any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 768–799).

Order

On February 28, 1989, the ALJ entered his Recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case. I hereby affirm the Decision and Order of the ALJ subject only to the following technical modification: there is added to the end of Paragraph II of the ALJ's Order the following new sentence: "Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations."

This constitutes agency action in this matter.

Date: March 30, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order on Default

Appearance for Respondent: Mr. Yuri Geifman, Industrial & Scientific Parts, Services, Inc., 350 Fort Washington Ave., Apt. 5–H, New York, New York 10033

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, H–3329, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement

On June 29, 1988, the Office of Export Enforcement, U.S. Department of Commerce ("Agency"), issued a charging letter to the Respondent Yuri Geifman (a/k/a Yuri Geller). individually and doing business as Industrial & Scientific Parts Services, Inc. The Agency alleges in the charging letter that the Respondent committed violations of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended, (the Act), and the Export Administration Regulations (the Regulations).[1] In the letter, the Agency alleged that the Respondent violated former §§ 387.3, 387.4, 387.5 and 387.6 of the Regulations.

The Respondent did not file an answer to the charging letter. An Order was issued on September 27, 1988 ruling Respondent in Default and directing Agency Counsel to file its evidentiary submission by October 28, 1988. Agency Counsel filed its submission on October 28, 1988. On November 1, 1988, pursuant to Section 788.8 of the Regulations, an Order to show cause why a default judgment against the Respondent should not be entered was issued. No response to that Order was received from the Respondent.

Section 788.8 of the Regulations provides:

Default

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record. Any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

A copy of the above mentioned Motion for Default Judgment was also sent to the Respondent on October 28, 1988, to which there has been no response.

The Agency alleges that Respondent committed one violation of former § 387.3, three violations of former § 387.4, three violations of former § 387.5 and three violations of former § 387.6 of the Regulations, for a total of ten violations of the Regulations, each of which involves U.S.-origin commodities controlled under Section 5 of the Act for national security reasons.

Findings and Discussion

The findings of facts are based on the six-count Information issued by the U.S. Attorney for the Southern District of New York. This Information was issued against the Respondent in criminal case no. SS 84 CR. 321 (JES). The Respondent pled guilty to these charges in the U.S. District Court for the Southern District of New York, and Judgment reflecting that plea was docketed against Geifman on January 13, 1986, and against Industrial & Scientific Parts Services, Inc. on January 14, 1986.

These documents reflect that in 1983 and 1984 the Respondent was contacted by Babeck Serouch [2] and Renee Inbar, President and General Manager of International Processing Systems, GmbH (IPS),[3] respectively, and others to bring about acts that constituted violations of the Act and the Regulations. The purpose of the conspiracy was to export U.S.-origin goods from the United States to the Soviet Union or North Korea, through West Germany, without obtaining the authorizations required by the Regulations from the U.S. Department of Commerce.

IPS was located in Cologne, West Germany, and Respondent was based in New York City, New York. The representatives of IPS asked the Respondent for price quotations and other assistance in obtaining electronic parts in the United States which IPS would export to West Germany and reexport from West Germany to North Korea and the Soviet Union. Serouch and Inbar notified the Respondent that the parts were destined for North Korea and the Soviet Union. Respondent also knew that U.S. export control laws required export licenses and reexport authorizations for the contemplated transactions.

Respondent agreed to help Serouch and Inbar get the controlled U.S.-origin commodities in the United States for these shipments. Respondent contacted various U.S. manufacturers and distributors to fill the IPS orders which Serouch and Inbar sent to him. Pursuant to directions from Inbar and Serouch, Respondent did not tell the U.S. companies he contacted that the quotations of prices for, and orders of, various electronic parts were for ultimate shipment to these proscribed countries.

Once the Respondent obtained numerous price quotations and other information for the U.S.-origin equipment specified by IPS, he transmitted the information to Serouch and Inbar in West Germany. On March 23, 1984 and on May 11, 1984, without the validated licenses required by former § 372.1(b) of the Regulations, the Respondent exported controlled U.S.-

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120, (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[2] This name has been spelled as reflected above and as Seroush. The former spelling will be used in this decision.

[3] An administrative proceeding was initiated against Babeck Serouch based on his participation in the actions alleged here. Agency Council's motion to withdraw the charging letter was granted on November 30, 1988, *Babeck Serouch*, Docket No. 8115.

The Agency has also initiated a separate administrative proceeding against Renee Inbar, charging that he committed violations of the Act and the Regulations resulting from his participation, *Inbar*, Docket No. 8116.

origin integrated circuits from the United States to Serouch and Inbar, in West Germany, with knowledge or reason to know that IPS intended to reexport the goods to North Korea without obtaining the reexport authorization required under former § 374.1 of the Regulations. This equipment was controlled for national security reasons under section 5 of the Act. In so doing, Respondent violated §§ 387.4 and 387.6 of the Regulations with respect to each of these two shipments.

On or about November 4, 1983, without the validated license required by former § 372.1(b) of the Regulations, Respondent exported from the United States to IPS in West Germany, controlled U.S.-origin integrated circuits and computer parts, with knowledge or reason to know that IPS intended to reexport the goods to the Union of Soviet Socialist Republics without obtaining the reexport authorization required under former § 374.1 of the Regulations. These circuits and parts were controlled for national security reasons under section 5 of the Act. In so doing Respondent violated §§ 387.5 and 387.6 of the Regulations with regards to this shipment.

To hide Respondent's and IPS' ultimate purposes in connection with each of these three shipments, Respondent furnished false or misleading information to the U.S. shippers, to the effect that these three shipments were G-DEST or otherwise did not require validated export licenses, and that West Germany was the ultimate destination. This information caused false Shipper's Export Declarations (SEDs) to be prepared and submitted to the Department. This constitutes a violation of § 387.5 of the Regulations in connection with each of these shipments.

Counts 1, 2 and 3 of the Information allege that, on March 23, 1984 and twice on May 11, 1984,[4] Respondent, with respect to the North Korean shipments:

knowingly did export from the United States to International Processing Systems GmbH, Cologne, West Germany, for an ultimate destination in North Korea, military-temperature-grade integrated circuits as set forth below, without a validated export license or other authorization from the United States Department of Commerce, and did transfer outside the United States without any license from the United States Department of Treasury, goods, merchandise and other property which were subject to the jurisdiction of the United States and in which North Korea and North Korean nationals had a direct and indirect interest as the ultimate purchaser. . . .

(Agency Exh. 2).

Respondent also made an allocution in which he said in part:

In 1983 and 1984, I was solicited by Babeck Serouch, Renee Inbar, and Brigitte Lins—who were officers and employees of a West Germany company, International Processing Systems GmbH ("IPS")—to obtain quotations for numerous electronic parts for shipment to North Korea . . . . I did know that some electronic parts I was seeking have potential military application and that the parts I was seeking required a license from the United States Government before they could be exported directly or indirectly to any Soviet Bloc country, including North Korea . . . . I deliberately avoided telling the American companies that the electronic parts were for export or for North Korea. I understood from Renee Inbar that I should not reveal to the American manufacturer or distributor the fact that the products we were purchasing were for export. I further understood that Inbar, an employee of IPS, was speaking for IPS and its owner, Babeck Serouch . . . . I did not tell any of these companies that the ultimate destination of the products was North Korea . . . .

On March 23, 1984, as charged in Count One, I made an initial export shipment of controlled parts for North Korea, which parts I thought might require a license. I did not obtain a license for the shipment and knew at the time that this was likely to be illegal.

On May 11, 1984, I again made an export shipment of parts for North Korea which parts I knew required a license . . . . I did not obtain a license for the export of these parts, and I knew at the time that this was illegal.

(Agency Exh. 4).

Count 6 of the Information alleges that on November 4, 1983 Respondent, with respect to a shipment that was ultimately destined for the Soviet Union:

. . . knowingly did export from the United States to International Processing Systems GmbH, West Germany, for an ultimate destination in the Soviet Union, 200 integrated circuits that were described on Soviet contracts and that were restricted for reasons of national security under Category 1564A of the Commodity Control List without obtaining a validated license for the export from the United States Department of Commerce.

(Agency Exh. 2).

In connection with his plea of guilty to Count 6, Respondent's allocution said in part:

On three other occasions in 1983 and 1984, including November 4, 1983, as charged in Count Six, I shipped controlled computer parts to International Processing Systems GmbH in West Germany which I knew were going to be transshipped to the Soviet Union. These parts were replacement parts for a manufacturing system to make printed circuit boards. I knew at the time that these parts required an American export license for their ultimate destination of the Soviet Union, which license I did not obtain. Neither did I truthfully inform the freight forwarder concerning the destination of the parts, even though I knew that the papers concerning the shipments were subject to inspection by the United States Customs Service. I knew at the time that these three exports were of questionable legality.

(Agency Exh. 4).

Having pled guilty to all of the counts of the Information and executed an allocution admitting and describing his actions which violated the Regulations, as alleged in the charging letter, Respondent is collaterally estopped from now denying in this proceeding the truth of the facts underlying the Information, or the factual contents of the allocution he made in connection with the plea of guilty to that Information.[5] The Information, however does not contain a conspiracy count, and the Respondent is additionally charged by the Agency, with conspiring with others to violate the Act and the Regulations in violation of former section 387.3 of the Regulations.

As has previously been the practice before this Tribunal, overt acts on behalf of the Respondent may be enough to support a conclusion that the Respondent was involved in a conspiracy. Conspiracy is inherently secretive by nature and is often proved only by circumstantial evidence. "Inferential proof may be controlling where the offense charged is so inherently secretive in nature as to permit the marshalling of only circumstantial evidence." *United States v. Pelfrey*, 822 F.2d 628, 632 (6th Cir. 1987). As another circuit court has stated:

For it is most often true, especially in broad schemes calling for the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence, the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without reqiring evidence of knowledge of all its details or of the participation of others.

United States v. Donsky, 825 F.2d 746, 753 (3d Cir. 1987), citing *Blumenthal v. United States*, 332 U.S. 539, 556–7 (1947). It is also well-settled that each conspirator does not have to know all of the details of the conspiracy or

[4] The Agency charged the Respondent with only one violation regarding only one of the shipments on May 11, 1984.

[5] *See Spawr Optical Research, Inc. v. Baldrige*, 649 F. Supp. 1366 (D.D.C. 1986).

participate in every phase of the scheme. *See, e.g., United States v. Carter*, 760 F.2d 1568 (11th Cir. 1985).

From all of the facts, including Respondent's admissions, it is established that there was a conspiracy to which the Respondent was a party. Respondent agreed with Inbar and Serouch to help them obtain goods in violation of U.S. export controls. His agreement is found in his admitted actions. Respondents willingly processed the requests for price quotations IPS sent to him to fill their proscribed countries' shopping lists. Further, Respondent repeatedly filled IPS's orders in the United States and exported to IPS to commodities IPS desired, concealing the true ultimate destination of the goods. These actions demonstrate that Respondent was part of a conspiracy to violate the Act and the Regulations.

Conclusion

I conclude that the exhibits and explanation by Agency Counsel support the conclusion that Respondent actively participated in a conspiracy to export U.S.-origin commodities from the United States to West Germany without the required export licenses, in violation of former § 372.1(b) of the Regulations, with the ultimate purpose being unauthorized reexports of U.S.-origin goods from West Germany to the Soviet Union and North Korea, in violation of former § 374.1 of the Regulations. By doing so, the Respondent violated former § 387.3 of the Regulations. In the discussions on pp 5 & 6 supra the basis for the other violations found are discussed.

The pattern of conduct and Respondents own admissions demonstrate a deliberate and willful intent to violate the United States export laws and regulations. He was neither an innocent, nor a pawn but a willing, overt participant. The goods unlawfully exported by the Respondent were controlled for national security purposes. I find that an Order denying export privileges for twenty years from the date that a final Order is entered in this proceeding is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act and the Regulations.

Order

I. For a period of 20 years from the date of the final Agency action, Respondent Yuri Geifman, (a/k/a Yuri Geller), individually and doing business as Industrial & Scientific Parts Services, Inc., 350 Fort Washington Avenue, Apt. 5-H, New York, New York 10033, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, coporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: February 28, 1989.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-8070 Filed 4-4-89; 8:45 am]
BILLING CODE 3510-DT-M

[Docket No. 8110-01 et al.; 1983 Docket No. 647 et al.[1]]

Order Vacating Temporary Denial Order; Goran Josberg

Discussion

In the matter of Goran Josberg, individually and doing business as Globe Trade, Globe Metals, Globe Computers, Respondents.

[1] The Docket Numbers 8110-01 through -04 are those of the Order of March 2, 1989 (54 FR 9537 (1989)), which denied the U.S. export privileges of Goran Josberg, individually and doing business as Globe Trade, Globe Metals, and Globe Computers, all with addresses at Strandvagen 9, S-11456 Stockholm, Sweden. The Docket Number 647 is that

Continued

Counsel for the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce requested, March 23, 1989, the vacating of a temporary denial order ("the Temporary Denial Order") issued in 1983 at the Agency's request. The Temporary Denial Order was issued December 28, 1983 (49 FR 499 (1984)) and it temporarily denied the U.S. export privileges of Goran B. Josberg, Globe Computers AB, and Globe Metals AB. The Temporary Denial Order was issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420) ("the Act"), and of the Export Administration Regulations ("the Regulations"), promulgated pursuant to the Act.[2]

Agency Counsel, in his March 23, 1989 request, stated that the Temporary Denial Order has been superseded by a March 2, 1989 Order of the Under Secretary for Export Administration (54 FR 9537 (1989)), which imposed a 35-year denial of U.S. export privileges on Goran Josberg, Globe Computers, and Globe Metals, and also on Globe Trade. The Temporary Denial Order, by its terms (paragraph VI), was to "remain[] in effect until the final disposition of any administrative or judicial proceedings initiated against the respondents as a result of the [then] ongoing investigation." Agency Counsel stated that the Under Secretary's Order of March 2, 1989 concluded the administrative proceeding that had been initiated as a result of that investigation, and consequently requested that the Temporary Denial Order be vacated.[3]

The reason advanced by Agency Counsel for vacating the Temporary Denial Order is sufficient. Accordingly, such vacating shall be ordered.

Order

The Temporary Denial Order, issued December 28, 1983 (49 FR 499 (1984)), is hereby vacated, effective immediately. Goran Josberg, Globe Computers, and Globe Metals shall henceforth remain on the Table of Denial Orders Currently in Effect in Supplement No. 1 to Part 788 of the Regulations pursuant only to the Order of March 2, 1989 (54 FR 9537 (1989)), which imposed on each of them a 35-year denial of U.S. export privileges. Globe Trade shall also remain on the Table of Denial Orders pursuant to the Order of March 2, 1989, which imposed on it also a 35-year denial of U.S. export privileges. Thus each of those listed below shall remain on the Table of Denial Orders pursuant only to the Order of March 2, 1989.

Globe Computers, Strandvagen 9, S–11456 Stockholm, Sweden
Globe Metals, Strandvagen 9, S–11456 Stockholm, Sweden
Globe Trade, Strandvagen 9, S–11456 Stockholm, Sweden
Josberg, Goran, Strandvagen 9, S–11456 Stockholm, Sweden.

Date: March 31, 1989.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89–8110 Filed 4–4–89; 8:45 am]
BILLING CODE 3510–GF–M

[Docket Nos. 4656–01, 4656–02, 4656–03]

Actions Affecting Export Privileges; Josef Kubicek, Individually and doing business as Exclusitrade, Inc. J.O.K., INC.

Summary

In the matter of Josef Kubicek, individually and doing business as Exclusitrade, Inc. J.O.K., Inc., Respondents.

The charges contained in the April 3, 1985 Charging Letter against Respondent Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc. are dismissed, and the names of all Respondents shall be deleted from the Trade of Denial Orders in Supplement No. 1 to Part 788 of the Regulations.

Discussion

On June 3, 1986 the Administrative Law Judge issued a recommended Decision and Order dismissing the charges made in the April 3, 1985 Charging Letter against the Respondents in this matter. On July 3, 1986, disagreeing with the ALJ's disposition of the matter with respect to these Respondents, I modified that Decision to find violations as charged and to impose both denial periods and fines on the Respondents. This action was done in keeping with similar action in a companion case; *In Re William Carlton Dart, et al.* Respondent Dart challenged my authority to modify the ALJ's recommended Decision and Order in such fashion, claiming a *de facto* reversal was beyond the scope of the powers of this office. In *Dart* v. *U.S.*, 848 F2d 217 (D.C. Cir. 1988), the Circuit Court of Appeals for the District of Columbia found in favor of Respondent Dart. Thereafter, in *In Re William Carlton Dart, et al* (54 Fed. Reg. 7231, Feb. 17, 1989), following a remand from the Circuit Court of Appeals, I dismissed the charges contained in the April 3, 1985 Charging Letter against Respondent Dart and his related corporations. The purpose of this Order, issued on my own notion, is to resolve the *Kubicek* matter in a fashion similar to Dart.

Order

On June 3, 1986, the ALJ entered his recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, was referred to me for final action. Notwithstanding my modification of said Order on July 3, 1986, I hereby affirm the recommended Decision and Order of the ALJ, expressly vacating my Order of July 3, 1986.

This represents final agency action in this matter.

Date: March 31, 1989.

Paul Freedenberg,

Under Secretary Export Administration.

Appearance for Respondent: Mark E. Beck, Esq., Anthony A. De Corso, Esq., Beck & De Corso, PC., 811 West Seventh Street, 11th Floor, Los Angeles, CA 90017

Appearance for Government: Daniel C. Hurley, Jr., Esq., Attorney-Advisor, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230

Decision

Facts

Procedural Background

This proceeding began November 6, 1984 with the issuance *ex parte*, upon request of the Office of General Counsel, U.S. Department of Commerce, of a temporary denial order, 49 Fed. Reg. 45468 (November 16, 1984), against Respondent Kubicek and against three additional individual Respondents and

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of the Order of December 28, 1983 (49 FR 499 (1984)), referred to in the instant Order as the Temporary Denial Order, which denied the U.S. export privileges of Goran B. Josberg, Globe Computers AB, and Globe Metals AB, all with addresses at Strandvagen 9, S–114 56 Stockholm, Sweden.

[2] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[3] The detailed listing of those denied U.S. export privileges by the Order of March 2, 1989 and by the Temporary Denial is set forth in note 1 *supra*. The listing by the Order of March 2, 1989 of Goran Josberg lacked the middle initial that is contained in the listing by the Temporary Denial Order; and the listing by the Order of March 2, 1989 of Globe Computers and of Globe Metals lacked the "AB" following each of the names that is contained in the listing in the Temporary Denial Order. Agency Counsel, however, in his March 23, 1989 request that the Temporary Denial Order be vacated, stated that the Order of March 2, 1989 concluded the administrative proceeding initiated as a result of the investigation that gave rise to the Temporary Denial Order.

four corporations through which the individual Respondents did business. This order, which was issued under ¶ 388.19 of the Export Administration Regulations,[1] denied all those named therein the privileges of participating in the export or reexport of U.S.-origin commodities or technical data.

Upon motion of Mr. Kubicek and two of the other individual Respondents, and following a January 16, 1985 hearing, the temporary denial order was modified March 5, 1985, 50 FR 9473 (March 8, 1985), so as to permit certain exports by the Respondents. Then the Department's Office of Export Enforcement issued a charging letter to Mr. Kubicek, April 3, 1985, alleging violations of the Export Administration Regulations in connection with the same transaction that underlay issuance of the temporary denial order. After various procedural filings, a five-day hearing was held March 17–21, 1986 to resolve both the temporary denial order and the charging letter. Final posthearing submissions were filed May 5, 1986; and the matter is now ready for decision.

Transaction

The transaction at the center of the temporary denial order and of Mr. Kubicek's charging letter lasted from June 1983 to February 1984. In June 1983, Mr. Kubicek purchased six used wafer polishers. He intended to sell them to Czechoslovakia, but believed that they needed to be upgraded to be like a more advanced model in order to be thus saleable. For this upgrading, he contracted with a firm that was in the business of rebuilding and upgrading polishing equipment used in the semiconductor industry. For the day-to-day dealings with this firm, he was assisted by two of the other individual Respondents. Throughout the arrangements for export of the wafer polishers, Mr. Kubicek held the only financial interest in the transaction. He had, however, engaged and was at that time engaging, in other export transactions with these two additional Respondents in which they all shared in the financial interest. Mr. Kubicek hired the fourth individual Respondent to go to Czechoslovakia to assist in the installation there of the wafer polishers.

Mr. Kubicek and the other Respondents, except for the one who was to go to Czechoslovakia for the installation, were all located in California, as was the upgrading firm. In November 1983, the president of this upgrading firm traveled to Washington, DC to check with the Department's Office of Export Administration regarding the export licensing requirement for the shipment to Czechoslovakia of wafer polishers. Thereafter the firm, pursuant to its contract with Mr. Kubicek, continued to upgrade two of his machines and to arrange for their export. Finally in February 1984 these two wafer polishers, having been upgraded, were seized by U.S. Customs at the Los Angeles International Airport as they were being prepared for shipment to Czechoslovakia. These machines lacked the validated export license that was required for such shipment.

Positions of Parties

The charging letter addressed to Mr. Kubicek alleged, on the basis of this export transaction, three violations of the Export Administration Regulations: attempt (§ 387.3(a)); conspiracy (§ 387.3(b)); and acting with knowledge of a violation (§ 387.4). Mr. Kubicek denied that he had committed any violations, or, if he did, claimed that he had been entrapped by the Department, or that no sanctions should be imposed because of the Department's "outrageous conduct" [2] or because of estoppel against the Department.

Conclusions

Citizen Informants

A prime source of evidence for the Department were two officers of the firm that upgraded the two seized wafer polishers. When the president of the firm traveled to Washington, DC in November 1983 to check with the Department there on the licensing requirements for wafer polishers, he and a vice president of the firm were requested by the Department to assist in an investigation of Mr. Kubicek and others of the Respondents. This assistance, which the two officers agreed to provide, took the form of serving as, to use Departmental Counsel's terminology, citizen informants. In this capacity, they covertly taped 30 conversations involving one or more of the Respondents, and took written notes on five other conversations.

The record indicates that both of the citizen informants undertook their roles at the risk of some possibly significant sacrifice of their own interests. Mr. Kubicek suggested that, as the transaction finally worked out, the cooperation of these two men with the Department may have worked to the financial benefit of their firm.[3] The Department countered that the firm "barely, if at all, broke even." [4] In Sum, as to the motives of the two citizen informants, the evidence shows that they served as they did simply out of a desire to aid their country; and they are to be commended for their willingness to supply that aid.

Licensing Requirements

A key factor in the export transaction was naturally the pertinent licensing requirements. It was clear from the outset of the transaction that the advanced model of wafer polisher needed a validated license for shipment to Czechoslovakia. The situation of the model of used machine purchased by Mr. Kubicek turned out to be less clear. In late November 1983, the president of the upgrading firm accurately reported to the Respondents that he had been told by the Department that this model could be exported to Czechoslovakia without a validated license. At the hearing, however, an expert witness from the Department, called by Departmental Counsel himself, testified that this lesser model of wafer polisher also, throughout 1983–84 (and still today), has required a validated license for such export.

Entrapment

Mr. Kubicek based his defense of entrapment on several grounds. He observed that the citizen informants reported possibly erroneous licensing information, as noted above, regarding the lesser model of wafer polisher, and contended that they also "suppress[ed]" information regarding the licensing requirement for the upgraded machines.[5] He argued further that the citizen informants in effect concealed their status as such, that in one conversation one of them did not explain possible risks of shipment that he had mentioned, that they controlled the pace of the transaction through their controlling the process of the upgrading, that they could not have accomplished the upgrading without assistance from the Department in obtaining the necessary parts from the manufacturer, and that in preparing export documents they departed from instructions given by another of the Respondents.

All of these actions of the citizen informants and of the Department, however, do not add up to entrapment.

[1] The Export Administration Regulations are currently codified at 15 CFR Parts 368–399 (1988), and are issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982)), as amended and extended by the Export Administration Amendments Act of 1985 (Pub. L. 99–64, 99 Stat. 120).

[2] Mr. Kubicek's Post-Hearing Brief 2.

[3] *Id.* 19 n. 7.

[4] Department's Post-Hearing Brief 15.

[5] Mr. Kubicek's Post-Hearing Brief 26.

The licensing information reported by the citizen informants regarding the lesser model of wafer polisher represented accurately what a Departmental licensing officer had told one of them; the different licensing judgment stated by another Departmental licensing officer at the hearing evidently constitutes just a disagreement among experts on this subject. More to the point, the charges against Mr. Kubicek focus on the licensing status of the advanced model of wafer polishers; and as to this status, the information conveyed to him was always free of doubt. Why specific information on the licensing status of the upgraded machines was not communicated to Mr. Kubicek remains unclear—and the significance of the lack of any report here is discussed in detail below [6]—But it does not amount to entrapment.

That the citizen informants concealed their roles—specifically, "their desire to complete the transaction for which they had contracted" [7]—was a legitimate law enforcement approach. The conversation regarding the mention of possible risks of shipment is confused,[8] but did not appear to contain significant misstatements or deliberate misleading of Mr. Kubicek. That the citizen informants controlled the pace of the transaction does not constitute entrapment, because they still did only what Mr. Kubicek was directing them to do. Similarly, the intercession of the Department to obtain needed parts simply facilitated the completion of the upgrading that Mr. Kubicek had wanted. Finally, the situation regarding the export documentation is not central to the charges against Mr. Kubicek.

"Outrageous Conduct"

Mr. Kubicek's charges of "outrageous conduct" by the Department are unsupported by the record of this proceeding. The assistance provided by the Department for the completion of this export transaction was only a facilitation of a transaction that Mr. Kubicek himself had conceived and planned. As to the Department's investigation of Mr. Kubicek's export activities, nothing in this proceeding has shown that it was not a legitimate Departmental undertaking. As for that Departmental evidence to which Mr. Kubicek objected, nothing in the record suggests that the Department did not obtain it in good faith, even if the circumstances of that obtaining were such that it has been denied admission into the record of this proceeding. The Department's actions in obtaining the evidence did not constitute "outrageous conduct," and Mr. Kubicek's rights have been adequately protected through its exclusion from the record. Finally, the erasure by a Justice Department official of six minutes of a recorded conversation has not been shown to be other than accidental, and the erasure did not affect evidence vital to Mr. Kubicek's case.

Estoppel

Mr. Kubicek argued that the Department should be estopped because it misled him as to the licensing status of the model of used wafer polishers that he purchased. Although the Department acted in good faith, it may well have communicated to Mr. Kubicek, through the citizen informants, erroneous information regarding this model. Still, the heart of the violations charged against Mr. Kubicek concern the export only of the advanced model of this machine. Consequently, even if this initial Departmental information may have been inaccurate, it was not of sufficient importance to the alleged violation to estop the Department from seeking sanctions against Mr. Kubicek.[9]

Parties' Versions of Events

The disposition of this proceeding, therefore, turns on an evaluation of what Mr. Kubicek did or did not do. According to Departmental Counsel's version of events, Mr. Kubicek knew that Czechoslovakia already had wafer polishers, made by the same company that had made those that he had brought, only of a more advanced model than his just-purchased used machines. To sell these used machines to Czechoslovakia, he believed that he had to upgrade them to be in important respects like the most advanced model. To investigate his alternatives, he himself, and through two of the other Respondents with whom he was working closely, made inquiries of several people at the manufacturer of these wafer polishers. As to export licensing requirements, they were told that the advanced model would probably not be approved for shipment to Eastern Europe, but that the lesser model might possibly be. Mr. Kubicek inquired also about the technical possibility of retrofitting the lesser model to be like the advanced model.

Subsequently, Mr. Kubicek contracted with the upgrading firm for the upgrading of two of his used wafer polishers to make them in important respects like the advanced model. The firm performed the contract. Ultimately these two machines were seized at the airport for lacking the validated license required for their shipment to Czechoslovakia.

Mr. Kubicek essentially agreed with the above recital of events, but claimed that he reasonably believed—because of actions of the Department itself—that these two upgraded wafer polishers could be exported without a validated license. To support this claim, Mr. Kubicek added to the above listing of major events one more: the trip to the Department in Washington, D.C. by the president of the upgrading firm specifically to check the export licensing requirements for wafer polishers.

This trip stemmed from a meeting in California, on or about November 9, 1983, attached, a minimum, by Mr. Kubicek, at least one of the other Respondents, and two officers of the firm that was to upgrade the wafer polishers. Mr. Kubicek and the firm concluded a contract for the upgrading. In addition, the firm was told that it was to be the official exporter of the upgraded machines. Before accepting this further responsibility, the president of the firm wanted to check the export licensing requirements with the Department in Washington, DC. Those present at the meeting agreed that he would travel to Washington for this purpose. It was during the visit of the firm's president to the Department in Washington later that month that the recruitment was initiated that led, unbeknownst to Mr. Kubicek, to citizen informant roles for the firm president and the other firm officer from the November meeting.

Report of Washington Trip

Mr. Kubicek's point is the report he received from that trip regarding the licensing situation. The citizen informants told him that the lesser model of wafer polishers required no validated license for export to Czechoslovakia, whereas the advanced model did. But, Mr. Kubicek has argued, they never told him that the upgraded machines required a validated license for such export. Instead, they simply peformed the contract to upgrade two of his machines and arrange for their export.

Therefore, Mr. Kubicek contended, all he knew was that the firm's president had said he would check the licensing requirements in Washington before he

[6] *See* Report of Washington Trip *infra*.

[7] Mr. Kubicek's Post-Hearing Brief 26.

[8] Departmental Exhibit 7, items 4.d.20), 4.d.21).

[9] Following this estoppel arugment, Mr. Kubicek also raised a denial of due process argument based, in significant measure, on a delay by Customs in notifying him of seizure of the wafer polishers. Mr. Kubicek's Post-Hearing Brief 39–40. The instant administrative proceeding lacks the authority to adjudicate these actions by Customs.

agreed to his firm's becoming the exporter of the upgraded wafer polishers, and the president made that trip. Then he returned, never said that the upgraded machines required a validated license, but instead his firm just continued with the contract and the export. What else, Mr. Kubicek in effect claimed, could he reasonably conclude, other than that the firm's president had satisfied himself that the used machines, though upgraded in important respects, still remained at the level where they could be shipped as the lesser models needing no validated license.

Departmental Counsel attacked this claim in two ways. First, Departmental Counsel contended that Mr. Kubicek knew, regardless of the Washington trip, that his upgraded wafer polishers required a validated license, but intended to export them anyhow. Second, Departmental Counsel argued that the Washington trip did not produce a more direct status report on the licensability of the upgraded machines because Mr. Kubicek had instructed that their situation be misrepresented.[10]

As to Mr. Kubicek's knowledge, aside from the Washington trip, Departmental Counsel stressed the several inquiries that he made, himself and through other Respondents, of the manufacturer of the wafer polishers. The answer to these inquiries was that the advanced model required a validated license; and yet Mr. Kubicek went ahead and contracted for his used machines to be upgraded to be, in important respects, like the advanced model. As for the Washington trip, both citizen informants testified that, at the November 9 meeting where it was agreed upon, Mr. Kubicek told the firm's president to ask about the licensing status of a machine with characteristics like those of the lesser model. Therefore, asserted Departmental Counsel, it was only natural that none of the report back from the Washington trip addressed an upgraded machine.

In reply, Mr. Kubicek argued that he did in fact look to the Washington trip—for which he, Mr. Kubicek, paid the expenses—for the pertinent licensing information, not to prior inquiries and contract negotiations. And he denied instructing that questions in Washington focus only on the lesser model. As to what happened before the Washington trip, Mr. Kubicek contended that none of it settled for him the licensing status of the upgraded models. He did ask the manufacturer about both models of wafer polisher and about the possibility of upgrading one to the other, and he contracted with the upgrading firm to "modify" his used machines, as he said, so that they would be "compatible" with the advanced model.[11] But "compatible" with is not, he argued, "identical" with.[12]

Further, Mr. Kubicek observed, the contract for the upgrading was prepared, not by him, but by the upgrading firm; and an expert witness called by Departmental Counsel testified that "it would take somewhat of an expertise" to determine, from a reading of the contract, its technical significance.[13] Finally Mr. Kubicek argued, as to events prior to the Washington trip, that it was to the Department, not to private sources, that he was entitled to look for export licensing determinations.

As to his alleged instructions to misrepresent in Washington the qualities of the upgraded wafer polishers, Mr. Kubicek denied the charge, and cited for his denial at least two pieces of evidence. First, neither of the other two Respondents who, Departmental Counsel claimed, had attended the November 9 meeting, at the hearing supported this allegation against Mr. Kubicek[14] Second, in two separate conversations with one of the citizen informants after seizure of the machines, Mr. Kubicek expressed puzzlement at the seizure, on the ground that the firm's president has gone to Washington to resolve any licensing problems. If the reasons for the firm's having received incorrect licensing information from Washington was that the question had been misleadingly asked, per instruction from Mr. Kubicek, a reference to that instruction would have been the natural reply by the citizen informant. But he did not raise it.[15] Moreover, had such instruction been in fact given, raising it then could have been especially natural for the citizen informant, since one purpose of his calls to Mr. Kubicek at that juncture was to elicit incriminating statements.

Finally supporting Mr. Kubicek's version of what he knew is the logic of the situation. The upgrading firm's president, in that president's own self interest, had a strong incentive to use the Washington trip to ascertain the true licensing requirement for the upgraded machines, since his firm was to be the official exporter. If he learned that the export would not be approved, the normal reaction would be to report that result to Mr. Kubicek and, at the very least, to decline the request for the firm to become the official exporter. That the citizen informants said nothing about the licensing situation of the upgraded wafer polishers, but just continued to perform the contract, certainly could lead reasonably to the conclusion that no licensing problems had been encountered in Washington.

Recorded Conversations

A major source of evidence cited by both parties were 30 conversations that had been covertly recorded. After the two citizen informants assumed that role, they covertly recorded, at the direction of the Department's Office of Export Enforcement, these 30 conversations in which the Respondents participated. Mr. Kubicek participated in 11 of them.

These conversations are, however, inconclusive as to whether Mr. Kubicek committed any of the alleged violations. Mr. Kubicek pointed to no statements in the conversations in which he convincingly set forth his reasoned belief that the export was to involve used machines not ungraded to the level where their licensing status was that of the advanced model. On the other hand, more significant is the absence of any clearly incriminating statements by Mr. Kubicek. In his argument, Mr. Kubicek stressed that nowhere is he heard to say that he wants to export, as the lesser model of wafer polisher, what is really the advanced model. The absence generally of incriminating statements is noteworthy because the citizen informants were expressly directed by an Office of Export Enforcement special agent to try to engage the Respondents in conversations that would produce such statements.

Summary

The record of this proceeding fails to show, by a preponderance of the evidence, that Mr. Kubicek knew or reasonably should have known that the upgraded wafer polishers needed a validated license for export to Czechoslovakia. Communicating that information to Mr. Kubicek was within the control of the department, through the direction of the citizen informants by the Office of Export Enforcement. Mr. Kubicek could reasonably have believed, from the reports by the citizen informants of the Washington Trip and

[10] At the hearing, at least one of the citizen informants testified that he had told Mr. Kubicek of the licensing requirements for the upgraded wafer polishers. But, although both citizen informants were articulate witnesses, the tape recordings do not bear out this point in the testimony. *See, e.g.*, Mr. Kubicek's Post-Hearing Brief 16.

[11] Mr. Kubicek's Post-Hearing Brief 15.

[12] *Id.*

[13] V Hearing Transcript 794. Here Departmental Counsel argued that Mr. Kubicek, after his inquiry of the manufacturer's sales representative, had acquired that level of expertise. Department's Response to 4 n.5. But the record does not really sustain this argument of Departmental Counsel.

[14] VII Hearing Transcript 1005–06, 1125–26.

[15] Departmental Exhibit 7, items 4.d.29), 4.d.30).

from their subsequently continuing to perform the contract and the export, that they had resolved the licensing requirement satisfactorily. Accordingly, the record fails to establish any violation of the Export Administration Regulations by Mr. Kubicek.

Order

The charges against Mr. Kubicek made by the April 3, 1984 charging letter are dismissed, and his name, and the names of the companies through which he does business—Exclusitrade, Inc. and J.O.K., Inc.—shall be deleted from the list of Respondents in the November 6, 1984 temporary denial order.

In accordance with section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (1982)), as amended and extended by the Export Administration Amendments Act of 1985 (Pub. L. 99–64, 99 Stat. 120), the foregoing constitutes the Decision and Order of the undersigned in this proceeding. The Order shall become effective if and when it is affirmed by the secretary pursuant to section 13(c).

Date: June 3, 1986.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89–8071 Filed 4–4–89; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Nos. 8121-01 and 8121-02]

Actions Affecting Export Privileges: John Michael Ludlam, Individually and Doing Business as Michael Ludlam Associates, Ltd.

Summary

Pursuant to the February 24, 1989 Recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is hereby modified by me, John Michael Ludlam, individually and doing business as Michael Ludlam Associates, Ltd. (hereinafter referred to collectively as Respondents), with mailing addresses at 39 High Street, Codnor, Derbyshire, United Kingdom and Monsal House, Bramble Way, Somercotes, Derbyshire DE55 4RH, United Kingdom, is, and the Respondents are collectively, denied for a period of ten years from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the direct export of commodities or technical data from the United States to any other destination; provided, however, that beginning five years from the date hereof said denial period shall be suspended for the balance of the ten year term, and shall be terminated at the end of such ten year period, provided that Respondents have committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding.

Discussion and Order

On August 1, 1988, the Department issued a Charging Letter against John Michael Ludlam, individually and doing business as Michael Ludlam Associates, Ltd. (hereinafter referred to collectively as Respondents), which alleged that Respondents violated the provisions of § 387.6 of the Export Administration Regulations (codified at 15 CFR Parts 368–399 (1988)) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979 (50 U.S.C. app. sections 2401–2420 (1982 and Supp. III 1985)) (the Act).[2]

The Department's Charging Letter alleged that on six separate occasions between August 10, 1983 and November 4, 1983, Respondents reexported U.S.-origin computers from the United Kingdom to Bulgaria without obtaining from the Department the reexport authorizations required by § 774.1 of the Regulations. In so doing, it is alleged that Respondents violated Section 787.6 of the Regulations with respect to each of the six shipments.

Based on the Department's Motion for Default Judgment and evidence submitted therewith, the ALJ correctly found that Respondents committed the six violations of § 787.6 of the Regulations as alleged by the Department in its August 1, 1988 Charging Letter. I hereby affirm the ALJ's findings of fact and conclusions of law in that regard.

Based upon his findings, the ALJ recommended the denial of all of Respondents' U.S. export privileges for a period of ten years, with five years suspended, apparently believing this was the sanction requested by the Department, as he concluded: "The Agency's proposed sanction is reasonable, and it shall be so ordered." Recommended Order at 5.

However, the Department had not requested denial of all of Respondent's U.S. export privileges, as the ALJ inadvertently provided. Rather, the Department had requested that Respondents be denied only certain specific U.S. export privileges for reasons detailed by the Department.

As described in detail in the Department's evidence, Ludlam pled guilty to a British Government criminal case against him in which he was charged with exporting U.S.-origin commodities from the United Kingdom to Bulgaria without British export authorization. The same transactions which were involved in the British case are the subject of this action. As a result of his guilty plea, Ludlam was punished by the British Government by way of both fines and imprisonment. In light of the British Government's prosecution and treatment of this case, the Department elected to request a denial order with a more narrowly focused scope than the denial order recommended by the Administrative Law Judge.

The operative scope of the ALJ's recommended denial order is worldwide, and would bar any person in the United States, the United Kingdom or elsewhere from dealing in U.S.-origin goods with Respondents. The Department does not believe the result in this case is desirable in light of the British Government's prosecution of Respondents. The Department's proposed Order in this case would operate only to prevent persons actually located within the United States from engaging in transactions with Respondents in U.S.-origin commodities or technical data.

I concur with the Department's reasoning and the sanctions proposed by the Department. Accordingly, it is hereby Ordered that the sanctions contained in the ALJ's Recommended Order of February 24, 1989 be MODIFIED to read as follows:

Order

John Michael Ludlam, individually and doing business as Michael Ludlam Associates, Ltd. (hereinafter referred to as Respondents), 39 High Street, Codnor, Derbyshire, United Kingdom and Monsal House, Bramble Way, Somercotes, Derbyshire DE55 4RH, United Kingdom, and all his successors, assignees, officers, partners, representatives, agents and employees, shall be denied, for a period of ten years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the direct

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[1] Effective October 1, 1988, the Regulations were redesignated as Parts 768–799 of Title 15 of the Code of Federal Regulations. 53 *Fed. Reg.* 37751 (September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 C.F.R. Parts 368–399 (1988).

The Regulations governing the violations at issues are found in the 1982, 1983 and 1984 versions of the Code of Federal Regulations. Those Regulations are codified at 15 C.F.R. Parts 368–399 (1982, 1983 and 1984) and, to the degree to which they pertain to this matter, are substantially the same as the 1988 version.

[2] After issuance of the Charging Letter, the Act was amended by Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

export of commodities or technical data from the United States to any destination.

A. All outstanding individual validated export licenses in which Respondents appear or participate, authorizing direct exports from the United States to any destination are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all Respondent's privileges of participating, in any special licensing procedure, including but not limited to, distribution licenses, on which Respondents appear as consignee to receive exports originating directly from the United States, are hereby revoked.

B. Without limiting the generality of the foregoing, the participation which is specifically prohibited in any such transaction, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported directly from the United States to any destination and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, located within the United States, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondents, or any related party, or whereby Respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (1.) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any commodity or technical data, to be exported directly from the United States by, to, or for Respondents, or either of them, or any related party denied export privileges; or (2.) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export of any commodity or technical data exported or to be exported directly from the United States to any destination. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by § 788.16(c) of the Regulations, the denial period shall be suspended for a period of five years beginning five years from the date of this Order, and shall thereafter be waived provided that, during the period of suspension, Ludlam has committed no violation of the Act or any regulation, order or license issued under the Act.

This Order constitutes final Agency action.

Dated: March 27, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

[FR Doc. 89-8072 Filed 4-4-89; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Nos. 8111-01, 8111-02, and 8111-03]

Actions Affecting Export Privileges: Dr. Manfred Stoelting Individually and Doing Business as Stoelting GmbH Dr. Stoelting & Partner GmbH

Summary

Pursuant to the February 28, 1989 recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is hereby affirmed by me, Manfred Stoelting, individually and doing business as Stoelting GmbH and Dr. Stoelting & Partner GmbH (all hereinafter collectively referred to as Respondents) of Blumenstrasse 5, 8190 Wolfratshausen, Federal Republic of Germany 08171/20840 is, and Respondents collectively are denied for a period of five years commencing November 1, 1986 all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or are otherwise subject to the regulations (15 CFR 768–799); provided, however, that commencing November 1, 1989, said denial period shall be suspended for the balance of the term provided Respondents have committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding.

Discussion

Departmental Counsel has urged this office to modify the recommended Decision and Order of the ALJ in the following three respects:

1. That the denial period be changed from five years to ten years;

2. That the initial, effective date of the denial period be the date of this Order rather than November 1, 1986; and

3. That there be no suspension with respect to the Order.

I address issues one and three first. The case against the Respondents is based on self-disclosure to German authorities. Further, the violations are arguably technical since during the relevant time period re-export authorization probably would have been granted for both Switzerland and Yugoslavia as final destinations. Given these facts, a five year denial period with two years suspended is not unreasonable.

Issue number two is more problematic. Those within the exporting community who are knowledgeable concerning the administration of U.S. export regulations have long known that a "gray" list exists with respect to approval of Distribution License consignees. It is clear from the record that the Respondents' names were included on this list from at least November of 1986. One included on the gray list will not be approved as a designated consignee for a U.S. Distribution License holder. Depending on the nature of the business run by a gray listed party, the practical result may be a denial of most, if not all, U.S. high technology products. It is not sufficient to say that those on the list have the right to receive U.S. products via the Individual Validated License route. As noted, the nature of an individual's business may preclude that as a practical alternative. In addition, foreigners unfamiliar with U.S. export regulations and their administration may never know of their *de facto* debarment, or if aware of it, may assume that it applies to all licenses.

The issue of whether the "gray" list should be published in order to allow those listed to challenge their inclusion, or discarded as a tool which may not meet due process standards, is beyond the scope of this opinion. However, in

this case the Respondents appear to have been denied at least certain of the export privileges provided by U.S. law since November of 1986. It is not inappropriate for the ALJ to take this fact into account in rendering his recommended Decision and Order. I am not inclined to modify this portion of that Order.

Order

On February 28, 1989, the ALJ entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Date: March 30, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: Dr. Manfred Stoelting, Blumenstrasse 5, 8190 Wolfratshausen, Federal Republic of Germany 08171/20840.

Appearance for Agency: Anthony K. Hicks, Esq.; Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement

This proceeding is initiated under the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended, (the Act), and the Export Administration Regulations (the Regulations).[1] The Respondents, Dr. Manfred Stoelting, Stoelting GmbH and Dr. Stoelting & Partner GmbH (hereinafter "Respondents")[2] were notified in a charging letter, dated May 4, 1988 that the Office of Export Enforcement was charging each of them with violating the regulations.

The Agency alleges in the charging letter that on or about December 5, 1984 and on or about March 5, 1985, Respondents aided and abetted another individual's reexport of a U.S.-origin 751 Data Processing System, with a Digital Equipment Corporation (DEC) VAX 11/750 computer and related peripheral equipment, from West Germany to Switzerland, without obtaining from the Department of Commerce the reexport authorization which Respondents knew or had reason to know was required by § 374.1 of the Regulations. By doing so, the Agency alleges that the Respondents committed one violation of § 387.2 and one violation of 387.4 of the Regulations. These violations involved U.S.-origin commodities controlled under section 5 of the Act for national security reasons and the Agency proposes that the Respondents be denied export privileges for a period of ten years for these actions.

No answer to the charging letter was received from the Respondents. An Order calling for the Agency to make a Default submission pursuant to § 388.8 of the Regulations was issued on August 17, 1988. Agency Counsel complied on September 16, 1988. A notice of appearance was filed, on behalf of the Respondents on September 16, 1988, and an extension of time to answer the charging letter was requested. This request was denied. A Notice of Withdrawal by Respondents' Counsel was filed on October 6, 1988 due to Dr. Stoelting's financial status. A response to the Agency's Default submission was received from the Respondents in this Office on October 13, 1988.[3] The record remained open for further submissions until November 7, 1988.

Facts

On and before November 8, 1984, Dr. Stoelting operated a system house in Munich which specialized in the programming of microcomputers and midsize-computers for use by the construction industry, realtors and investment consultants. He also ran a computer center offering accounting services to persons in these markets. Dr. Stoelting had purchased a Digital Equipment Corporation VAX 11/750 in 1982 which he used in the course of the business. This system was in service through most of 1984, but due to a recession, Dr. Stoelting decided to downgrade to a PDP 11 series computer and sell the VAX 11/750.[4] Advertisements were taken out by him to sell that equipment.

On November 8, 1984, the Dr. Stoelting entered into a contract with Intergraph GmbH, West Germany, a subsidiary of the Intergraph Corporation, a United States corporation, for the purchase of a U.S.-origin Intergraph 751 Data Processing System (DPS) with a DEC VAX 11/750 and related peripheral equipment (system).[5] the contract states that "[t]he delivery is subject to the U.S. export regulations."

On or about December 3, 1984, the system, controlled under commodity control number 1565A for national security reasons, was shipped from the United States to Intergraph GmbH in West Germany. The shipment was made under Intergraph Corporation's Distribution License. On December 5, 1984, Dr. Stoelting signed the air waybill and took possession of the system. The commercial invoice which was attached to the air waybill stated that "THESE COMMODITIES/TECHNICAL DATA [ARE] LICENSED BY THE UNITED STATES FOR ULTIMATE DESTINATION, WEST GERMANY. DIVERSION CONTRARY TO UNITED STATES LAW [IS] PROHIBITED".

Dr. Stoelting stated that after taking possession of the 751 system he turned it over to a driver who worked for a third party firm, Krammer, who had paid for the equipment.

According to Dr. Stoelting, after receiving the Intergraph 751 system, the driver informed him that it was to be immediately transported to Switzerland, that he knew that the final customer for this equipment was a Swiss financier, who was to take possession of the equipment in Munich. He claims that at this time the end user location was not clarified, nor mentioned in the contract. Dr. Stoelting told the investigators that

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[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120, (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[2] In Respondents's submission, dated October 10, 1988, Dr. Manfred Stoelting enclosed a notarized statement, dated August 29, 1986, which indicated that the name of the company "Dr. Stoelting and Partner, GmbH" was changed to "GDB Gesellschaft fur Datenverarbeitungfur das Bauwesen m.b.h." Dr. Stoelting and Partner GmbH was the successor of Dr. Stoelting GmbH. He represents that those companies no longer exist. Respondent also submitted evidence that the company GDB Gesellschaft fur Datenverarbeitungfur das Bauwesen m.b.h. was liquidated on and after December 17, 1987.

[3] At first the Respondent was represented by counsel from this area. Counsel filed a Notice of Withdrawal on October 5, 1988. Respondent represented himself in his submission pursuant to the Order of Default.

[4] The disposal of that computer is not the subject of this proceeding.

[5] In the product description, this data processing system is stated to be designed for mid-sized Intergraph computer graphics configurations and is balanced for the graphics through the addition of specialized Intergraph processors, based on the DEC VAX-11/750. Its purpose is to provide the basic software and hardware for graphics operations, database management and general purpose computation.

To form a complete interactive graphics system ready for production work, one or more graphics workstations, a plotter or off-line plot software, one additional Intergraph disk and a console device must be added. A variety of graphics workstations, alphanumeric terminals, screenplot units, line printers and other peripherals can be added to further increase system utility.

the system then went to Yugoslavia and then to some unknown destination.

Dr. Stoelting indicated that the supplier knew of possible transportation of the equipment to Switzerland. However, there is nothing to support this assertion and it is rejected. That inquiries respecting purchase were made by other parties does not constitute knowledge and/or participation in the unauthorized export. Neither Respondent, the micro-computer dealer, nor the third party ever applied for or obtained the required reexport authorization., However, in a letter of March 5, 1985, Dr. Stoelting indicates that he was aware that the reexport of the system from West Germany would violate the terms of his contract with Intergraph GmbH.

On March 5, 1985, the Dr. Stoelting sent a voluntary declaration to a West German government official concerning falsely declared exports of goods to Switzerland acknowledging that Dr. Stoelting and Partner GmbH had ordered the equipment and software from Intergraph GmbH and detailing how he had received an order to purchase his firm's VAX 11/750 computer from a microcomputer dealer, Mr. Reger. After some negotiations and his agreement to order several additional pieces of equipment to effect graphics modifications, it was determined that the modifications of the older equipment would not be suitable for the intended use. Dr. Stoelting then agreed to order a new VAX 11/750 with the special equipment required to make up the 751 Data Processing System. The prospective purchaser agreed to pay for and take delivery of the two systems, which he apparently did.

Discussion

Respondent apparently became concerned over the legal ramification of his actions, knowing that the system was to be accepted in Munich and sent directly to Zurich. He nevertheless accepted these improper conditions because of his troubled financial situation. The record reflects that he was most cooperative with investigating agents.

Section 374.1 of the Regulations prohibits the reexport of U.S.-origin commodities without specific authorization. Section 387.2 of the Regulations prohibits any person from aiding and abetting actions prohibited by the Regulations. By obtaining the System from Intergraph and then transferring that system to Krammer so that he could reexport it from West Germany without obtaining the required reexport authorization, Respondent aided and abetted the doing of an act which is prohibited by the Regulations, thus violating § 387.2 of the Regulations.

Section 387.4 of the Regulations provides that no person may transfer any commodity which is subject to the Regulations with knowledge or reason to know that a violation of the Act or the Regulation is about to occur with respect to any transaction. The processing system is of U.S.-origin and is therefore clearly subject to the Act and the Regulations. Further, the pertinent provisions of the contract that the Dr. Stoelting entered into with Intergraph show, as do his admitted awareness of those provisions, and the notation on the commercial invoice attached to the air waybill, that he knew or had reason to know that the processing system could not be reexported without authorization from the United States. Therefore, when Dr. Stoelting transferred the processing system to Krammer for immediate reexport to Switzerland without reexport authorization, he had reason to know that a violation of the Regulations was about to occur. Thus the Respondents violated Section 387.4 of the Regulations.

Agency counsel has submitted no evidence regarding any penalties, if any, assessed to other members of this elaborate reexport scheme, including those who actually shipped the system in question to an unknown and unauthorized destination. Agency Counsel has declined the invitation to submit evidence taken, if any, against other principals or co-conspirators. In addition to Mr. Reger who responded to the attempt to sell the "old" computer system and Mr. Krammer who is identified as the exporter of the machines to Switzerland, a Mr. Eggs is identified as the exporter of the equipment to Switzerland.[6]

While the above-mentioned findings are not rebutted by the statements made by Dr. Stoelting in his submission, the effect of this activity has put the Respondents out of business.

In his last filing made on February 17, 1989, Agency Counsel included a licensing determination which indicated that the critical, national security regulated DEX VAX 11/750 computer component of the equipment would have been approved for export to Switzerland and Yugoslavia had the proper licensing request been filed. This suggests that only a procedural violation has been established.

[6] A criminal proceeding is pending in the Oberlandeggericht Munchen File No. 377 JS 12759/85 against Dr. Stoelting. Intergraph has obtained a civil judgment against his company, which is being appealed.

Conclusion

Agency Counsel requests that Dr. Stoelting and his companies be denied for ten years. Respondent argues for a fine. He acknowledges that he did wrong but claims to have had a change of heart and blew the whistle on himself. That is not rebutted. From exhibits and particularly the transcript of a telephone call between a special agent and Dr. Stoelting, it appears that he has been on some so called "gray list" since at least November 1986.

Dr. Stoelting's participation in this entire transaction was at most peripheral. He appears to have been trying to dispose of his business computer in a domestic sale. This disposal was precipitated by the downturn of his business. The attempted sale led to further complication and losses. His company is faced with a judgment in excess of 2.5 million marks and he is awaiting the disposition of criminal charges. The purchasers of the two computer systems apparently made off with the systems and left him with the liabilities. They, not he, effected the export.

Apparently the letter of credit upon which he relied was not honored. His attempted bailout has turned into a scuttling. But he did facilitate an unauthorized reexport. Weighing the quality and effect of his default, I conclude that revocation of export privileges for five years is appropriate with two years of the term suspended. Since he has apparently been denied export privileges since at least early November 1986, according to the Agency's submission, the period of denial should run from November 1, 1986.

Order

I. For a period of 5 years from November 1, 1986, Respondents Dr. Manfred Stoelting, Stoelting GmbH, Dr. Stoelting & Partner GmbH, GDB Gesellschaft fur Datenverarbeitungfur das Bauwesen m.b.h., Blumenstrasse 5, 8190 Wolfratshausen, Federal Republic of Germany, 08171/20840, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing three years from November 1, 1986, the denial of export privileges set forth above shall be

suspended, in accordance with Section 388.16 of the Regulations, for the remainder of the five year period set forth in Paragraph I above, and shall be terminated at the end of that period, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraph VI of this Order are also suspended during the suspension period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly, or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Hugh J. Dolan,

Administrative Law Judge.

Date: February 28, 1989.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-8073 Filed 4-4-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Export Trade Certificate of Review; Stanford S. Smith

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which Certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificate of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00009." A summary of the application follows.

Summary of the Application

Applicant: Stanford S. Smith, including Stanford S. Smith doing business as "Historical and Cultural Tours of America", 6400 South Gessner, Suite 1132, Houston, Texas 77036, Contact: Stanford S. Smith, Telephone: (713) 995-4249.

Application No.: 89-00009.

Date Deemed Submitted: March 23, 1989.

Members (in addition to applicant): None.

Export Trade:

Products

Tourism products, including retail and handicraft products relating to U.S. Indian tribes and U.S. history.

Services

Travel and tourism, including arranging historical and cultural tours, tour packages, guided tours, shopping tours, overnight accommodations and meals; air and ground transportation; freight forwarding; entertainment and amusement; insurance; and financial services.

Export Trade Facilitation Services (as they relate to the export of Products)

Consulting, international market research, advertising and sales promotion, educational services, language translation and interpretation services, state and local government services, management, sales of goods and services, legal assistance, transportation, financial services, foreign exchange, insurance, trade documentation and freight forwarding, marketing, warehousing, communication and processing of foreign orders, and taking title to goods.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: 1. Stanford S. Smith, including Stanford S. Smith doing business as "Historical and Cultural Tours of America" or its agent, may deliver foreign tourists to retail stores that have been selected by Historical and Cultural Tours of America.

2. Historical and Cultural Tours of America may enter into exclusive and confidential agreements with the operators of selected retail stores to:

a. Deliver the foreign tourists to the selected shops; and

b. Receive, in consideration for taking the foreign tourists to the selected shops, a monetary commission on purchases made by the foreign tourists; provided, however, that Historical and Cultural Tours of America will have previously agreed not to convey the foreign tourists to retail stores in competition with the selected stores.

Date: March 30, 1989.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-8043 Filed 4-4-89; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments

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 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 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89-067. *Applicant:* Boston College, 140 Commonwealth Ave., Chestnut Hill, MA 02167. *Instrument:* 2 Computer Interfaces and Software, Models 1401 and 1708. *Manufacturer:* Cambridge Electronic Design, United Kingdom. *Intended Use:* The instruments provide a computer-based control system for presentation of visual stimuli which will be used in studies of visual processing in the retina. Stimuli of varying parameters are generated on the face of the cathode ray tube and brought to focus on the surface of the retina. *Application Received by Commissioner of Customs:* January 24, 1989.

Docket Number: 89-086. *Applicant:* Case Western Reserve University, 2040 Adelbert Road, Cleveland, OH 44106. *Instrument:* Electromagnetic Ground Conductivity Meter, Model EM31-DL. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* The instrument will be used for educational purposes in the university-level course of GEOL 321, Hydrogeology, GEOL 330, Geophysical Field Methods, and GEOL 421, Hydrogeology. *Application Received by Commissioner of Customs:* February 27, 1989.

Docket Number: 89-088. *Applicant:* Cleveland Metropolitan General Hospital, 3395 Scranton Road, Cleveland, OH 44109. *Instrument:* Fluorescence Lifetime Instrument Upgrade. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to upgrade an existing fluorescence lifetime instrument which is being used to measure excited state lifetimes on the nanosecond and microsecond time scales, decays of fluorescence aniosotropy, and time resolved fluorescence spectra. The materials involved are proteins or peptides. In addition, luminescence measurements will be made on lanthanide ion complexes with proteins and peptides. This instrument is also used for training in operation of the lifetime instrument. *Application Received by Commissioner of Customs:* February 24, 1989.

Docket Number: 89-089. *Applicant:* Cuyahoga County Hospital Foundation, 3395 Scranton Road, Cleveland, OH 44109. *Instrument:* Photomultiplier Tube. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to upgrade a fluorometer already being used for scientific purposes. The red sensitive phototube is necessary to explore the fluorscent characteristics of phthalocyanines. Fluorescence characterization is extremely important for developing defined membrane vesicles and partitioning coefficients. *Application Received by Commissioner of Customs:* February 27, 1989.

Docket Number: 89-090. *Applicant:* University of Arizona, Department of Anatomy, 1501 North Campbell Avenue, Tucson, AZ 85724. *Instrument:* Intravital Light Microscope with Accessory Components. *Manufacturer:* E. Leitz, West Germany. *Intended Use:* The instrument will be used to continue collaborative research studies on the effects of bacterial endotoxin on the microcirculation of blood in the livers and spleens of anesthetized mice, rats and guinea pigs. The variety of experiments requiring direct intravital microscopic examinations will include the effect on microvascular cellular function of endotoxin alone and in combination with several cytokines and eicosinoids. *Application Received by Commissioner of Customs:* February 27, 1989.

Docket Number: 89-091. *Applicant:* University of Alabama at Birmingham, Purchasing Department, UAB Station, Birmingham, AL 35294. *Instrument:* 3-Dimensional Micromanipulators with Accessories, Models MX-2R and MX-2L. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* The instruments are used to manipulate electrodes which record signals from inside single nerve fibers. These signals are used to evaluate the performance of nerves in animal models of certain diseases. *Application Received by Commissioner of Customs:* February 28, 1989.

Docket Number: 89-092 *Applicant:* Washington University, School of Medicine, 4559 Scott Avenue, St. Louis, MO 63110. *Instrument:* Microelectrode Manipulator and Stepper Drive. *Manufacturer:* AB GE-KA

Finmekaniska, Sweden. *Intended Use*: The instrument will be used for neurophysiological investigations which will be made on single cells in the central nervous system of experimental animals in order to study their physiological properties. The objectives of the experiments will be to understand the mechanisms of sensori-motor processing in the nervous system. *Application Received by Commissioner of Customs*: February 28, 1989.

Docket Number: 89–093 *Applicant*: University of Florida, Department of Pediatric Genetics, Box J–296, JHMHC, Gainesville, FL 32610–0296. *Instrument*: Rapid Karyotyping Analysis System, Model RK1. *Manufacturer*: Image Recognition Systems, United Kingdom. *Intended Use*: The instrument will be used to both increase the volume of patient services and perform research on changes due to differences in cellular constitution which require a larger number of cells to be scanned. Search for environmental causes of birth defects and carcinogens may be approached with such an instrument. In addition the instrument will be used for educational purposes in the courses BCH 7979—Advanced and GMS 7979—Advanced Research. *Application Received by Commissioner of Customs*: February 28, 1989.

Docket Number: 89–094 *Applicant*: University of Hawaii at Manoa, Hawaii Institute of Geophysics, 2525 Correa Road, HIG #114, Honolulu, HI 96822. *Instrument*: Ultrasonic Interferometer *Manufacturer*: Anutech Pty., Ltd., Australia. *Intended Use*: The instrument will be used for studies of single-crystal and polycrystalline specimens of natual and synthetic minerals (silicates and oxides), metals, alloys and related ceramic materials of geophysical/geological importance. Experiments will involve measurement of ultrasonic celocities (and elastic moduli) in well-prepared mineral samples as a function of pressure, temperature or both. In addition, the instrument will be used for education purposes in the courses Physics of the Earth's Interior (GG 701), High-Pressure Mineralogy (GG 660V), Solid State Geophysics (GG 653) and Topics in High Pressure-Temperature Research (GG 660V). *Application Received by Commissioner of Customs*: March 2, 1989.

Docket Number: 89–095. *Applicant*: Bellevue Hospital, First Avenue at 27th Street, New York, NY 10016. *Instrument*: Electron Microscope, Model EM 10CA. *Manufacturer*: Carl Zeiss, West Germany. *Intended Use*: The instrument will be used for diagnostic work in a pathology laboratory. Ultrastructural studies are an essential part of the diagnostic work-up in cases such as tumors, viral infections and metabolic diseases. Of particular interest is the identification of HIV particles in placental tissue which will allow the early diagnosis of infected children. The instrument will also be used to teach ultrastructural pathology to residents in pathology during their second or third year of training. *Application Received by Commissioner of Customs*: March 2, 1989.

Docket Number: 89–096 *Applicant*: University of Nebraska Medical Center, Meyer Children's Rehabilitation Institute, 444 South 44th Street, Omaha, NE 68131. *Instrument*: Automated Chromosome Analysis System, Model RK2E. *Manufacturer*: Image Recognition Systems, United Kingdom. *Intended Use*: The instrument will be used for studies of human tissue in investigations directed toward determining the etiology of malignancies as well as investigating cases of birth defects. *Application Received by Commissioner of Customs*: March 3, 1989.

Docket Number: 89–097. *Applicant*: University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument*: Stopped Flow Instrument, Model SFA–11. *Manufacturer*: Hi-Tech Scientific Ltd., United Kingdom. *Intended Use*: The instrument will be used for measuring fluroescence lifetime of the protein at various times during the folding reaction. *Application Received by Commissioner of Customs*: March 3, 1989.

Docket Number: 89–098. *Applicant*: Woods Hole Oceanographic Institution, Woods Hole, MA 02543 *Instrument*: Seasoar Vehicle with Hydraulics, Controller, Cable and Winch. *Manufacturer*: Chelsea Instruments, United Kingdom. *Intended Use*: Observational studies of spatial and temporal variability of the mixed layer and upper thermocline. The principal use of the instrument will be to observe the small scale structure in the upper 450 meters of the ocean in a nearly continuous fashion. *Application Received by Commissioner of Customs*: March 3, 1989.

Docket Number: 89–099. *Applicant*: University of Oregon, Eugene, OR 97403. *Instrument*: Electron Microprobe, Model CAMEBAX SX50. *Manufacturer*: Cameca Instruments, France. *Intended Use*: The instrument will be used for studies of rocks, minerals, synthetic inorganic compounds and materials. The experiments will consist of measurement of x-ray, secondary and backscattered electron intensities emitted by samples when bombarded by a focused beam of electrons. The objectives of these investigations will be to determine the mode of formation and chemical evolution of rocks and minerals through chemical analysis and identification of chemical impurties and distribution of impurities in synthetic materials used in the materials sciences. In addition, the instrument will be used for hands-on operation and one-on-one instruction with the student operating the instrument and obatining data from samples of interest to the student's research. *Application Received by Commissioner of Customs*: March 6, 1989.

Docket Number: 89–100. *Applicant*: University of Houston, Purchasing Department, 4800 Calhoun Road, Houston, TX 77204–2770. *Instrument*: Dual Beam Low-Energy Ion Implanter. *Manufacturer*: VSW Scientific Instruments Ltd., United Kingdom. *Intended Use*: The instrument will be used in experiments involving deposition of thin solid films and measurement of their surface and bulk properties. The objectives are to understand the fundamental mechanism of film deposition from low-energy ion beams and to use this knowledge to produce films with unique properties, e.g. diamond structures. In addition, the instrument will be used to train students how to collect, analyze and interpret deposition data on metals, ceramics, superconductors, semiconductors and other solids. *Application Received by Commissioner of Customs*: March 8, 1989.

Docket Number: 89–101. *Applicant*: Ohio State University, Byrd Polar Research Center, 125 South Oval Mall, Columbus, OH 43210. *Instrument*: Light Element Isotope Ratio Mass Spectrometer, Model Delta E. *Manufacturer*: Finnigan MAT, West Germany. *Intended Use*: The instrument will serve as the state-of-the-art focal point for a number of projects in the general area of research of paleoclimatic reconstruction from polar and alpine ice cores. *Application Received by Commissioner of Customs*: March 8, 1989.

Docket Number: 89–102. Yale University, P.O. Box 3333, 333 Cedar Street, New Haven, CT 06510. *Instrument*: Lab Interface and Software for Computer, Models CED 1401 and Spike 2. *Manufacturer*: Cambridge Electronic Design Ltd., United Kingdom. *Intended Use*: The instrument will be used to collect and analyze electrical events generated by the nervous system.

The phenomena to be studied are low intensity, short duration electrical events known as action potentials. Experiments will be conducted involving the recording of action potentials from the nervous system of animals following the presentation of stimuli to the animal. *Application Received by Commissioner of Customs:* March 9, 1989.

Docket Number: 89–103. *Applicant:* State University of New York, Health Science Center at Syracuse, Department of Anatomy and Cell Biology, 750 East Adams Street, Syracuse, NY 13210. *Instrument:* Freeze Fracture Apparatus, Model CFE–50. *Manufacturer:* Cressington Scientific Instruments, United Kingdom. *Intended Use:* This instrument will be used to study the structure of biological cells and tissues. Included among these will be contractile/cytoskeletal/membrane proteins in developing myocytes, intestinal smooth muscle, cochlear hair cells, parietal eye, electronic coupling, membranes of neuromuscular synapse, alga cilia, cytoskeleton of developing neurites, developing and adult myocardium. All of the materials and phenomena will be biological in origin and will be taken from a variety of tissues and organs derived from animals. In addition, the instrument will be used to introduce students to modern techniques in three-dimensional deep-tech immuno-electron microscopy in the course "Methods in Biological Electron Microscopy". *Application Received by Commissioner of Customs:* March 10, 1989.

Docket Number: 89–104. *Applicant:* University of Maryland, Physics and Astronomy Department, Physics Building #081, c/o Traffic Management Building #206, Rossborough Lane, College Park, MD 20742. *Instrument:* (FTIR) Spectrometer and Data System, Model DA3. *Manufacturer:* Bomem Inc., Canada. *Intended Use:* The instrument will be used for fundamental spectroscopic studies of solid state materials (e.g., semiconductors; HgCdTe, InSb, GaAs, InAs, and PbTe; high temperature and conventional superconductors; magnetic materials, etc.). Experiments will consist of reflectance, transmission photo luminescence and photo conductance on solids as a function of temperature down to 0.5 K and magnetic fields up to 11 T. The objective of these investigations is to obtain a fundamental understanding of the basic physics of important technological and interesting scientific materials, including body effects, collective excitations, excitons, and Quantum confinement effects. *Application Received by Commissioner of Customs:* March 14, 1989.

Docket Number: 89–105. *Applicant:* Oregon State University, Botany and Plant Pathology Department, Cordley Hall, Room 2082, Corvallis, or 97331–2902. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips The Netherlands. *Intended Use:* The instrument will be used for studies of virus, bacteria, plant and animal tissues, foods, minerals, engineered materials (e.g. polymers, ceramics, metals, semi-conductors). The data obtained will contribute to studies of biological development and disease processes, the microgeology of soils and sediments, and the nature behavior, and failure mechanisms of engineered substances. In addition, the instrument will be used for educational purposes in the course BI466, Electron Microscopy. *Application Received by Commissioner of Customs:* March 14, 1989.

Docket Number: 89–107. *Applicant:* U.S. Department of the Interior, Department of Geological Survey, MS977, 345 Middlefield Road, Menlo Park, CA 94025. *Instrument:* Aqua Radon Meter, Model E2M–101. *Manufacturer:* Aloka Co., Ltd., Japan. *Intended Use:* Analysis of recorded radon data together with other geophysical and geochemical data in search for premonitory changes useful for earthquake prediction. *Application Received by Commissioner of Customs:* March 14, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–8074 Filed 4–4–89; 8:45 am]

BILLING CODE 3510–DS–M

Rutgers University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories

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 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–248. *Instrument:* Strut Buckling Apparatus, Model HST 15.

Docket Number: 88–249. *Instrument:* Torsion Tester.

Applicant: Rutgers University, Piscataway, NJ 08854.

Manufacturer: Hi-Tech Scientific, Ltd., United Kingdom.

Intended Use: See notice at 53 FR 32420, August 25, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicant. In each case, the instrument and accessory were made by the same manufacturer.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–8075 Filed 4–4–89; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 90375–9075]

Cooperative Research and Development Opportunity in Ceramic Matrix Composites With the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks industrial and governmental parties interested in entering into a cooperative research program with NIST on ceramic matrix composites. This program would be undertaken within the scope and confines of the Federal Technology Transfer Act of 1986, which provides Federal laboratories, including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program. Contributions from other participants may include funding, personnel, facilities and equipment. This is not a grant program.

DATE: Interested parties should contact NIST at the address or telephone number shown below no later than June 5, 1989.

ADDRESS: Dr. David Cranmer, NIST Ceramics Division, Room A329, Materials Building, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. David Cranmer, NIST Ceramics Division, (301) 975–5753.

SUPPLEMENTARY INFORMATION: NIST seeks qualified industrial and

governmental parties interested in entering into a cooperative research program on ceramic matrix composites with the NIST Ceramics Division. Because of the unique properties of ceramic matrix composites, including damage tolerance, these materials are becoming increasingly important for a variety of applications. The purpose of the NIST program is to develop an understanding of the mechanical response of these materials at room and elevated temperatures in order to take advantage of their unique features in new and existing systems. The results of the program will be translated into specific standards, standard test techniques, and standard reference data which may be used by industry and government, especially systems designers.

The specific near-term goals of the program are to elucidate fracture and deformation mechanisms, to understand the deformation and fracture properties that govern mechanical response at high temperatures, to understand the relationship between processing variables and material microstructure, and to investigate and manipulate the processing-property relations in order to relate the properties to industrial applications.

The reinforcing phase may be particulate, whisker, or fiber in any of a variety of matrices. Typical materials include large SiC fiber reinforced glasses, small SiC fiber reinforced glasses and glass ceramics, SiC whisker reinforced aluminum oxide and silicon nitride, and zirconia reinforced ceramics.

One portion of the research program will focus on understanding the relationships between processing, material microstructure, and material properties in ceramic composite materials reinforced with particulates, whiskers, and/or fibers. The model material chosen to demonstrate the validity of this approach is SiC whisker reinforced aluminum oxide. This material was chosen because of the many published studies on it and because it has many current and potential applications including heat engines, cutting tools, electronic substrates, and heat exchangers. Additional matrices and reinforcements will be examined as the program evolves.

Specific processing variables include but are not limited to whisker size, amount of reinforcement, hot processing temperature, hot pressing temperature, and hot pressing time. The microstructure will be characterized in terms of matrix grain size, reinforcement distribution and size, and pore size and distribution. The material properties of interest include but are not limited to hardness, strength,, toughness, and reliability (Weibull modulus).

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502), which authorizes government owned and operated Federal laboratories, including NIST, to enter into cooperative research and development agreements (CRDAs) with qualified parties. Under the law, CRDA may provide for contributions from the Federal laboratory of personnel, facilities and equipment, but not direct funding. Contributions from other participants may include funding, personnel, facilities and equipment. This is not a grant program. All data made available to or develop at NIST will be considered to be in the public domain and intended for publication. This program is covered by 15 CFR Part 26, Nonprocurement Debarment and Suspension.

Raymond G. Kammer,

Acting Director.

Date: March 30, 1989.

[FR Doc. 89–8010 Filed 4–4–89; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 90376–9076]

Cooperative Research and Development Opportunity in Optical Fiber Sensors With the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks industrial parties interested in entering into a cooperative research program with NIST on optical fiber sensors. This program will be undertaken within the scope and confines of the Federal Technology Transfer Act of 1986, which provides Federal laboratories, including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program. Contributions from other participants may include funding, personnel, facilities and equipment. This is not a grant program.

DATE: Interested parties should contact NIST at the address or telephone number shown below no later than May 5, 1989.

ADDRESS: Dr. Gordon W. Day, National Institute of Standards and Technology, 325 Broadway, Boulder, Colorado 80303.

FOR FURTHER INFORMATION CONTACT: Dr. Gordon W. Day, (303) 497–5204.

SUPPLEMENTARY INFORMATION: NIST seeks qualified industrial parties interested in entering into a cooperative research program on optical fiber sensors. NIST has developed techniques for producing optical fiber current sensors that can be, variously, smaller, faster, more sensitive, and/or less expensive than previously possible. Potential areas of application include the electric power industry, EMP/EMI testing, and general electronic instrumentation. The technology developed to date is, or will be placed, in the public domain.

To exploit the commercial potential of these techniques, NIST would like to enter into a cooperative research and development program with a company or companies to develop instruments based on this technology. NIST would like to work with an established company or companies that have significant expertise in the manufacture of optical fiber and related components, in producing commercial optical electronic instrumentation, and in marketing to the appropriate commercial sectors. Firms should be prepared to invest adequate resources in the collaboration and be firmly committed to bringing a product to the market.

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502), which authorizes government owned and operated federal laboratories, including NIST, to enter into cooperative research and development agreements (CRDAs) with qualified parties. Under the law, a CRDA may provide for contributions from the Federal laboratory of personnel, facilities and equipment, but not direct funding. Contributions from other participants may include funding, personnel, facilities and equipment. This is not a grant program. This program is covered by 15 CFR Part 26, Nonprocurement Debarment and Suspension.

Raymond G. Kammer,

Acting Director.

Date: March 30, 1989.

[FR Doc. 89–8011 Filed 4–4–89; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 50600-9005]

Approval of Federal Information Processing Standards Publication 156, Information Resource Dictionary System (IRDS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce

ACTION: .The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 156.

SUMMARY: On August 13, 1985, notice was published in the **Federal Register** (50 FR 32610) that a Federal Information Processing Standard for IRDS was being proposed for Federal use.

Th written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective September 25, 1989.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Dr. Alan H. Goldfine, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3252.

Raymond G. Kammer,
Acting Director.
Date. March 30, 1989.

Federal Information Processing Standards Publication 156: Announcing the Standard for the Information Resource Dictionary System

Federal Information Processing Standards Publication (FIPS PUBs) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Information Resource Dictionary System (IRDS) (FIPS PUB 156).

2. *Category of Standard.* Software Standard, Data Management Applications.

3. *Explanation.* This publication announces the adoption of the American National Standard Information Resource Dictionary System (IRDS) as a Federal Information Processing Standard (FIPS). The IRDS specifies a computer software system that provides facilities for recording, storing, and processing descriptions of an organization's significant data and data processing resources. The IRDS includes the functions performed by data dictionary systems or information repositories. The standard specifies two user interfaces: the full syntax and semantics of a Command Language, and the semantics of a menu-driven Panel Interface. The purpose of the standard is to promote portability of valuable information resources within and among Federal agencies. The standard is the reference authority for use by implementors in developing information resource dictionary systems, and for use by other computer professionals in understanding the precise snytactic and semantic rules of the standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology.

6. *Cross Index.*

a. American National Standard Information Resource Dictionary System, ANSI X3.138-1988.

7. *Related Documents.*

a. Federal Information Resource Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

b. ISO 8824, "Abstract Syntax One."

c. ISO 8825, "ASN.1 Basic Encoding Rules."

d. FIPS PUB 126, "Database Language NDL."

e. FIPS PUB 127, "Database Language SQL."

f. National Bureau of Standards IR 88-3700, "A Technical Overview of the Information Resource Dictionary System (Second Edition)."

g. National Bureau of Standards IR 88-3701, "Using The Information Resource Dictionary System Command Language. (Second Edition)"

h. National Bureau of Standards Special Publication 500-152, "Guide to Information Resource Dictionary System Applications: General Concepts and Strategic Systems Planning."

8. *Objectives.* The primary objectives of this standard are:

- To improve identification of existing, valuable information resources that can be used by others in the same organization or shared with other organizations.
- To help reduce unnecessary development of computer programs when suitable programs already exist.
- To simplify software and data conversion through the provision of consistent documentation.
- To increase portability of acquired skills, resulting in reduced personnel training costs.

9. *Applicability.* An information resource dictionary system is intended to serve as the central repository of current and accurate information about an organization's data. Implementations of this standard are required in information resource management applications that are either developed or acquired for Federal Government use. Such applications include:

- Development, modification, and maintenance of manual and automated information systems throughout the life cycle.
- Support to an agency-defined data element standardization program.
- Support to records, reports, and forms management, spanning the range from non-automated to fully-automated environments.
- Management of schema and subschema definitions for database management systems (BMBSs).

The use of this standard is strongly recommended for all applications traditionally served by data dictionary systems, data dictionary/directory systems, and similar repository software.

The specifications of this standard are applicable to dictionary software in both of the following categories:

• Dictionary systems that are free-standing, and hence not dependent on the presence of other software. These systems may or may not provide interfaces to one or more database management systems.

• Dictionary systems that are designed to co-exist with particular database management systems. This type of dictionary system is dependent on the DBMS.

The specifications of this standard are *not* applicable to those dictionary systems embedded within a database management system. This is the case when the dictionary function is part of the data definition function of the DBMS, and the dictionary data is stored as part of the database for the DBMS.

Nonstandard interfaces to this standard should be used only when the application cannot reasonably be implemented using the standard Command Language or Panel Interfaces.

Nonstandard operations or functions should be used only when the needed operation or function cannot be reasonably implemented with standard commands or panels. A needed Command Language or Panel Interface feature not provided by this standard should, to the extent possible, be acquired as an addition to an IRDS that otherwise conforms to the specifications of this standard. Although nonstandard features can be useful, their use may make the interchange of IRDS applications and data, and the future conversion to a revised standard, more difficult and costly.

10. *Specifications.* This standard adopts the American National Standard Information Resource Dictionary System (IRDS), ANSI X3.138–1988. The ANS document defines the scope of the specifications, the syntax and semantics of the IRDS Command Language, the semantics of the IRDS Panel Interface, and requirements for a conforming implementation.

ANSI X3.138–1988 is organized into seven Modules: (1) Core Standard; (2) Basic Functional Schema; (3) IRDS Security; (4) Extensible Life Cycle Phase Facility; (5) Procedure Facility; (6) Application Program Interface; (7) Entity List. All the specifications of ANS X3.138–1988 apply to this standard with one exception: In the chapter "Requirements for a Conformant Implementation" of ANSI X3.138–1988, it is stated that each of Modules 2 through 7 are optional. All implementations of the FIPS IRDS, however, *must* include Module 2, the Basic Functional Schema.

11. *Implementation.* The implementation of this standard involves three areas of consideration: Acquisition of implementations, Interpretation of the standard, and Validation of implementations.

11.1 *Acquisition of Implementations.* This standard is effective September 25, 1989. Information resource dictionary systems (or data dictionary/directory systems) acquired for Federal use after this date should conform to the FIPS IRDS. Implementation of this FIPS applies when IRDS software is developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programing services.

A transition period provides time for industry to produce information resource dictionary systems conforming to the standard. The transition period begins on the effective date of the standard and continues for eighteen (18) months thereafter. The provisions of this publication apply to all orders placed after the date of this publication; however, an information resource dictionary system not conforming to this standard may be acquired for interim use during the transition period.

11.2 *Interpretation of this standard.* Resolution of questions regarding the implementation and applicability of this FIPS will be provided by NIST. These questions, and all others concerning the technical content and specifications of the FIPS IRDS, should be addressed to: Director, National Computer Systems Laboratory, ATTN: FIPS IRDS, National Institute of Standards and Technology, Gaithersburg, MD 20899.

11.3 *Validation of Implementations:* A suite of automated validation tests for implementations is currently under development. The suite will be made available when it is completed. For more information on validation tests, contact: Director, National Computer Systems Laboratory, ATTN: Software Standards Testing Program, National Institute of Standards and Technology, Gaithersburg, MD 20899.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specification document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 156 (FIPS PUB 156), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 89–8012 Filed 4–4–89; 8:45 am]

BILLING CODE 3510–CN–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 New England Bio Labs, having a place of business in Beverly, MA., an exclusive right in the United States to practice the invention entitled "Novel Restriction Endonuclease," U.S. Patent Application SN 7–169,487 and 7–260,829. The invention provides a diagnostic test for mycoplasma. The patent right to this invention will be 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 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 proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Copies of the instant patent applications may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–8016 Filed 4–4–89; 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 Pharmatec, Inc. having a place of business in Alachua, FL, an exclusive right in the United States to practice the invention entitled "Administration of Steroid Hormones," U.S. Patent Application SN 7–094,597, The patent rights to this invention will be 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 proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–8017 Filed 4–4–89; 8:45 am]

BILLING CODE 3510–04–M

National Oceanic and Atmospheric Administration

Permit; Pacific Coast Groundfish Fishery

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

application and request for comments.

SUMMARY: This notice acknowledges receipt of an application for an experimental fishing permit to experimentally harvest groundfish on domestic trawl vessels using detachable codends of various mesh sizes in the exclusive economic zone off the coasts of Washington, Oregon, and California. If granted, this permit would allow fishing practices which otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Management Plan and implementing regulations.

DATE: Comments on this application will be received until May 1, 1989.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140; or Rodney R. McInnis, 213–514–6199.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application to harvest groundfish with bottom trawl gear using detachable codends of various mesh sizes in the exclusive economic zone off the coasts of Washington, Oregon, and California was received on March 23, 1989. The application represents the third of four phases of the West Coast Groundfish Mesh Size Study, and the second of two years of field work which began in 1988. The major goal of the experimental fishery is to compare the effectiveness of different mesh size gear regulations with the current trip limit regime implemented under the FMP. Current groundfish regulations at 50 CFR 663.26 prohibit the use of a mesh size smaller than four and one-half inches in bottom trawls and prohibits detachable codends if the vessel is carrying a net with smaller than four and one-half inch mesh. In addition, in order to obtain meaningful results in comparing gear regulations with trip limits, the applicant is requesting that the current trip limits and groundfish quota restrictions be waived for the duration of the experiment. An EFP, if granted, would authorize the use of detachable codends of various mesh sizes and would waive current trip limits and groundfish quota restrictions for the time, area, and vessels specified.

The applicant proposes to conduct no more than 50 experimental fishing trips using up to 50 domestic trawl vessels operating out of various ports in Washington, Oregon, and California from June 1, 1989, to December 31, 1989. However, no more than six vessels will be involved in the experimental fishing at any one time and each vessel will have an observer employed by the University of Washington aboard. The proposed experimental fishing will utilize bottom otter trawls with up to five detachable codends of different mesh sizes ranging from three inches up to six inches or more. Three general types of groundfish fishing strategies are proposed in the experiment: (1) Use of the bottom trawls with roller gear targeting on a mixture of rockfish species (primarily *Sebastes* complex); (2) use of bottom trawls with mud gear targeting on the slope assemblage of groundfish consisting primarily of dover sole, sablefish, and *Sebastolobus* sp.; and (3) use of bottom trawls with mud

gear targeting on the shelf assemblage of groundfish consisting primarily of a mixture of flatfish species. The application indicates that the majority of the experimental harvest will be within the current groundfish trip limits. However, some harvest in excess of the trip limits for sablefish, yellowtail rockfish, and the *Sebastes* complex are expected by the applicant in order to obtain sufficient information on the catch performances of different mesh sizes to contrast with the effects of trip limits.

In 1988 an EFP was issued for Phase II of the West Coast Groundfish Mesh Size Study. The 1989 EFP application is essentially the same as the 1988 EFP application, with the exception that one additional bottom trawl fishing strategy targeting on the shelf assemblage of groundfish has been added. In 1988 there were 26 trips conducted, resulting in the following excess harvest over trip limits: widow rockfish 37.7 metric tons (mt); Pacific ocean perch 5.7 mt; sablefish 52.2 mt; *Sebastes* complex 87.8 mt; yellowtail rockfish 119.2 mt. If the maximum of 50 trips takes place in 1989, the applicant estimates the following excess harvest over trip limits: widow rockfish 75.0 mt; Pacific ocean perch 10.0 mt; sablefish 100.0 mt; *Sebastes* complex 170.0 mt; yellowtail rockfish 230.0 mt.

The application will be discussed at the April 4–7, 1989, public meeting of the Pacific Fishery Management Council in Portland, Oregon. The decision to approve or deny issuance of an EFP will be based on a number of considerations including recommendations made by the Council and comments received from the public. A copy of the application is available for review at the NMFS, Northwest Regional Office, address above.

Authority: (16 U.S.C. 1802 *et seq.*)

Dated: March 30, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–8007 Filed 3–31–89; 10:37 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management, Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council and its Standing Committees will hold public meetings on April 10–12, 1989, at the Rainmaker Hotel, Port of Call Room, Utulei, American Samoa. The Council will meet on April 11 at 1 p.m., and continue the meeting on April 12 at 9 a.m. The Standing Committees will meet on April 10 at 11 a.m.

The Council will hear routine fisheries reports from State, Territorial and Federal Government representatives on the Council, as well as from private sector Council members from Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The status of fishery management plans (FMPs) for crustaceans, bottomfish and seamount groundfish, and precious corals will also be discussed.

The Council will be briefed on the status of the annual reports for the Crustacean, the Bottomfish and Seamount Groundfish, and the Pelagics FMPs, the status of the foreign drift gillnet fishery in the North and South Pacific, and will review the draft mission and goals statement for 1990–1995. The Council also will begin program planning activities, discuss general administrative matters, the reauthorization of the Magnuson Fishery Conservation and Management Act, as well as other routine Council business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: March 31, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–8069 Filed 4–4–89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contract the DoDDS ACDE coordinator.

DATES: April 21, 1989, 9 a.m. to 5 p.m.; April 22, 1989, 9 a.m. to 4:00 p.m..

ADDRESS: April 21, 1989, The Bull Hotel, Oxford Road, Gerrards Cross, Bucks, England SL9–7PA.

April 22, 1989, London Central High School, High Wycombe Air Station, Daws Hill Lane, High Wycombe, Bucks, England HP11–1PZ.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Vansuch, DoDDS Atlantic Region, APO NY 09241–0005, Telephone: 44–1–868–2321 or Ms. Marilyn Witcher, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331–1100, Telephone: (202) 325–0867.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Pub. L. 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Pub. L. 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes information on the School Report Card (parent survey), the teacher appraisal system, the student teaching program, programs to combat teenage alcohol abuse, foreign language, weighted grading, partental communication, and responses to the recommendations made by the Council during its January meeting.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 31, 1989.

[FR Doc. 89–8019 Filed 4–4–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Availability of the Final Programmatic Environmental Impact Statement for the Biological Defense Research Program

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability of final environmental impact statement for the Biological Defense Research Program.

SUMMARY: In the April 8, 1987, Notice of Intent, the Department of the Army stated that, as executive agent for the Department of Defense, it is responsible for the ongoing conduct of research and product development in the biological defense field. The Biological Defense Research Program involves research and product development in equipment, devices, drugs, substances, and biologics that are used to detect biological substances, protect soldiers from the adverse effects of biological substances, treat exposed individuals, and decontaminate exposed individuals, areas and equipment. The work is being carried out at a number of Government and university laboratories throughout the country.

The proposed action for EIS evaluation purposes is the continuation of the ongoing program in its current form. Alternatives considered to the proposed action for consideration in the EIS are:

(1) Modification in program scope and

(2) Modification in program implementation.

The final EIS for the Biological Defense Research Program is now available for public review. A copy of the document may be obtained by contacting Mr. Charles Dasey at the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD-PA (Mr. Charles Dasey), Fort Detrick, MD 21701-5012.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety, & Occupational Health) OASA (I&L).

[FR Doc. 89-8034 Filed 4-4-89; 8:45 am]

BILLING CODE 3710-08-M

Office of the Assistant Secretary

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: April 25-26, 1989.

Time of Meeting: 0800-1700 hours, April 25, 0800-1300 hours, April 26.

Place: Fort Monmouth, NJ.

Agenda: The Army Science Board Ad Hoc Subgroup on the M-1 Tank Product Improvemnt Program will hold its third meeting for the purpose of reviewing material and information obtained during prior meetings, and to draft a report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at 202-695-3039 or 695-7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary.

[FR Doc. 89-8097 Filed 4-4-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-297-000 et al.]

Arkansas Power & Light Company, *et al.*; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 28, 1989

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Company

[Docket No. ER89-297-000]

Take notice that on March 8, 1989, Arkansas Power & Light Company (AP&L) tendered for filing redetermined transmission and distribution rates, a revenue comparison and supporting workpapers concerning the Hydroelectric Power Transmission and Distribution Service Agreement between AP&L and the City of North Little Rock, Arkansas.

AP&L requests that the redetermined rates supercede the currently effective rates and that they become effective for service on and after March 1, 1989, subject to refund.

Comment date: April 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER89-264-000]

Take notice that on March 1, 1989, Arkansas Power & Light Company (AP&L) tendered for filing revenue comparisons and supporting workpapers concerning the Transmission Service Agreement between AP&L and the City of Hope, Arkansas.

AP&L requests that the redetermined rate supercede the currently effective rate and that it become effective for service on and after March 1, 1989, subject to refund, in accordance with the provisions of the Agreement.

Comment date: April 11, 1989, in accordance with Standard Paragraph E at the end of this document.

3. Florida Power & Light Company

[Docket No. ER89-266-000]

Take notice that on March 6, 1989, Florida Power & Light Company (FP&L) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 100 between FP&L and Seminole Electric Cooperative, Inc.

FP&L requests an effective date of March 1, 1989.

Comment date: April 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Company

[Docket No. ER-89-268-000]

Take notice that on March 7, 1989, Minnesota Power & Light Company (MP&L) tendered for filing a Notice of Cancellation of Rate Schedule FPC No. 112, Supplement No. 17 to FPC No. 112 (Schedule 96 to Stuntz Cooperative Light & Power Association) and Supplement No. 1 to Supplement No. 17.

MP&L proposes an effective date of February 27, 1989.

Comment date: April 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Arkansas Power & Light Company

[Docket No. ER89-278-000]

Take notice that on March 10, 1989, Arkansas Power & Light Company (AP&L) tendered for filing a summary of redetermined rates for customers, and revenue comparisons, concerning the Power Coordination, Interchange and Transmission Service Agreements between AP&L and Conway, West Memphis, and Osceloa, Arkansas; Campbell and Thayer, Missouri; City Water & Light Plant of Jonesboro, Arkansas and Arkansas Electric Cooperative Corporation.

Comment date: April 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER89-283-000]

Take notice that on March 17, 1989, Kansas City Power & Light Company (KCPL) tendered for filing an initial rate schedule for Transmission Service Provided to the City of Marshall, Missouri—Service Schedule I–MPA (KCPL Rate Schedule FPC No. 83). KCPL states that the rates for the service covered by the above-mentioned schedule are similar to rates for other customers with similar service.

Comment date: April 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER89-142-000]

Take notice that on March 20, 1989 Public Service Company of New Mexico, in response to a directive from the Director, Division of Electric Power Application Review, filed an amendment to its previous filing in this docket to provide additional cost support data.

Copies of the amendment to filing were served upon all persons receiving the original filing and on all entities which have petitioned to intervene in this docket.

Comment date: April 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. PacifCorp, Doing business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER89-284-000]

Take notice that PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company, on March 20, 1989, tendered for filing, a Revised Exhibit A, dated December 1, 1988 to the February 25, 1976 Transmission Agreement (PacifiCorp's Rate Schedule FPC No. 123), between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State)

Exhibit A to the Transmission Agreement is revised annually in accordance with Article 6 (b) of the Transmission Agreement, and specifies the projected maximum integrated demand in kilowatts which Tri-State desires to have transmitted to defined Points of Delivery for a four year rolling period.

PacifiCorp requests an effective date of September 30, 1988, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were supplied to Tri-State and the Wyoming Public Service Commission.

Comment date: April 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8085 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

Hydroelectric Application Filed with the Commission

March 31, 1989

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Filing:* Transfer of License.
b. *Project No.:* 2899-006.
c. *Date Filed:* February 28, 1989.
d. *Applicants:* Twin Falls Canal Company, North Side Canal Company, Ltd. and Idaho Power Company.
e. *Name of Project:* Milner Hydroelectric Project.
f. *Location:* On the Snake River in Twin Falls, Cassia, Jerome, and Minidoka Counties, Idaho.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. *Applicant Contacts:* Mr. John A. Rosholt, Twin Falls Canal Company, North Side Canal Company, Ltd., 142 Third Avenue North, P.O. Box 1906, Twin Falls, ID 83303, (208) 734-0700. Mr. Robert W. Stahman, Idaho Power Company, 1220 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 383-2676.
i. *FERC Contact:* Thomas Dean, (202) 376-9562.
j. *Comment Date:* April 20, 1989.
k. *Description of Application:* A hydropower license was issued to Twin Falls Canal Company and North Side Canal Company, Ltd. (licensees), on December 15, 1988, to construct, operate, and maintain the Milner Hydroelectric Project. The licensees intend to add as a third entity to the license, Idaho Power Company, to effectuate the existing contractual relationship between the applicants.
l. This notice also consists of the following standard paragraphs: B & C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8086 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1065-000, et al.]

United Gas Pipe Line Company, et al. Natural gas certificate filings

March 29, 1989.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket Nos. CP89–1065–000]

Take notice that on March 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1065–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing, Inc. (Texaco), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United States that pursuant to an Interruptible Gas Transportation Agreement, dated July 22, 1988, as amended on January 24, 1989, it would transport a maximum daily quantity of 103,000 MMBtu. United further states that it would utilize existing facilities to provide the proposed transportation service.

United states that it commenced the transportation of natural gas for Texaco on January 30, 1989, as reported in Docket No. ST89–2521–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (19 CFR 284.223(a)).

Comment date: May 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–1068–000]

Take notice that on March 23, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188 filed in Docket No. CP89–1068–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips 66 Natural Gas Company (Phillips), under the authorization issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Phillips, a processor of natural gas, pursuant to an interruptible transportation agreement IT–1 dated March 9, 1989 (transportation agreement number 69483). The term of the transportation agreement is for two years from the date of initial delivery, and month to month thereafter unless terminated upon 30 days prior written notice to the other party. Northern proposes to transport on a peak day up to 45,000 MMBtu; on an average day up to 33,750 MMBtu; and on an annual basis 16,425,000 MMBtu of natural gas for Phillips. Northern proposes to receive the subject gas from Phillips in Midland County, Texas, for redelivery to Phillips at a point in Midland. Northern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on January 20, 1989, as reported in Docket No. ST89–2219–000.

Comment date: May 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP89–1043–000]

Take notice that on March 20, 1989, K N. Energy, Inc. (K N), 12055 West Second Place, Lakewood, Colorado 80228, filed in Docket No. CP89–1043–000, an application pursuant to section 7(c) of the Natural Gas Act, and section 284.221 of the Commission's Regulations for a certificate of public convenience and necessity authorizing open-access transportation and a sales standby service, all as more fully set forth in the application on file with the Commission and open to public inspection.

K N states that it intends to transport natural gas on behalf of shippers and elects to become a transporter under the terms and conditions of the Commission's Order Nos. 436 and 500. K N states that it will comply with Paragraph (c) of § 284.221 of the Commission's Regulations.

K N states that it has concurrently filed revised General Terms and Conditions and initial Rate Schedules FT and IT as part of its FERC Gas Tariff. K N states that it would perform transportation service under Subpart B and G of the Commission's Regulations under proposed rate Schedule FT and IT.

K N also request authorization to establish a new Sales Standby Service for its customers under initial Rate Schedules SS. K N states that service would be available to customers who purchase gas from K N under Rate Schedules CD, SF, or WPS of K N's FERC Gas Tariff. K N states that the new service agreements for service under Rate Schedule SS contain an agreement between K N and the customers that the new service agreement upon its execution would not be deemed to be "eligible firm sales service agreements" under 18 CFR Part 284.10.

K N states that initial rates for service under Rate Schedules FT, IT, and SS are based upon cost of service in K N's rate case settlement recently approved by the Commission in its order issued on February 17, 1989, in Docket Nos. RP87–86–000, RP86–11–000 and RP85–11–000. K N further states that transportation rates for service under Rate Schedule FT and IT comply with the requirements of Order Nos. 436 and 500, and with the Commission's Regulations thereunder.

Comment date: April 19, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89–1064–000]

Take notice that on March 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1019–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of KM Gas Company (KM), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 9,270 MMBtu equivalent of natural gas on a peak day, 9,270 MMBtu equivalent on an average day, and 3,383,550 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for KM's account at an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and would deliver equivalent volumes at an existing interconnection between United and Mobile Gas Service at Whistler Junction, Mobile County, Alabama. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced February 1, 1989, as reported in Docket No. ST89–2622.

Comment date: May 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89-1062-000]

Take notice that on March 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1019-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of LL & E Gas Marketing, Inc. (LL & E), a marketers of natural gas, under United's blanket certificate issued in Docket No. CP89-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 10,300 MMBtu equivalent of natural gas on a peak day, 10,300 MMBtu equivalent on an average day, and 3,759,500 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for LL & E's account at an existing interconnection between United and production facilities in High Island, Block 480, offshore Texas, and would deliver equivalent volumes at an existing interconnection between United and High Island Offshore System's mainline, High Island, Block 511, offshore Texas. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced March 1, 1989, as reported in Docket No. ST89-2633.

Comment date: May 15, 1989 in accordance with Standard Paragraph G at the end of the notice.

6. United Gas Pipe Line Company

[Docket No. CP89-1061-000]

Take notice that on March 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations in Docket No. CP89-1061-000, to provide interruptible transportation service on behalf of MidCon Marketing Corporation, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1-21-2066, dated January 11, 1989, proposes to transport a maximum daily quantity of 154,500 MMBtu and that service commenced February 1, 1989, as reported in Docket No. ST89-2621, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: May 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8084 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-377-003 and CI86-378-003]

Arkla Energy Marketing Co.; Application for Extension of a blanket Limited-Term Certificate with Pregranted Abandonment

March 24, 1989

Take notice that on March 24, 1989, Arkla Energy Marketing Company (Arkla) of 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Arkla to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8076 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS72-44-000, et al.]

LCS Co., Inc., and Lela Cook Sparks (Roy L. Cook, Trustee), et al., Applications for Small Producer Certificates

March 30, 1989.

Take [1] notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 17, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS72-44-000	[1] 2-17-89	LCS Company, Inc., and Lela Cook Sparks (Roy L. Cook, Trustee), 12607 Kingsride Lane, Houston, Texas 77024.
CS89-8-000	[2] 1-27-89	Melgerhel, Inc., 3101 N. Pecos, Midland, Texas 79705.
CS89-21-000	[3] 3-16-89	AFG Energy Inc., Citicorp Center, Suite 670, 1200 Smith Street, Houston, Texas 77002.
CS89-22-000	2-13-89	W. James Truettner III, SGT Oil & Gas Ltd., T-Bar Oil & Gas Ltd., and Western Interior Resources Ltd., 1625 Broadway, Suite 2730, Denver, Colorado 80202.
CS89-23-000	2-15-89	Siegenthaler Enterprise, *et al.*,[4] P.O. Box 824, Big Lake, Texas 76932.
CS89-24-000	2-22-89	James E. Hughes and Hughes Oil & Gas, Inc., 3934 F.M. 1960 West, Suite 240, Houston, Texas 77068.
CS89-25-000	3-2-89	Enexco, Inc., and Janex Oil Co., Inc., 3500 Oak Lawn, Suite 380, LB#31, Dallas, Texas 75219-4398.
CS89-26-000	3-10-89	Ruth Sutton, 2826 Moss Avenue, Midland, Texas 79705.
CS89-27-000	3-17-89	Lamberson Operating, P.O. Box 480, Pampa, Texas 79066-0480.
CS89-28-000	3-20-89	Ranch Oil Company, *et al.*,[5] 10785 South Pine Drive, Parker, Colorado 80134.

[1] By letter dated January 30, 1989, Applicants state that Leta Cook Schmuck and her sister, Lela Cook Sparks, each inherited a 50% interest in certain gas properties from their father, Roy L. Cook. They request that his small producer certificate in Docket No. CS72-44 be redesignated in the names of an S Corporation, wholly owned by Leta Cook Schmuch, the LCS Company, Inc., and Lela Cook Sparks. The application was received on February 2, 1989. The filing date is the date of receipt of the filing fee.

[2] The application was received on November 28, 1988. The filing date is the date of receipt of the filing fee.

[3] The application was received on February 7, 1989. The filing date is the date of receipt of the filing fee.

[4] The *et al.* parties are Printz Brothers, Steve W. Coates and S.P. Ventures.

[5] The *et al.* parties are Homecraft Realty Corp. and Edward I. Cudahy.

[FR Doc. 89-8077 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-104-000]

International Paper Co. v. United Gas Pipe Line Co.; Complaint

March 29, 1989

Take notice that on March 10, 1989, International Paper Company (International) filed a complaint against United Gas Pipe Line Company (United) regarding alleged violations of the Commission's open-access transportation regulations and United's Rate Schedule ITS.

International states that United has unlawfully violated its tariff in attempting to bill International for imbalances at a penalty of $4.00 per MMBtu. International states that: (a) United has not provided International with any notice of imbalance other than monthly billing invoices; (b) United has denied International a sustained opportunity to make-up imbalances during the 45-day makeup period following the billing month in which an imbalance occurred; (c) there is no provision in United's tariffs which permits United to bill International an arbitrary charge of $4.00 per MMBtu; and (d) United has failed to aggregate receipt and delivery points for purposes of computing International's gas transportation balance between actual receipts and deliveries into and out of United's system.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before April 28, 1989. 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. Answers to this complaint shall be due on or before April 28, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8078 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC89-7-000]

Mississippi River Transmission Corp.; Tariff Filing

March 29, 1989

Take notice that on March 15, 1989, Mississippi River Transmission Corporation (Mississippi) filed revised Tariff Sheets to become effective April 15, 1989, pursuant to § 281.204(b) of the Commission's Regulations which requires interstate pipelines to update their respective Index of Entitlements annually to reflect changes in Essential Agricultural Use. The following sheets have been submitted:

Thirteenth Revised Sheet No. 75
Eleventh Revised Sheet No. 76

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Fourteenth Revised Sheet No. 78
Twelfth Revised Sheet No. 79

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-8079 Filed 4-4-89 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-4-37-005 and RP89-1-007]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

March 31, 1989

Take notice that on March 27, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

First Substitute Revised Second Amended Thirty-Ninth Revised Sheet No. 10.
First Substitute Fourth Amended Thirty-Ninth Revised Sheet No. 10.
First Substitute Seventh Amended Thirty-Ninth Revised Sheet No. 10.
First Amended Substitute Fortieth Revised Sheet No. 10.

Northwest states that the purpose of this filing is to restate the Account 191 surcharge as required by the Commission's February 23, 1989 order issued in the above referenced dockets. The resulting effect is to reduce the surcharge from 13.21¢ per MMBtu to 9.68¢ per MMBtu on the tariff sheets listed above. Northwest has requested waivers to permit effective dates as follows:

April 1, 1988: First Substitute Revised Second Amended Thirty-Ninth Revised Sheet No. 10.
June 1, 1988: First Substitute Fourth Amended Thirty-Ninth Revised Sheet No. 10.
July 1, 1988: First Substitute Seventh Amended Thirty-Ninth Revised Sheet No. 10.
July 3, 1988: First Amended Substitute Fortieth Revised Sheet No. 10.

Northwest states that a copy of this filing has been served on all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 7, 1989. 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,

Secretary.

[FR Doc. 89-8080 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TF89-2-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

March 31, 1989

Take notice that on March 24, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised sheet to its FERC Gas Tariff, Sixth Revised Volume No. 1, with a proposed effective date of April 1, 1989:

Eighty-Fifth Revised Sheet No. 4A

Southern states that the proposed tariff sheet and supporting information are being filed pursuant to the interim adjustments provision of the Purchase Gas Adjustment clause of its FERC Gas Tariff.

Southern further states that the proposed tariff sheet reflects a decrease in Southern's commodity cost of gas on a sales basis of 34.67¢ per MMBtu from the levels reflected in its annual PGA filing in Docket No. TA89-1-7-000. This reduction in gas costs is the consequence of a purchase commitment from a majority of Southern's customers, spot market prices lower than those projected in Southern's annual filing, and the conclusion of certain producer settlements.

Southern states that because its commitment with its customers will remain in effect through September 30, 1989, Southern requests a waiver of §§ 154.304 and 154.308 of the Commission's Regulations which would otherwise require Southern to make its first quarterly PGA filing for 1989 to be effective July 1. Since the duration of Southern's agreement with its customers coincides with the October 1, 1989 effective date of Southern's second scheduled quarterly PGA, Southern submits that waiver of the July 1 quarterly adjustment filing is appropriate.

Copies of Southern's filing were served upon 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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before April 7, 1989. 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,

Secretary.

[FR Doc. 89-8081 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-113-000]

Tennessee Gas Pipeline Co.; Filing

March 31, 1989.

Take notice on March 27, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective on April 26, 1989:

Second Substitute Second Revised Sheet No. 109
Second Substitute Original Sheet No. 109A
Substitute Alternate Fourth Revised Sheet No. 115
Substitute Alternate First Revised Sheet No. 115A

Tennessee also tendered for filing the following revised tariff sheets to become effective on May 1, 1989, to replace tariff sheets which were to become effective on that date:

Fifth Revised Sheet No. 115
Second Revised Sheet No. 115A

Tennessee states that the purpose of this filing is designed to provide Tennessee's shippers additional flexibility in arranging the purchase of natural gas supplies that can be attached by Tennessee in its supply

area. Tennessee will construct these facilities where the shipper agrees to reimburse Tennessee for the costs of the facilities or where the shipper provides assurances that there are adequate gas supplies to be attached by the facilities to make construction of the facilities economical.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 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 April 7, 1989. 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,

Secretary.

[FR Doc. 89-8082 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3550-6; ECAO-CD-86-073]

Draft Criteria Document for Carbon Monoxide—Air Quality Chapters

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a peer-review workshop to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate preparation of an external review draft of an Air Quality Criteria Document for Carbon Monoxide. The conference site is the Governor's Inn, Hwy 54, Research Triangle Park, North Carolina.

DATES: The workshop will be held on April 24, 1989, from 8:30 a.m. to 5:00 p.m. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: Thomas B. McMullen, coordinator for the air quality chapters, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4150 or (FTS 629-4150), or James A. Raub, Project Manager, same address, (919) 541-4157 or (FTS 629-4157).

SUPPLEMENTARY INFORMATION: Periodic revisions of the air quality criteria documents are required under the Clean Air Act to incorporate relevant new information that may either support or suggest reevaluation of existing national ambient air quality standards. EPA is currently revising the criteria document for carbon monoxide as announced in the **Federal Register** on July 22, 1987 (52 FR 27580).

ECAO is holding this workshop to review certain draft chapters.

These draft chapters cover the properties of carbon monoxide and measurement techniques, its global cycle in the atmosphere, its anthropogenic sources, ambient concentrations, and models of human exposure. Draft chapters on human health effects will be reviewed at a workshop to be announced in a future **Federal Register** notice. Copies of the workshop draft will be made available to the public at the meeting, and members of the public will have an opportunity to make brief oral statements. The draft chapters subsequently will be revised and released as part of an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of an external review draft. The public comment period for the external review draft will be announced in a subsequent **Federal Register** notice.

Date: March 29, 1989.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-8038 Filed 4-4-89; 8:45 am]

BILLING CODE 6560-50-M

[ECAO-CD-86-082; FRL-3550-7]

Draft Criteria Document for Oxides of Nitrogen; Air Quality and Health Effects Chapters

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a peer-review workshop to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate preparation of an external review draft of an Air Quality Criteria Document for Oxides of Nitrogen. The conference site is the Governor's Inn, Hwy 54, Research Triangle Park, North Carolina.

DATES: The workshop will be held April 24 to 27, 1989, from 8:30 a.m. to 5:00 p.m. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis J. Kotchmar, Project Manager for oxides of nitrogen, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4158 or (FTS 629-4158).

SUPPLEMENTARY INFORMATION: Periodic revisions of the air quality criteria documents are required under the Clean Air Act to incorporate relevant new information that may either support or suggest reevaluation of existing national ambient air quality standards. EPA is currently reivising the criteria document for oxides of nitrogen as announced in the **Federal Register** on July 22, 1987 (52 FR 27580).

ECAO is holding this workshop to review certain draft chapters. These draft chapters cover the properties of oxides of nitrogen and measurement techniques, the global cycles in the atmosphere, the anthropogenic sources and ambient concentrations. The chapters on human health effects are: Controlled human studies, toxicology and epidemiology. Draft chapters on ecological effects will be reviewed at a workshop to be announced in a future **Federal Register** notice. Copies of the workshop draft chapters will be made available to the public at the meeting, and members of the public will have an opportunity to make brief oral statements. The draft chapters subsequently will be revised and released as part of an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of an external review draft. The public comment period for the external review draft will be announced in a subsequent **Federal Register** notice.

Date: March 29, 1989.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-8037 Filed 4-4-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50675B; FRL-3550-2]

Clarification of a Notice of Receipt of Application for an Extension/ Expansion of an Experimental Use Permit; Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of clarification.

SUMMARY: This document clarifies a notice issued in the **Federal Register** of January 27, 1989, pertaining to the proposed extension and expansion of an experimental use permit (EUP) to Crop Genetics International (CGI) for a genetically engineered microbial pesticide. EPA issued the original EUP on June 14, 1988. CGI's proposed extension and expansion would include five additional sites in four additional States and would extend the current permit from April 1989 to December 1990.

FOR FURTHER INFORMATION CONTACT:

By mail:

Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA received an application for an extension and expansion of an EUP from Crop Genetics International of 7170 Standard Drive, Hanover, Maryland 21076. EPA announced notice of the receipt in the **Federal Register** of January 27, 1989 (53 FR 4071). This notice provides more detail and clarifies the studies outlined in that notice. The proposed EUP under EPA File Symbol 58788-EUP-1 is outlined below.

The proposed experiment involves the endophytic bacterium *Clavibacter xyli* subspecies *cynodontis* that has been genetically engineered to contain a delta-endotoxin gene obtained from *Bacillus thuringiensis* subspecies *kurstaki*. After inoculation, the endophytic bacterium grows within the corn plants and produces the pesticidal agent which is active against the larval stages of the European Corn Borer.

The purpose of the program is to further assess the characteristics of the recombinant organism in the environment, and evaluate the effect of the organism on crop yield. CGI proposes to initiate the field tests in the spring of 1989. CGI is proposing to test a prototype recombinant microorganism at five sites in the Midwest and at three sites in Maryland. The proposed field test sites are: Ingleside, Queen Anne's County Maryland (1 site); Beltsville Agricultural Research Center, Prince Georges County, Maryland (1 site); Illiopolis, Sangamon County, Illinois (1 site); Stanton, Goodhue County, Minnesota (1 site); Hastings, Clay County, Nebraska (2 sites); Hooper, Dodge County, Nebraska (1 site). The sites are each approximately 1 to 7 acres in size; all are isolated and secured. Each site will consist of: central corn test plant populations arranged in replicated blocks; primary corn trap plants contiguous with replicated blocks; a 100 ft wide barren zone adjacent to and surrounding the primary trap plants; and secondary corn trap plants outside the barren zone surrounding the entire test.

The studies to be performed will evaluate: stand vigor parameters associated with treated seeds; the effect seed treatments alone or in combination with *Clavibacter xyli* subsp. *cynodontis/Bacillus thuringiensis* subsp. *kurstaki* have on crop yield; flea beetle acquisition of Cxc/Bt on selected sites; Cxc/Bt population dynamics and systemic distribution in corn plants; and possible interactions between plant nutrition and Cxc/Bt colonization and their impact on yield. The Agricultural Research Services/United States Department of Agriculture (ARS-USDA) cooperating scientists (at Beltsville) will examine: gram negative phylloplane bacterial populations; interactions between soil nutritional factors and yield; and plant-microbe interactions, such as VA-mycorrhizae, gram negative phylloplane and rhyzosphere bacteria.

At the completion of the tests, all plant debris will be buried by disking, and grain harvested will be destroyed by burial within the test site or by burning at an isolated area on the research farm. The test sites will be used for other agricultural or research purposes in 1990.

The labeling proposed by CGI that would govern the conduct of the experiment, states:

> Applicator should wear protective clothing and water proof gloves. For use only in accordance with the terms and conditions of the EUP.

Following the review of the CGI application and any comments received in response to the notice of January 27, 1989, EPA will decide whether to extend or deny the EUP request for this EUP program, and if extended, the conditions under which it is to be conducted. Any issuance of an EUP extension will be announced in the **Federal Register**.

Dated: March 24, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-7937 Filed 4-4-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50686; FRL-3548-7]

Receipt of Application for an Experimental Use Permit; Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a third experimental use permit (EUP) application from Crop Genetics International (CGI) requesting an EUP for a genetically engineered mircrobial pesticide. The first EUP on this organism was issued June 14, 1988. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATE: Written comments must be received on or before May 5, 1989.

ADDRESS: Comments in triplicate, must bear the docket control number OPP-50686 and be submitted to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

In person bring comments to: Room 246, CM#2, 1921 Jefferson David Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Room 246 at the Virignia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Phil Hutton, Product Manager (PM) 17, Registration Division

(H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2690).

SUPPLEMENTARY INFORMATION: An application for an EUP has been received from Crop Genetics International of 7170 Standard Drive, Hanover, Maryland 21076. This EUP application EPA File Symbol is 58788–EUP–G. The proposed experiment involves the endophytic bacterium *Clavibacter xyli* subspecies *cynodontis* that has been genetically engineered to contain a delta-endotoxin gene obtained from *Bacillus thuringiensis* subspecies *kurstaki*. After inoculation, the endophytic bacterium grows within the rice plants and produces the pesticidal agent which is active against the larval stages of the Mexican rice borer and Sugarcane Borer.

The purpose of this EUP application is to further assess the characteristics of the recombinant organism in the environment, and evaluate the effect of the organism on crop yield. CGI proposes to initiate the field tests in the spring of 1989. CGI is proposing to test a prototype recombinant microorganism on one site in Ingleside, Queen Anne's County Maryland. The proposed field test site in Ingleside, Queen Anne's County Maryland would allow the use of 0.1 g active ingredient on a 0.1 actual test plot acre. The site is approximately 0.1 acre in size; and it is isolated and secured. Each site will consist of: central rice test plant populations arranged in primary rice trap plants contiguous with replicated blocks; a 100 ft wide barren zone adjacent to and surrounding the primary trap plants; and secondary rice trap plants outside the barren zone surrounding the entire test.

Studies to be performed are designed to: determine the dispersal and persistence of *Clavibacter xyli* subsp. *cynodontis/Bacillus thuringiensis* subsp. *Kurstaki* (*Cxc/Bt*) in rice; quantify the colonization *Cxc/Bt* in rice under field conditions; and determine the effects of *Cxc/Bt* in rice plant growth.

At the completion of the tests, all plant debris will be buried by disking, and grain harvested will be destroyed by burial within the test site or by burning at an isolated area on the research farm. The test sites will be used for other agricultural or research purposes in 1990.

The labeling proposed by CGI that would govern the conduct of the experiment, states:

> Applicator should wear protective clothing and water proof gloves. For use only in accordance with the terms and conditions of the experimental use permit.

Following the review of the CGI application and any comments received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register.**

Dated: March 24, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–7788 Filed 4–4–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30284A; FRL–3549–9]

Elanco Products Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Elanco Products Co. to register the pesticide products Cutless® 50W and Cutless® TP containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 245, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 17, 1988 (53 FR 4712), which announced that Elanco Products, Division of Eli Lilly Co., PO Box 708, Greenfield, IN 46140, had submitted applications to register the pesticide products Cutless® 50 W and Cutless® TP (EPA File Symbols 1471–RTR and 1471–RTG), containing the active ingredient flurprimidol alpha-(1-methylethyl)-alpha-[4-(trifluoromethoxy) phenyl]-5-pyrimidinemethanol at 50 and 99 percent respectively; an active ingredient not included in any previously registered products.

The applications were approved for general use on February 22, 1989, for Cutless® 50W (EPA Reg. No. 1471–171), as a foliar plant growth regulator which reduces mowing frequency and improves quality of cool and warm season turfgrasses on golf course fairways; and Cutless® TP (EPA Reg. No. 1471–173), as a trunk injected plant growth regulator for use on ornamental trees to reduce the growth and pruning frequency.

The Agency has considered all required data on the risks associated with the proposed use of flurprimidol alpha-(1-methyl-ethyl)-alpha-[4-(trifluoromethoxy)phenyl]-5-pyrimidinemethanol and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of flurprimidol alpha-(1-methyl-ethyl)-alpha-[4-(trifluoromethoxy) phenyl]-5-phyrimidinemethanol when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheel on flurprimidol alpha-(1-methylethyl)-alpha-[4-(trifluoromethoxy) phenyl]-5-phyrimidinemethanol.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (H7505C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M Street SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM#2, Arlington, VA 22202 (703–557–3262). Requests for data must be made in accordance with the provisions of the

Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M Street SW., Washington, DC 20460. Such requests should: (1) Identify the products' name and registration numbers and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: March 23, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–7936 Filed 4–4–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004003–002.

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach
Toyota Motor Sales, U.S.A., Inc.

Synopsis: The Agreement amends the basic agreement (Agreement No. 224–004003) to restate the liability and property insurance requirement set forth in paragraph 20 of the basic agreement.

Agreement No.: 224–003877–001.

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach (LB)
Crescent Terminals, Inc. (CT)

Synopsis: The Agreement amends the basic agreement (Agreement No. 224–003877) to provide that LB will grant CT a non-exclusive preferential assignment of wharves and certain premises together with all improvements on Pier F in the Harbor District of the City of Long Beach. Pursuant to paragraph 9 of the basic agreement, the parties have renegotiated the compensation payable by CT for the period ending June 30, 1990.

Agreement No.: 224–004016–002.

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach (City)
Pacific Marine Services, Inc. (PMS)

Synopsis: The Agreement provides that the parties have agreed to the compensation that will be paid for that portion of the term ending April 30, 1990. The City has agreed to add additional areas to the premises and to make certain improvements thereto.

Agreement No.: 224–200231.

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach
Stevedoring Services of America, Inc. (SSA)

Synopsis: The Agreement provides for a 10-year lease of office and parking space used in connection with SSA's terminal operations in the Harbor District of the City of Long Beach.

By Order of the Federal Maritime Commission.

Dated: March 31, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–8008 Filed 4–4–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL HOME LOAN BANK BOARD

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act

AGENCIES: Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency, Department of the Treasury; Federal Home Loan Bank Board; Federal Deposit Insurance Corporation.

ACTION: Policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Home Loan Bank Board, and the Federal Deposit Insurance Corporation (collectively, the "Agencies") are revising the 1980 Community Reinvestment Act (CRA) Information Statement. The revisions in this Joint Statement are intended to take advantage of the experience the Agencies, financial institutions, and community members have gained over the years in developing approaches to ensure that the requirements and purposes of the CRA are met. This revised Statement is designed to provide federally insured financial institutions and the public with guidance regarding the requirements of the CRA and the policies and procedures the Agencies will apply during the applications process.

Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act

Introduction

In light of the significant developments that have occurred in the financial institutions industry since enactment of the Community Reinvestment Act of 1977 ("CRA"), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the comptroller of the Currency, and the Federal Home Loan Bank Board ("the Agencies") have revised the 1980 Community Reinvestment Act Information Statement. The revisions in this Joint Statement are intended to take advantage of the experience the Agencies, financial institutions, and community members have gained over the years in developing approaches to enure that the requirements and purposes of the CRA are met. This revised Statement provides guidance regarding the types of policies and procedures that the Agencies believe financial institutions should have in place in order to fulfill their responsibilities under the CRA on an ongoing basis and the procedures the Agencies will use during the application process to review an institution's CRA compliance and performance.

Under the CRA, the Agencies are required, when considering certain applications involving a federally insured financial institution ("financial institution"), to take into account the institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods. Given this responsibility, the Agencies want to assure that potential applicants, and those who may wish to comment on an applicant's CRA record, know what is expected of a financial institution under the CRA and of participants during the application process.

The Agencies believe the clarification provided in this Statement will help applicants and others who wish to comment on applications to provide promptly the information necessary to permit the Agencies to address CRA issues in a timely fashion in accordance with the schedules required under relevant Federal statutes and regulations. The Agencies wish to emphasize their belief that the goals of the CRA are best accomplished when financial institutions make meeting their responsibilities under the statute a part of their routine management and operational structure. Thus, the Agencies expect applicants to have addressed their responsibilities under the CRA well before they submit an application.

Background

The CRA was enacted in 1977 against a backdrop of concern over unfair treatment of prospective borrowers by financial institutions and over unwarranted geographic differences in their lending patterns. In the CRA, Congress reaffirmed that every financial institution has a continuing and affirmative obligation consistent with its safe and sound operation to help meet the credit needs of its entire community, including low- and moderate-income neighborhoods.

The CRA states that its purpose is to require each Federal financial supervisory agency to use its authority when conducting examinations to encourage the financial institutions it supervises to help meet those needs. to this end, the Community Reinvestment Act provides:

> In conmnection with its examination of a financial institution, the appropriate . . . agency shall—
>
> (1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of [the] institution; and
>
> (2) take such record into account in its evaluation of an application . . . by such institution. 12 U.S.C. 2903.

Simply stated, the CRA and the implementing regulations place upon all financial institutions, whether wholesale or retail, urban or rural, an affirmative responsibility to treat the credit needs of low- and moderate-income members of their communities as they would any other market for services that the institution has decided to serve. As with any other targeted market, financial institutions are expected to ascertain credit needs and demonstrate their response to those needs.

The Agencies believe that the CRA intends financial institutions to help meet the credit needs of their communities in a positive, ongoing way that recognizes the institution's assessment of its relevant market and is consistent with the safe and sound operation of the institution. This responsibility under the CRA may be met in a variety of ways, including lending for business, agriculture, education, consumer, home purchase, and home improvement purposes, and to finance state and local governments. The CRA was not intended to limit an institution's discretion to develop the types of products and services that it believes are best suited to its expertise and business objectives and to the needs of its particular community, as long as the institution's program is consistent with the objectives of the CRA. Nor is it the purpose of this statement to establish specific lending requirements or programs for financial institutions subject to the CRA.

This Statement provides guidance, in part, by describing the types of activities that the Agencies have found fulfill a financial institution's responsibilities under the CRA. Because the needs of communities vary, the Agencies recognize that the examples outlined in this Statement will not be appropriate for every institution or for every community.

Guidelines for Developing an Effective CRA Process

Because the credit needs of individual communities differ, the Agencies will consider the process by which a Financial institution defines the community it serves, determines its credit needs, including its low- and moderate-income areas, and takes steps to help meet those needs through appropriate and prudent lending. The Agencies believe that appropriate consideration should be given to an institution that makes ongoing efforts to ascertain the needs of its entire community, develops products and services that are responsive to those needs, and markets those products and services throughout the community. An active program of management involvement, policy oversight, and regular review is most likely to assure that the products and services the institution chooses to offer will meet community credit needs, be adjusted when those needs change, and be available to all segments of the community.

The experience of the Agencies indicates that an effctive CRA process must include methods to ascertain community needs on an ongoing basis through outreach efforts to local governments, businesses, and community members and organizations. This ascertainment effort should include a system that both facilitates dialogue with these individuals and groups and enables them to communicate their concerns to an officer of the financial institution with CRA responsibilities. To be effective, the process must include methods to incorporate findings regarding community credit needs into the development of products and services that the institution decides to offer to help meet these needs.

The CRA plan should include marketing and advertising programs for lending products and services that are responsive to the needs of the community and that will inform and stimulate awareness of those products and services throughout the community, including low- and moderate-income areas. The plan should also include periodic analysis of the disposition of loan applications to ensure that potential borrowers are treated in a fair and non-discriminatory manner.

The duty to coordiante and monitor the CRA process should be assigned to a senior officer or a committee charged with the responsibility to report periodically to the board of directors about the institution's CRA efforts, performance and areas for improvement, where appropriate. An employee training program should be established. This program should contain information about those policies of the institution designed to help meet community credit needs, including the needs of low- and moderate-income areas and small businesses. Procedures should be implemented to assure that files are maintained, as required by agency regulations, for purposes of receiving public comments and for reviewing and responding to these comments.

Regardless of how an institution organizes itself to implement such a plan, seeing that the institution has taken the steps necessary to help meet its community's credit needs is the responsibility of the entire organization, beginning with its board of directors and continuing through its line management.

Once a financial institution has established an effective CRA process, it must assure that its CRA statement accurately reflects the types of lending and other services that it will offer to the community. This statement must be reviewed at least annually to ensure its accuracy. The services that the institution chooses to offer should be clearly articulated, reasonably related to community needs, and distributed in a

fair and nondiscriminatory manner in keeping with an institution's general approach to its business. A financial institution need not offer every financial service in order to meet its CRA responsibilities; however, the Agencies expect that institutions will offer the types of credit listed in their CRA statement throughout their delineated communities.

Specific Elements of an Effective CRA Process

Within the general framework discussd above, institutions have substantial leeway in developing specific policies and programs to meet their CRA responsibilities. The actual steps taken by an institution will of necessity depend upon a number of factors, including the size of the institution, its business strategy and objectives, and the size, nature and needs of the community involved. For example, the specific steps taken by a small rural institution to meet its CRA responsibilities may be quite different from those required of a major metropolitan institution.

Based upon the experience of the Agencies, institutions with the most effective programs for meeting their CRA responsibilities and for assuring that their services reach low- and moderate-income segments of the community will have taken many of the following steps:

—Implemented policies, including the use of more flexible lending criteria, consistent with safe and sound practices, to provide the types of loans and services described in the institution's CRA statement on a more widespread basis;

—Increased efforts to make loans to help meet identified credit needs within the community, such as those for home mortgages, home improvement and small business. This may include participation in various government-insured lending programs, such as FHA-insured or VA-guaranteed mortgage loans and SBA loans, and participation in other types of lending programs, such as high-loan-to-value-ratio conventional mortgage loans with private mortgage insurance;

—Implemented and advertised the availability of services of benefit to low- and moderate-income persons, such as cashing government checks or offering low-cost checking accounts;

—Created and implemented advertising and marketing efforts through, for example, newspapers, radio, television and brochures designed to inform low- and moderate-income groups (in langauges other than English, where appropriate) of available loan and deposit services;

—Expanded officer call programs to include targeted groups, such as small business owners and real estate agents in low- and moderate-income neighborhoods, in order to inform them of available credit services;

—Established a process involving all levels of management in efforts to contact governmental leaders, economic development practitioners, businesses and business associations, and community organizations to discuss the financial services that are needed by the community;

—Developed systems to provide assistance to customers or potential customers regarding federal, state or local assistance programs to small businesses, or for housing or other similar community needs;

—Adopted a written corporate policy concerning branch closings which contains provisions for appropriate notice, analysis of the impact of the closing on the local community, and efforts that may be made to minimize any adverse effects;

—Particiapted in or provided assistance to community development programs or projects, such as Neighborhood Housing Services programs, small business programs encouraged by the Small Business Administration or Economic Development Administration, or Community Development Block Grant programs;

—Established a community development corporation;

—Funded a small business investment corporation or created a minority small business investment corporation;

—Made lines of credit and other financing available, within prudent lending principles, to non-profit developers of low-income housing and small business developments, for low-income multi-family rehabilitation and new construction projects, and/or provided a secondary market for non-profit developer paper;

—Underwritten or invested in state and municipal bonds; or

In the case of members of the Federal Home Loan Bank System, participated actively in the FHLBB Community Investment Fund program.

Finally, to enhance CRA performance, some financial institutions have chosen to establish special or pilot lending programs earmarked for low- and moderate-income neighborhoods, consistent with safe and sound lending practices. While the Agencies support such activity, the scope of any such program is properly addressed by the financial institution itself, taking into account its own expertise and financial capabilities. This is particularly true of any targeted goals established for such a program, which may represent a statement of the institution's expectations of services to be provided based upon actual loan demand, market conditions, and other similar factors. The Agencies will continue to consider favorably financial-institution leadership in concerted efforts to improve low- and moderate-income areas in the community and participation by financial institutions in public and private partnerships to promote economic and community development efforts.

The examples described above illustrate specific steps that have been taken, in particular by larger financial organizations operating in urban communities, to help meet the credit needs of all segments of those communities. Smaller financial organizations operating in primarily rural communities may nonetheless find some of these examples helpful in designing CRA policies that would meet the needs of their communities.

Expanded CRA Statement

Financial institutions are currently required by agency regulations to prepare a CRA statement describing the community served by the institution and listing the types of credit offered by the institution to the community and encouraged to describe their CRA efforts in this statement. This statement must be reviewed by the board of directors of the institution at least on an annual basis. As noted above, an effective CRA process should also include management review and oversight of the institution's policies and performance on a regular basis.

The Agencies believe that it would be especially useful for a financial institution, in connection with the preparation and periodic review of its CRA statement, to expand the CRA statement to include a description of the institution's CRA performance. The CRA regulations of the Agencies currently encourage financial institutions to incorporate this type of description in their CRA statements. This description includes the institution's efforts to ascertain the credit needs of its community and to communicate with members of the community regarding those needs, and the steps taken by the institution, including through special credit-related programs, to help meet the community's credit needs. The CRA statement also provides a readily available vehicle for financial institutions to describe the marketing

and advertising programs used by the institution to inform the community of the institution's services, and any other steps, such as those outlined in this Statement, that have been taken by the institution to implement its CRA policies. The institution may also find it useful to include a summary of the results of its internal CRA review and a summary of the documentation collected by the institution regarding its CRA performance.

An expanded CRA statement along the lines suggested in existing agency regulations can be a particularly effective part of the institution's outreach efforts to the community. This type of statement would also focus, on an ongoing basis, the attention of both the institution's management and the public on the financial institution's efforts to meet its responsibilities under the CRA and on any areas identified by the institution for improvement.

The Agencies also believe that an expanded CRA statement would present a suitable framework outside the applications process for public comment regarding an institution's CRA record. Under existing rules, public comments received by an institution regarding its CRA performance must be maintained in a public file with the institution's CRA statement. These public comments provide the institution with an opportunity to identify areas of public concern regarding its CRA performance and to consider any steps that the institution may find appropriate to address these concerns. The Agencies may then review these comments and the steps taken by the institution to address the comments during the CRA examination of the institution rather than through the applications process.

The Agencies strongly encourage financial institutions to expand their CRA statement to include a description of the institution's CRA performance in connection with the institution's review of its CRA record. The Federal Reserve Board and the FHLBB also strongly encourage holding companies, as part of the system-wide review and oversight by the holding company of the CRA performance of its subsidiary financial institutions, to ensure that their CRA statements are expanded in this way. The Agencies recognize that the CRA statement would vary in complexity and scope depending on the size, resources, and location of the institution.

Communication in Advance of the Applications Process

Just as financial institutions are expected to communicate with their local communities on an ongoing basis regarding credit needs, community organizations and other members of the public are strongly encouraged to bring comments regarding an institution's CRA performance to the attention of the institution and the appropriate supervisory agency at the earliest possible time. Interested persons are encouraged not to wait to present their comments through a protest to an application.

Prompt submission of comments regarding an institution's CRA record provides the institution and examiners with a timely opportunity to evaluate the matter and permits the institution to correct any deficiencies—an opportunity that may not be as effectively utilized under the time constraints of the applications process. The CRA regulations of the Agencies establish a comment procedure at the financial institution for this purposes, and the Agencies strongly encourage use of this process. The Agencies expect that financial institutions will investigate promptly all complaints and place a high priority on correcting any deficiencies.

The Agencies will consider any comments submitted to the institution through this comment procedure, as well as any action or response that the institution deems appropriate, in the evaluation of the institution's CRA performance. In this regard, when considering public comments received during the applications process concerning the CRA reocrd of a particular institution, the Agencies will take into account whether the institution has provided to the public an expanded CRA statement that, as discussed above, describes the efforts made by the institution to help meet the credit needs of its community. The Agencies may also consider whether the commenter has submitted comments to the institution in response to the institution's CRA statement outside of the applications process. However, comments will be carefully weighed regardless of their timing, as long as submitted within the periods specified in the rules of the appropriate reviewing Agency.

Role of CRA Examinations

In acting upon applications covered by the CRA, the appropriate reviewing Agency will consider the CRA record of the relevant financial institutions as reflected in examination reports (from the relevant federal or state supervisory agencies), the information presented by any commenters, the response by the applicant, and the Agency's own analysis.

As indicated earlier, the CRA requires the Agencies to assess the CRA record of institutions under their supervision during the examination process and to take that record into account in evaluating certain applications. Therefore, the CRA record of the institution, as reflected in its examination reports, will be given great weight in the applications process. In some cases, however, the institution's CRA record as reflected in the examination report may need to be supplemented.

The CRA requires the Agencies to consider the institution's entire CRA record as an integral component of the analysis of the convenience and needs of the community that must be conducted when processing certain types of applications under Federal statutes governing financial institutions. The documentation of that record must be sufficient to support the conclusions of the reviewing Agency. A favorable CRA examination from a supervisory agency is an important, and often controlling, factor in the consideration of an institution's CRA record. It is not conclusive evidence, however, in the face of significant and support allegations from a commenter. This is especially the case when the examination is not recent or the particular issue raised in the application proceeding was not addressed in the examination. In these instances, applicants should submit sufficient data upon which the reviewing Agency may base a decision regarding the institutions' record of serving the convenience and needs of its community, and should also respond to specific substantive issues raised by the commenters or the reviewing Agency.

Documentation of CRA Performance

The Agencies expect financial institutions to maintain reasonable documentation of the activities, such as those outlined in this Statement, that have been undertaken by the institution to implement the institution's CRA policies. The appropriate scope and detail of this documentation must be determined by each financial institution and should accurately reflect the institution's CRA policies and performance.

If a substantive CRA issue is raised in the applications process that has not been addressed in the institution's examination reports, the applicant should be prepared to provide the reviewing Agency with information necessary to evaluate the issue. This information may include such items as a description of the CRA policies that have been established, any procedures for ongoing review of these policies, and the types of services offered by the

institution to help meet community credit needs. In addition, a description of the resources devoted to such services and the extent to which they are distributed throughout the community has proven to be helpful to the consideration of the issues.

An applicant that has established the type of CRA policies outlined in the applicable CRA regulations and this Statement, and that is able to document that it is performing in accordance with these policies, can expect a favorable finding on the CRA component of the convenience and needs factor under the applicable federal statute governing the transaction. The applicant can also expect timely action on the application within the reviewing Agency's processing guidelines (assuming that financial and other factors are favorable).

Where the examination or application records fails to show that the institution has instituted these types of policies, however, it will be necessary for the reviewing Agency to develop the information required to evaluate the institution's record of helping to meet community credit needs. A poorly documented reocrd may prolong the application process in order for the reviewing Agency to collect the information needed for its decision.

Where the record shows disparities in lending that do not appear to be attributable to safety and soundness considerations or to factors beyond an institution's control, the reviewing Agency will inquire into the institution's efforts to ascertain the community's needs, to communicate with all areas of its community, and to advertise and market its services throughout its delineated community. The reviewing Agency will also consider all available information to determine whether any policies and practices of the institution may discourage credit applications from, or unlawfully discriminate against, individuals or segments of the community. Where the institution's record under the CRA is found not to be consistent with its obligations under the CRA, the]reviewing Agency, after weighing all other factors, may deny the application.

Role of Commitments for Future Action

The Agencies believe that applicants should address their CRA responsibilities and have the necessary policies in place and working well before they file an application. In fulfilling their responsibilities under the CRA, however, financial institutions may decide to initiate programs for future action as a means of assuring a strong CRA record or resolving CRA issues. Commitments for future action are not viewed as part of the CRA record of performance of the financial institution, but may be given weight as an indicator of potential for improvement in the institution's performance. Commitments for such improvement can be used to address specific problems in an otherwise satisfactory record. Commitments may also be appropriate in addressing CRA performance in the context of the acquisition of a troubled financial institution. In some cases, these commitments are important to the conclusion that convenience and needs considerations are consistent with approval of the application. In general, commitments made in the applications process cannot be used to overcome a seriously deficient record of CRA performance. The Agencies may, where appropriate, require financial institutions to take specific actions designed to improve CRA performance by granting conditional approval of an application. In such cases, approval granted by an agency generally becomes effective or final only after confirming that the financial institution has satisfied the appropriate conditions.

In line with the long-standing view of the Agencies that the CRA was not intended to establish a regulatory allocation of credit, the Agencies have neither requested commitments from applicants to make particular types or amounts of loans nor specified the terms or conditions for such loans. The Agencies will review whether the policies that an applicant commits to adopt are reasonably directed at the type of deficiencies, if any, found in the applicant's record, and whether those policies are consistent with the safe and sound operation of the financial institution.

Role of Meetings

While not required under the CRA or the regulations of the Agencies, the Agencies have in many instances found private meetings between an applicant and a protestant to be helpful. Such meetings may clarify the matters at issue, assist the Agencies in determining whether additional information is required, help to plan the direction of the necessary analysis, and, in some instances, resolve differences based on misunderstandings between the parties. These meetings often provide the protestant and applicant an opportunity to submit information to clarify or to support points made in their written submissions.

Although the Agencies believe that ongoing discussion between a financial institution and members of the institution's community is the best way to determine a community's needs, any decision to negotiate or to reach a formal agreement, either during or outside of the applications process, is at the discretion of the parties. The Agencies may, in appropriate cases, facilitate private meetings and may attend them. In doing so, however, the Agencies will maintain a neutral role, and attendance and participation by the parties is voluntary. The purpose of such private meetings is not to provide a forum for the negotiation of a formal agreement among the parties, and the Agencies do not require or enforce such agreements. Moreover, the Agencies do not believe that it is appropriate to suspend processing an application to allow the parties to conclude negotiations or to reach a settlement unless requested by the applicant. The Agencies will act on an application once it has obtained a record sufficient to support a determination in the matter.

Each Agency may, under certain circumstances, order a public meeting, hearing or oral argument. For example, an Agency may find that a public meeting or hearing on an application would be helpful in order to develop a complete record for decision. A public meeting or hearing may be ordered if the written submissions and materials presented at the private meetings do not develop an application record that the reviewing Agency believes is sufficient for decision. In such situations, the decision to call a public meeting or hearing would not be based on the inability of the parties to reconcile their differences in private meetings, but rather on the need for additional information that might be collected through such a process. Each Agency follows its own regulations and procedures with respect to ordering public meetings, hearings or oral arguments.

Extension of Comment Period

Parties desiring to comment on applications, including those wishing to comment on the CRA record of a particular financial institution, should do so promptly and within the time periods specified in the rules of the appropriate reviewing Agency and the relevant public notices. The Agencies believe that this is important in order for the Agencies to carry out their responsibility to process applications within applicable time limits consistent with the public interest. Timely submission of comments also provides an opportunity for response by applicants and ensures time for any

necessary analysis by the reviewing Agency.

In accordance with the rules of the Agencies, extensions of time for public comment will be provided only upon a showing of good cause or as otherwise permitted by agency regulations. For example, a brief extension would be appropriate where the application has not been promptly made available for inspection by the parties or where there has been inadequate public notice of the application. The Agencies do not believe that extensions of time are appropriate solely when the commenter desires more time to conduct discussions with an applicant. An extension of the comment period will only be for a brief period and normally will not be appropriate if it will extend the application-processing period beyond the time limits established in the relevant statute or Agency rules. A commenter that fails to submit comments on an application until after the close of the comment period (or any extension) may be precluded from participation.

Conclusion

The Agencies consider it important that financial institutions act effectively to meet the requirements of the CRA in a positive and ongoing manner. The Agencies believe that this can be done in a way that will not only benefit local communities, but also will be consistent with the safe and sound operation of financial institutions. Doing so, however, requires managerial effort, oversight and review. An institution's processes for meeting the credit needs of its community must reflect an understanding of those needs and take into account changes that may occur in the community's credit needs. By applying sound management techniques to the challenges presented by the CRA, financial institutions can be agents of positive change for the cities, towns and rural areas of this country—thereby benefiting themselves as well as the communities that they serve.

(12 U.S.C. 2901)

By order of the Board of Governors of the Federal Reserve System, March 30, 1989.

William W. Wiles,

Secretary of the Board.

Date: March 29, 1989.

Robert L. Clarke,

Comptroller of the Currency.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

By order of the Board of Directors. Dated at Washington, DC, this 21st day of March, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-8003 Filed 4-4-89; 8:45 am]

BILLING CODE 6210-01-M, 4810-33-M, 6720-01-M, 6714-01-M

Caisse National de Credit Agricole S.A., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y or is unlisted as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 1989.

A. **Federal Reserve Bank of Chicago**—(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Caisse National de Credit Agricole S.A.*, Paris, France; to engage *de novo* through its subsidiary, Bertrand Michel Securities, Inc., New York, New York, in providing investment advice and securities brokerage services on a combined basis, as previously approved by the Board, to institutional customers; and in providing investment and financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers and Traders Bancshares, Inc.*, California, Missouri; to engage *de novo* through its subsidiary, California Community Development Corporation, California, Missouri, in projects designed primarily to promote community welfare, including purchasing, owning, rehabilitating, managing, and selling real property, pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the town of California, Missouri.

Board of Governors of the Federal Reserve System, March 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-8004 Filed 4-4-89; 8:45 am]

BILLING CODE 6210-01-M

Lexington Bancshares, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-7360) published at page 12682 of the issue for Tuesday, March 28, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Lexington Bancshares, Inc.*, Lexington, Kentucky; to acquire 100 percent of the voting shares of Cardinal Bancshares, Inc., Lexington, Kentucky, and thereby indirectly acquire Cardinal Bancshares Subsidiary, Inc., Lexington, Kentucky; Harco Bancshares, Inc., Harlan, Kentucky; Cole Holding Company, Harlan, Kentucky; Guaranty Deposit Bank, Cumberland, Kentucky; Harlan National Bank, Harlan, Kentucky; and Union Bank & Trust Company, Irvine, Kentucky.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Widmer Bancshares, Inc.*, Salisbury, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants and Farmers Bank, Salisbury, Missouri.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First State Bankshares, Inc.*, Spearman, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Spearman, Texas.

2. *Red River Financial Corporation*, Detroit, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Detroit, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Allied Bancorp*, Mission Viejo, California; to become a bank holding company by acquiring up to 50 percent of the voting shares of Mission Valley Bank, N.A., San Clemente, California.

Comments on these applications must be received by April 19, 1989.

Board of Governors of the Federal Reserve System, March 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-8005 Filed 4-4-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-940-09-4520-13; ES-040653, Group 7]

Filing of Plat of Dependent Resurvey; Maine

March 30, 1989.

1. The plat of the dependent resurvey of the boundaries of the land held in trust for the Penobscot Nation in Township 3, Range 9, North of the Waldo Patent, Penobscot County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 15, 1989.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 15, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Corwyn J. Rodine,

Acting Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 89-8099 Filed 4-4-89; 8:45 am]

BILLING CODE 4310-GJ-M

[ID-943-09-4214-11; I-9110]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture proposes that a 90.00 acre withdrawal for the Lost Valley Progeny Test Area, formerly known as the Lost Lake Seed Orchard, continue for an additional 100 years, which is the anticipated life of the project. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 5595 for the Lost Valley Progeny Test Area, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

Payette National Forest

T. 19 N., R. 1 W.
- Sec. 17, NW¼SW¼SW¼SW¼, S½SW¼SW¼SW¼;
- Sec. 18, NE¼SE¼SE¼SE¼, S½SE¼SE¼NE¼;
- Sec. 19, NE¼NE¼NE¼, NE¼SE¼NE¼NE¼;
- Sec. 20, SW¼NE¼NE¼NW¼, SW¼NE¼NW¼, W½SE¼NE¼NW¼, W½NE¼NW¼NW¼, SE¼NE¼NW¼NW¼, NW¼NW¼NW¼, N½SW¼NW¼NW¼, SE¼SW¼NW¼NW¼, SE¼NW¼NW¼, N½NE¼SW¼NW¼, N½NW¼SE¼NW¼.

The areas described aggregate 90.00 acres in Adams County.

The withdrawal is essential for protection of the Lost Valley Progeny Test Area, which contains planted stands of high quality trees that have been partially thinned and pruned to promote seed production. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 27, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-8100 Filed 4-4-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-09-4214-11; I-15018, I-15022]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that two withdrawals for the Grays Lake Administrative Site, consisting of 37.50 acres, be continued for an additional 25 years, based upon the anticipated remaining useful life of the site for administrative purposes. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The U.S. Forest Service proposes that the existing land withdrawals made by Secretarial Order of June 18, 1908, and Executive Order of October 28, 1914, as amended by PLO 4596, be continued for a period of 25 years pursuant section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751;

43 U.S.C. 1714. The land is described as follows:

Boise Meridian

(I–15018)

T. 4 S., R. 43 E.
Sec. 35, NE¼SE¼NE¼, N½NW¼SE¼ NE¼, N½S½NW¼SE¼NE¼, SE¼SE¼ NE¼.

(I–15022)

T. 4 S., R 43 E.
Sec. 35, NE¼NE¼SE¼.

The area described contains 37.50 acres in Bonneville County.

The withdrawals are essential for protection of the Grays Lake Administrative Site. The withdrawals closed the land to surface entry and mining, but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

William E. Ireland,

Chief, Realty Operations Section.

Dated: March 27, 1989.

[FR Doc. 89–8101 Filed 4–4–89; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninety-third Meeting of the Board for International Food and Agriculture Development (BIFAD) on April 14, 1989.

The purposes of the Meeting are to discuss the Development Fund for Africa, Agricultural Universities in Africa, and the expansion of the Title XII mandate.

The April 14, 1989, Meeting will be held in the Department of State, Room 1107, 2201 C Street, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA–18, Washington, DC 20523, or telephone him on (703) 235–8929.

Date: March 29, 1989.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 89–8098 Filed 4–4–89; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–411 (Final)]

Calcined Bauxite Proppants From Australia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1674(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Australia of calcined bauxite proppants, provided for in heading 2606 (and covered by statistical reporting number 2606.00.0060) of the Harmonized Tariff Schedule of the United States,[3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 29, 1988, following a preliminary determination by the Department of Commerce that imports of calcined bauxite proppants from Australia were being sold at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 28, 1988 (53 FR 52512). The hearing was held in Washington, DC, on February 22, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 28, 1989. The views of the Commission are contained in USITC Publication 2172 (March 1989), entitled "Calcined bauxite proppants from Australia: Determination of the Commission in Investigation No. 731–TA–411 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission

Kenneth R. Mason,

Secretary.

Issued: March 30, 1989.

[FR Doc. 89–8105 Filed 4–4–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–430 (Preliminary)]

Dry Aluminum Sulfate From Sweden

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no 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 Sweden of dry aluminum sulfate, provided for in subheading 2833.22.00 of the Harmonized Tariff Schedule of the United States (formerly provided for in item 417.16 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioner Cass not participating.

[3] Until Jan. 1, 1989, calcined bauxite proppants were provided for in item 521.1720 of the *Tariff Schedules of the United States Annotated.*

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Background

On February 13, 1989, a petition was filed with the Commission and the Department of Commerce by Delta Chemical Corp., Baltimore, MD, alleging that an industry in the United States is materially injured by reason of LTFV imports of dry aluminum sulfate from Sweden. Accordingly, effective February 13, 1989, the Commission instituted preliminary antidumping investigation No. 731–TA–430 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of February 22, 1989 (54 FR 7609). The conference was held in Washington, DC, on March 6, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 30, 1989. The views of the Commission are contained in USITC Publication 2174 (March 1989), entitled "Dry Aluminum Sulfate From Sweden: Determination of the Commission in Investigation No. 731–TA–430 (Preliminary) Under the Tariff Act of 1930, together with the Information Obtained in the Investigation."

Issued: March 31, 1989.

By Order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 89–8106 Filed 4–4–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–299 (Preliminary) and Investigation No. 731–TA–431 (Preliminary)]

Aluminum Sulfate From Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and a preliminary antidumping investigation and the 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–299 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and of antidumping investigation No. 731–TA–431 (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 Venezuela of aluminum sulfate, provided for under subheading 2833.22.00 of the Harmonized Tariff Schedule of the United States (formerly provided for in item 417.16 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Venezuela, and sold in the United States at less than fair value. As provided in section 703(a), and section 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by May 15, 1989.

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, as amended by 53 FR 33039 (Aug. 29, 1988) and 54 FR 5220 (Feb. 2, 1989)), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–252–1185), 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 March 29, 1989, by General Chemical Corporation de Puerto Rico, Inc., Dorado, Puerto Rico.

Participation in the investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 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.

Public service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public 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.

Limited Disclosure of Business Proprietary Information Under a Protective Order and and Business Proprietary Information Service List

Pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 19, 1989 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–252–1185) or Judith Zeck (202–252–1199) not later than April 17, 1989 to arrange for their appearance. Parties in support of the imposition of countervailing duties and 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 April 25, 1989, a written brief containing information and arguments pertinent to the subject matter 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 business proprietary 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 information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than April 28, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: March 31, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-8107 Filed 4-4-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31384]

Federal Industries Limited—Control Exemption—CF Kingsway Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The acquisition by Federal Industries, Ltd., a noncarrier holding company controlling a railroad and motor carriers, of control of CF Kingsway, Inc., a noncarrier holding company controlling motor carriers, is exempt under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343, *et seq.*, subject to standard employee protective conditions.

DATE: The exemption will be effective on publication in the **Federal Register**. Petitions for reconsideration must be filed by April 25, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31384 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: Mark Andrews, L. John Osborn, Verner, Liipfert, Bernhard, McPherson & Hand, 901 Fifteenth Street NW., Washington, DC 20005-2301

John C. Kirtland, Eric L. Kirschhorn, Joseph V. Kennedy, Bishop, Cook, Purcell & Reynolds, 1400 L Street NW, Washington, DC 20005-3502

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4359, (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 29, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-8001 Filed 4-4-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31268]

The Pittston Co.—Control Exemption—Buffalo Creek and Gauley Railroad Co., et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the acquisition of control of Highway Merchandise Express, a motor carrier, and the Buffalo Creek and Gauley Railroad Company.

DATES: This exemption will be effective on May 8, 1989. Petitions to stay must be filed by April 17, 1989. Petitions for reconsideration must be filed by April 27, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31268 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Richard H. Streeter, Suite 800, 1815 H Street NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

(Assistance for the hearing impaired is available through TDD services (202) 275-1721)

Decided: March 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7999 Filed 4-4-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31437]

Exemption; Soo Line Railroad Co.—Joint Project for Relocation Of a Line of Railroad and Trackage Rights Exemptions—Chicago Central and Pacific Railroad Co.

On March 23, 1989, Soo Line Railroad Company (Soo) filed a notice of exemption under 49 CFR 1180.2(d)(5) and (7) for the acquisition of overhead trackage rights over the line of the Chicago Central and Pacific Railroad Company (CCP) between milepost 182.73 and milepost 184.50 at Dubuque, Iowa.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers, and, incidental thereto, the abandonment of certain Soo track and the construction of two connections to facilitate Soo's use of CCP's line. The Commission will assume jurisdiction over the abandonment and construction components of a relocation project only

in cases where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN,* 4 I.C.C.2d 95 (1987). Under these standards, the abandonment and construction of track are not subject to the Commission's jurisdiction. The remainder of the joint relocation project, involving the acquisition of overhead trackage rights, qualifies under the class exemption procedures at 49 CFR 1180.2(d) (5) and (7).[1]

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on:

Larry D. Starns, Soo Line Railroad Company, Soo Line Building, Box 530, 105 South Fifth Street, Minneapolis, MN 55440

Donald R. Wood, Jr., President, Chicago Central and Pacific Railroad Company, P.O. Box 1800, 501 Sycamore Street, Waterloo, IA 50704

Dated: March 29, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-8000 Filed 4-4-89; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules to consider proposed amendments to the Federal Bankruptcy Rules under the provisions of Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on May 17, 18, and 19, 1989, beginning at 8:30 a.m. and ending at approximately 5:00 p.m. each day.

ADDRESS: The meeting will be held in the Stouffer Madison Hotel, 515 Madison Street (Room 638), Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: March 28, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-8091 Filed 4-4-89; 8:45 am]

BILLING CODE 2210-01-M

Hearings of the Judicial Conference Advisory Committees on Civil and Criminal Rules

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of public hearings.

SUMMARY: The Advisory Committee on Civil Rules has proposed a new Rule 84, to the Federal Rules of Civil Procedure, including a Practice Manual and Forms. The Advisory Committee on Criminal Rules has proposed an amendment to Rule 41(a), and a new Rule 58 which would replace the "Rules of Procedure for the Trial of Misdemeanors before United States Magistrates", to the Federal Rules of Criminal Procedure. Each of these Committees has requested that the proposals be made available to the public so that comments may be obtained from those who are interested.

Those interested in presenting oral comments may do so at hearings concerning these proposals, to be held in the Ceremonial Court Room No. 2525, on July 24, 1989, at the United States District Court, 219 South Dearborn Street, Chicago, Illinois.

Any one desiring a copy of the proposed amendments, and any one wishing to appear or to present written comments should write to James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544 no later than June 26, 1989.

Announcement

On March 14, 1989, the Judicial Conference of the United States, pursuant to the provisions of 28 U.S.C. § 2073, approved the following:

Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure

Scope. These procedures govern the operations of the Judicial Conference Committee on Rules of Practice, Procedure, and Evidence (Standing Committee) and the various Judicial Conference Advisory Committees on Rules of Practice and Procedure in drafting and recommending new rules of practice, procedure, and evidence and amendments to existing rules.

Part I—Advisory Committees

1. *Functions.* Each Advisory Committee shall carry on "a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use" in its particular field, taking into consideration suggestions and recommendations received from any source, new statutes and court decisions affecting the rules, and legal commentary.

2. *Suggestions and Recommendations.* Suggestions and recommendations with respect to the rules should be sent to the Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, who shall, to the extent feasible, acknowledge in writing every written suggestion or recommendation so received and shall refer all suggestions and recommendations to the appropriate Advisory Committee. To the extent feasible, the Secretary, in consultation with the Chairman of the Advisory Committee, shall advise the person making a recommendation or suggestion of the action taken thereon by the Advisory Committee.

3. *Drafting Rules Changes.* a. An Advisory Committee shall meet at such times and places as the Chairman may authorize. All Advisory Committee meetings shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public and states the reason for closing the meeting. Each meeting shall be preceded by notice of the time and place of the meeting, including publication in the **Federal Register**, sufficient to permit interested persons to attend.

[1] Embraced in the notice is a request for waiver of the environmental report. In a decision in Finance Docket No. 31342, *Soo Line Railroad Company and Burlington Northern Railroad Company—Exemptions—Joint Project for Relocation of a Line of Railroad and Trackage Rights* (not is no basis for conducting environmental review of transactions such as these. Accordingly, inasmuch as there is no requirement for an environmental report, waiver is unnecessary.

b. The reporter assigned to each Advisory Committee shall, under the direction of the Committee or its Chairman, prepare initial draft rules changes, "Committee Notes" explaining their purpose and intent, copies of summaries of all written recommendations and suggestions received by the Advisory Committee, and shall forward them to the Advisory Committee.

c. The Advisory Committee shall then meet to consider the draft proposed new rules and rules amendments, together with Committee Notes, make revisions therein, and submit them for approval of publication to the Standing Committee, or its Chairman, with a written report explaining the committee's action, including any minority or other separate views.

4. Publication and Public Hearings. a. When publication is approved by the Standing Committee, the Secretary shall arrange for the printing and circulation of the proposed rules changes to the bench and bar, and to the public generally. Publication shall be as wide as practicable. Notice of the proposed rule shall be published in the **Federal Register** and copies provided to appropriate legal publishing firms with a request that they be timely included in their publications. The Secretary shall also provide copies to the chief justice of the highest court of each state and, insofar as is practicable, to all individuals and organizations that request them.

b. In order to provide full notice and opportunity for comment on proposed rule changes, a period of at least six months from the time of publication of notice in the **Federal Register** shall be permitted, unless a shorter period is approved under the provisions of subparagraph d of this paragraph.

c. An Advisory Committee shall conduct public hearings on all proposed rules changes unless elimination of such hearings is approved under the provisions of subparagraph d of this paragraph. The hearings shall be held at such times and places as determined by the chairman of the Advisory Committee and shall be preceded by adequate notice, including publication in the **Federal Register**. Proceedings shall be recorded and a transcript prepared. Subject to the provisions of paragraph six, such transcript shall be available for public inspection.

d. Exceptions to the time period for public comment and the public hearing requirement may be granted by the Standing Committee or its chairman when the Standing Committee or its chairman determines that the administration of justice requires that a proposed rule change should be expedited and that appropriate public notice and comment may be achieved by a shortened comment period, without public hearings, or both.

5. Subsequent Procedures. a. At the conclusion of the comment period the reporter shall prepare a summary of the written comments received and the testimony presented at public hearings. The Advisory Committee shall review the proposed rules changes in the light of the comments and testimony. If the Advisory Committee makes any substantial change, an additional period for public notice and comment may be provided.

b. The Advisory Committee shall submit proposed rules changes and Committee Notes, as finally agreed upon, to the Standing Committee. Each submission shall be accompanied by a separate report of the comments received and shall explain any changes made subsequent to the original publication. The submission shall also include minority views of Advisory Committee members who wish to have separate views recorded.

6. Records. a. The Chairman of the Advisory Committee shall arrange for the preparation of minutes of all Advisory Committee meetings.

b. The records of an Advisory Committee shall consist of the written suggestions received from the public; the written comments received on drafts of proposed rules, responses thereto, transcripts of public hearings, and summaries prepared by the reporter; all correspondence relating to proposed rules changes; minutes of Advisory Committee meetings; approved drafts of rules changes; and reports to the Standing Committee. The records shall be maintained at the Administrative Office of the United States Courts for a minimum of five years and shall be available for public inspection during reasonable office hours. Thereafter the records may be transferred to a Government Records Center in accordance with applicable Government retention and disposition schedules.

c. Any portion of minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting as provided in subparagraph 3a.

d. Copies of records shall be furnished to any person upon payment of a reasonable fee for the cost of reproduction.

Part II—Standing Committee

7. Functions. The Standing Committee shall coordinate the work of the several Advisory Committees, make suggestions of proposals to be studied by them, consider proposals recommended by the Advisory Committees, and transmit such proposals with its recommendation to the Judicial Conference, or recommit them to the appropriate Advisory Committee for further study and consideration.

8. Procedures. a. The Standing Committee shall meet at such times and places as the Chairman may authorize. All Committee meetings shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public and states the reason for closing the meeting. Each meeting shall be preceded by notice of the time and place of the meeting, including publication in the **Federal Register**, sufficient to permit interested persons to attend.

b. When an Advisory Committee's final recommendations for rules changes have been submitted, the Chairman and Reporter of the Advisory Committee shall attend the Standing Committee meeting to present the proposed rules changes and Committee Notes.

c. The Standing Committee may accept, reject, or modify a proposal. If a modification effects a substantial change, the proposal will be returned to the Advisory Committee with appropriate instructions.

d. The Standing Committee shall transmit to the Judicial Conference the proposed rules changes and Committee Notes approved by it, together with the Advisory Committee report. The Standing Committee's report to the Judicial Conference shall include its recommendations and explain any changes it has made.

9. Records. a. The Secretary shall prepare minutes of all Standing Committee meetings.

b. The record of the Standing Committee shall consists of the minutes of Standing and Advisory Committee meetings, reports to the Judicial Conference, and correspondence concerning rules changes including correspondence with Advisory Committee Chairmen. The records shall be maintained at the Administrative Office of the United States Courts for a minimum of five years and shall be

available for public inspection during reasonable office hours. Thereafter the records may be transferred to a Government Records Center in accordance with applicable Government retention and disposition schedules.

c. Copies of records shall be furnished to any person upon payment of a reasonable fee for the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544.

Dated: March 30, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-8093 Filed 4-4-89; 8:45 am]

BILLING CODE 2210-01-M

Meeting of the Advisory Committee on Criminal Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Advisory Committee on Criminal Rules to consider proposed amendments to the Federal Criminal Rules under the provisions of Chapter 237 of Title 18, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on May 18, and 19, 1989, beginning at 9:00 a.m. and ending at approximately 5:00 p.m. each day.

ADDRESS: The meeting will be held at the Administrative Office of the United States Courts, 811 Vermont Avenue NW. (Room 638), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, telephone: (202) 633-6021.

Dated: March 28, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-8092 Filed 4-4-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Registration

By Notice dated June 23, 1988, and published in the **Federal Register** on July 1, 1988, (53 FR 25017), Applied Science Laboratories, Division of Alltech Associates, Inc., 2701 Carolean Industries Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxyamphetamine (7400).	I
3,4-methylenedioxy-n-ethylamphetamine (7404).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethylamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
Thiophene analog of phencyclidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-phenylcyclohexylamine (7460)	I
Phencyclidine (7471)	II
1-piperidinocyclohexaneccarbonitrile (PCC) (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, §§ 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: March 29, 1989.

[FR Doc. 89-8049 Filed 4-4-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated January 26, 1988, and published in the **Federal Register** on February 2, 1988, (53 FR 2893), Johnson Matthey, Inc., Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pethidine (meperidine) (9230)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 29, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-8050 Filed 4-4-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 1, 1989, M.D. Pharmaceutical Inc., 3501 Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9710)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 5, 1989.

Dated: March 27, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-8051 Filed 4-4-89; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

Arkansas Power & Light Co.; Arkansas Nuclear One, Unit 1; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by the Arkansas Power & Light Company (AP&L or the licensee) for an amendment to Facility Operating License No. DPR-51 issued to the Arkansas Nuclear One, Unit 1 (ANO-1), located in Pope County, Arkansas.

During an AP&L review of the High Pressure Injection (HPI) system, it was discovered by the licensee that a postulated break of an HPI injection line, just upstream of the reactor coolant system cold leg connection and downstream of the first check valve, could constitute a small break loss of coolant accident (LOCA) not currently enveloped by the approved 10 CFR 50.46 and Appendix K analyses. Subsequent Babcock and Wilcox (B&W) analysis determined that the ANO-1 HPI system might not be able to provide adequate core cooling should the break occur at high power operation. B&W then further determined that the HPI system would provide adequate core cooling at up to 74% of full power based on a best estimate analysis.

The purpose of the licensee's amendment application dated March 23, 1989 was to temporarily reduce the authorized power level for ANO-1 to the 74% level for a period of time until an acceptable hardware modification could be achieved.

The staff reviewed the licensee's request for amendment and supporting analysis provided by B&W and determined that the amendment was partially acceptable. Specifically, the staff approved the licensee's request to operate at a lower power level, but only would approve 50% of full power based on the nature of the B&W analysis. The power level above 50% was rejected pending the submittal of a full, Appendix K, LOCA analysis for the postulated accident. Further the licensee had requested in the suggested wording of the proposed amendment that it would return to an authorized 100% power level upon approval and implementation of a permanent modification to address the problem of the unanalyzed postulated break. This change was rejected and instead a maximum duration of 50 equivalent full power days for continuation of operation was authorized by the NRC in the amendment. This was necessary because of limitations of existing fuel related analyses related to the reload methodology. Further, future modifications to the authorized power level will require separate routine amendment applications. Notice of Issuance of that amendment will be published in the Commission's biweekly **Federal Register** notice.

The licensee was notified of the Commission's partial denial of the proposed amendment by a letter transmitting Amendment No. 119.

By May 5, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or 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, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should be also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds Bishop, Cook Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005-3502, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 23, 1989, and (2) the Commission's letter to the licensee dated March 29, 1989, and (3) the Commission's Safety Evaluation dated March 29, 1989, issued with Amendment No. 119 to DPR-51.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 29th day of March, 1989.

For the Nuclear Regulatory Commission

Jose A. Calvo,

Director,

Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-8046 Filed 4-4-89; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-275 and 50-323]

Pacific Gas & Electric Co.; Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 34 and 33 to Facility Operating Licenses Nos. DPR-80 and DPR-82, issued to the Pacific Gas and Electric Company (the licensee), which revised the Technical Specifications (TS) for operation of the Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2 (DCNPP), located in San Luis Obispo County, California. The amendments are effective as of the date of issuance.

The amendments changed the DCNPP Combined Technical Specifications by revising TS 2.2.1, "Reactor Trip System Instrumentation Setpoints," Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints," Items 13 and 14 to reduce the steam generator water level low and low-low setpoints from 15 to 7.2 percent of the narrow range span. Also, the associated TS bases were changed.

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 regulations. The Commission has made appropriate findings, as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 23, 1988 at 53 FR 23708. No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on March 23, 1989 at 54 FR 12032.

For further details with respect to this action, see (1) the application for amendments dated April 18, 1988, (2) Amendments Nos. 34 and 33 to Licenses

Nos. DPR–80 and DPR–82, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407. 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—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 27th day of March, 1989.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–8047 Filed 4–4–89; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

1. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

The biweekly notice includes all notices of amendments issued, or proposed to be issued from March 13, 1989 through March 24, 1989. The last biweekly notice was published on March 22, 1989 (54 FR 18831).

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; (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 Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources 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 from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 5, 1989, 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 Procedures" 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 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 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, the Gelman Building, 2120 L 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, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: November 1, 1988.

Description of amendment request: The following proposed changes to the Technical Specifications (TS) are in response to the Baltimore Gas and Electric Company (BG&E, the licensee) submittal dated November 1, 1988. The proposed changes would (1) modify the Unit 2 TS 3/4.4.9, "Pressure/Temperature Limits," by raising the minimum pressurization temperature by 20°F, for pressures between 20 and 530 psia, to a minimum temperature of 90°F; (2) change the Units 1 and 2 TS in accordance with the guidance provided in NRC Generic Letter (GL) 87–09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Condition for Operation and Surveillance Requirements."

Basis for proposed no significant hazards consideration determination

To correct the nonconservative value for the MPT currently provided in the Unit 2 TS Figure 3.4–2c, "Reactor Coolant System Pressure Temperature Limitations for 10 to 40 Years of Full Power Operation," of TS 3/4.4.9, "Pressure/Temperature," the licensee has requested Change No. 1 to raise the Unit 2 MPT to 90°F for reactor coolant system (RCS) pressurizer (PZR) pressures between 20 and 530 psia.

The MPT for a reactor vessel is dependent upon the value of the maximum Nil Ductility Transition Temperature (NDTT) for the vessel and its associated components. The maximum reactor vessel or vessel component NDTT at Unit 2 is +30°F for the vessel flange. The original design code for the reactor vessel, Section III of the 1965 Edition with Addenda through Winter 1967 of the ASME Code, requires the MPT to be equal to the sum of the maximum NDTT plus 60°F. Therefore, the MPT between PZR pressures of 20 and 530 psia at Unit 2 is 90°F. TS Figure 3.4–2c currently sets this MPT at the nonconservative value of 70°F.

The licensee evaluated this proposed change against the standards of 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in probability or consequences of an accident previously evaluated.

The Change No. 1 proposed increase of the MPT for PZR pressures from 20 to 530 psia from 70°F to 90°F represents an additional restriction over the TS requirement currently in effect. Furthermore, the 90°F value to which MPT is to be changed is the minimum temperature that was permitted by the reactor vessel construction code to provide adequate brittle fracture protection to the vessel and its components. Finally, this restrictive change will not affect any other plant operations, equipment or accident analyses.

Consequently, this proposed change would not result in any increase in the probability or consequences of previously evaluated accidents.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated.

This proposed change does not alter any plant operability requirements, other than conservatively shifting the MPT by 20°F, surveillance testing, maintenance, or system design functions. Furthermore, this change reduces the likelihood of brittle fractures of the reactor vessel or of its components which are accidents that are not included in the facility's design basis events.

Thus, this change would not create the possibility of any new or different type of accident.

(iii) Involve a significant reduction in a margin of safety.

This proposal does not alter any plant operational requirements or restrictions other than raising the MPT by 20°F in order to comply with the reactor vessel construction code to ensure that the RCS is at high enough temperature before it is pressurized in order to provide brittle fracture protection to the reactor vessel and its components. Therefore, this proposed change will not involve any reduction in any margin of safety.

Finally, on March 6, 1986, the NRR published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration.

This change is consistent with one of the examples provided: "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications."

Due to all of the above, the NRC staff proposes to determine that the change requested for the Unit 2 TS Figure 3.4–2c

involves no significant hazards consideration.

In accordance with the guidance provided in GL 87–09 the licensee has requested Change No. 2 to the Units 1 and 2 TS to address problems arising from potentially unnecessary operational restrictions that result from the current construction of TS 3/4.0, "Applicability."

Specifically, the Generic Letter suggested changing TS 3.0.4, TS 4.0.3, and TS 4.0.4 TS 3.0.4 deals with entry into an operational mode when the LCO's associated with a particular operational mode are not met. The present specification is inconsistent with operational requirements for several plant systems, prohibiting plant start-up with inoperable equipment though continued power operation would be permitted with the same equipment in an inoperable condition.

TS 3.0.4 would be revised to permit entry into an operational mode with specific equipment/system conditions for which the Action Statements of the applicable Limiting Condition for Operation (LCO) would allow continued plant operation for an unlimited period of time. Consequently, entry into an operational mode would be prohibited only when an equipment/system condition exists for which the applicable LCO Action Statement would require shutdown within a specific time interval.

TS 4.0.3 deals with the licensee's failure to perform a surveillance requirement. Failure to perform a surveillance requirement results in the failure to demonstrate that a structure, system, or component is operable. Currently, if a licensee were to miss a surveillance requirement, the construction of this TS would require plant shutdown. If the licensee were to immediately attempt the performance of the missed surveillance to prevent shutdown, the quality of plant control could be degraded. Thus, GL87–09 provides some flexibility to permit the licensee to perform the surveillance in a reasonable period of time.

TS 4.0.3 would be revised to permit up to 24 hours delay in implementing Action Statement requirements to permit completion of the missed surveillance requirement.

TS 4.0.4 deals with entry into an operational mode and satisfaction of the surveillance requirements associated with the Limiting Condition for Operation (LCO) for a given mode. The present TS 4.0.4, due to its construction, could conflict with TS 4.0.3 and possibly prevent passage through or to operational modes as required to comply with TS LCO Action Statement requirements or in the converse, TS 4.0.3 could prevent entry into a mode for which a surveillance is required to demonstrate operability when that surveillance can only be performed in that particular mode.

TS 4.0.4 would be revised to ensure that it "shall not prevent passage through or to operational modes as required to comply with Action Statement" requirements.

The changes, proposed by the licensee to the Units 1 and 2 TS 3.0.4, 4.0.3 and 4.0.4, are in accordance with the guidance provided in GL 87–09. In addition, the licensee proposed changes to the following TS to delete the non-applicability of TS 3.0.4 to these TS in order to fully implement the changes to TS 3.0.4 as recommended in GL 87–09:

- TS 3.3.3.2, "Incore Detectors"
- TS 3.3.3.3, "Seismic Instrumentation"
- TS 3.3.3.4, "Meteorological Instrumentation"
- TS 3.3.3.7, "Fire Detection Instrumentation"
- TS 3.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation"
- TS 3.3.3.10, "Radioactive Liquid Effluent Monitoring Instrumentation"
- TS 3/4.7.9, "Sealed Source Contamination"
- TS 3/4.7.11, "Fire Suppression Systems"
- TS 3.7.11.2, "Spray and/or Sprinkler Systems"
- TS 3.7.11.3, "Halon Systems"
- TS 3.7.11.4, "Fire Hose Stations"
- TS 3.7.11.5, "Yard Fire Hydrants and Hydrant Hose Houses"
- TS 3/4.7.12, "Penetration Fire Barriers"
- TS 3.11.1.1, "Liquid Effluents—Concentration"
- TS 3.11.1.2, "Dose"
- TS 3.11.1.3, "Liquid Radwaste Treatment System"
- TS 3.11.2.1, "Gaseous Effluents—Dose Rate"
- TS 3.11.2.2, "Dose-Noble Gases"
- TS 3.11.2.3, "Dose-Iodine-131 and Radionuclides in Particulate Form"
- TS 3.11.2.4, "Gaseous Radwaste Treatment System"
- TS 3.11.2.5, "Explosive Gas Mixture"
- TS 3.11.2.6, "Gas Storage Tanks"
- TS 3.11.3, "Solid Radioactive Waste"
- TS 3.11.4, "Total Dose"
- TS 3.12.1 (Radiological Environmental Monitoring Program)
- TS 3.12.2, "Land Use Census"
- TS 3.12.3, "Interlaboratory Comparison Program."

The licensee evaluated these proposed changes against the standards of 10 CFR 50.92 and has determined that the amendments would not:

(i) Involve a significant increase in probability or consequency of an accident previously evaluated * * *

The change to Specification 3.0.4, allowing mode changes while in ACTION STATEMENTS that allow continued, unlimited operation, does not affect the probability or consequences of any accident previously evaluated. Since continued, unlimited operation is allowed in either of the modes involved in the mode change, the only difference is that now the mode change is allowed to happen.

The change to Specification 4.0.3, allowing 24-hours to complete missed Surveillance Requirements, does not effect the consequences of previously evaluated accidents, but it may slightly increase the probability of an accident previously evaluated by increasing the time between surveillances. However, the frequency of missed Surveillance Requirements is very low and it is overly conservative to assume that systems or components are inoperable when a Surveillance Requirement has not been performed. Also, by not shutting down the plant, accidents that might occur as a result of the transient are avoided. Therefore, overall, the change does not increase the probabilities significantly, if at all.

Clarification of Specification 4.0.4 for mode changes as a consequence of ACTION requirements does not affect the probability or consequences of previously evaluated accidents. It is not the intent of Specification 4.0.4 to prevent passage through or to operational modes to comply with ACTION requirements. The change resolves potential conflicts between Specifications 4.0.3 and 4.0.4.

Consequently, these proposed changes would not result in any increase in the probability or consequences of previously evaluated accidents.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated * * *

This change does not add or modify any plant equipment. Therefore, the only possible accidents are still those previously evaluated.

Thus, these changes would not create the possibility of any new or different type of accident.

(iii) Involve a significant reduction in a margin of safety * * *

The change to Specification 3.0.4 reduces the margin of safety in those specifications that allow for continued, unlimited operation and which did not have an exception to 3.0.4 prior to the change. However, as discussed in the NRC staff position in the generic letter, for an LCO that has ACTION requirements permitting continued operation for an unlimited period of time, entry into an operational mode should be permitted in accordance with those ACTION requirements. Therefore, these ACTION requirements provide an acceptable level of safety for continued operation, and there is not a significant reduction in the margin of safety.

Deleting the exception to Specification 3.0.4 in the specifications that allow for continued, unlimited operation does not affect any margin of safety. Prior to this change, Specification 3.0.4 did not apply, as indicated by the exception, and mode changes could be made. With this change, Specification 3.0.4 applies, but, since these specifications allow for continued, unlimited operation, mode changes can still be made.

The proposed change to Specification 4.0.3 would allow time to complete a missed surveillance test and avoid a forced power reduction. Since the majority of surveillances are completed successfully, this avoids potentially unnecessary transients and reduces the potential for plant upset and challenges to safety systems. Therefore, no reduction in a margin of safety results.

Deletion of the statement that exceptions to Specification 4.0.3 are stated in the individual specifications does not effect margin of safety since no such statements exist.

Clarification of Specification 4.0.4 for mode changes as a consequence of ACTION requirements does not affect margin of safety. As pointed out in the NRC staff position on this area in Generic Letter 87–09, it is not the intent of Specification 4.0.4 to prevent passage through or to operational modes to comply with ACTION requirements. The change resolves potential conflicts between Specifications 3.0.4 and 4.0.4.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards.

Based upon the above discussion, the staff proposes to determine that these proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: September 27, 1988.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to (1) revise TS Section 3/4.3.2 to include Limiting Conditions for Operation and Surveillance Requirements to ensure the capability of the main stack monitor signal circuitry to isolate containment purge and vent valves; and (2) revise pages affected by the above TS changes and other editorial and formatting changes.

Basis for proposed no significant hazard 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 licensee 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 Carolina Power & Light Company (CP&L) has reviewed the proposed changes to TS Section 3/4.3.2 and associated revision to the affected TS pages, and has determined that the requested amendments do not involve a significant hazards consideration. The licensee's analysis is reproduced below:

(I) Change of TS Section 3/4.3.2

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not affect the function or physical nature of any component or system associated with the probability of a Design Basis Accident (DBA) or Transient Analysis. The nonsafety-related main stack radiation monitor is in addition to safety related signals from the low reactor water level instrumentation and high containment pressure instrumentation for which there are existing Technical Specifications. Thus, the main stack monitor signal provides additional assurance that, when necessary, primary containment will be isolated. Further, this function provides additional assurance that the consequences of an accident will be mitigated such that radiological effluents released to unrestricted areas will be kept as low as is reasonably achievable.

2. The main stack radiation monitor and associated signal circuitry are nonsafety-related. The nonsafety-related circuitry is electrically isolated from the existing safety-related isolation logic circuitry. Thus, a failure of the nonsafety-related main stack monitor and/or the associated nonsafety-related circuitry will not affect the existing safety-related isolation signals and therefore, will not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The main stack radiation monitor signal setpoints are listed and controlled in the Brunswick Offsite Dose Calculation Manual (ODCM). Changes to this document are submitted to the Staff as part of the Semi-Annual Radioactive Effluent Release Report in accordance with BSEP TS 6.13.2. As noted in an NRC letter dated June 3, 1988, the setpoints are based on the guideline values of 10 CFR Parts 20 and 50, which are more conservative than those of 10 CFR Part 100. Based on this fact, the proposed amendment actually augments the margin of safety.

II. Revision of pages affected by changes to TS Section 3/4.3.2

1. The changes are editorial only and make no changes to the technical content or requirements of the Technical Specifications. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The changes do not affect the function or physical nature of any component or system. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The changes are administrative only and as such are not applicable to any safety parameter. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The staff has made a preliminary review of the CP&L determinations and is in agreement with them. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3298.

Attorney for licensee: R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

NRC Acting Project Director: Edward A. Reeves.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 1, 1989.

Description of amendment request: The amendments would delete references to instrument tag numbers from the technical specifications and provide other editorial and administrative revisions. Carolina Power & Light Company (CP&L) the licensee for the Brunswick Steam Electric Plant, Units 1 and 2, (BSEP) divided the changes into seventeen change categories. For ease in noticing, the staff grouped these into five board categories.

Category 1 changes would delete instrument tag number throughout the technical specifications, delete the words "Instrument Number" from column headings, replace instrument tag numbers with the words "Transmitter," "Trip Logic," "NO17 Instrument Loop," "Remaining Instruments Logic"; delete Footnote (a) from Table 3.3.5.3–1; delete

footnote (b) from table 3.3.6.1–1; and combine footnote ## and ### into footnote (c) on page 3/4 3–26.

Category 2 changes would replace existing numerical and symbolic footnote notations with alphabetical notations; replace the word "Condition" with the phrase "Operational Condition," or "Action" with "Actions," or "Table Notations" with "Notes," or "Action Statements" with "Actions"; change the item notation in Table 3.3.7–1 from alphabetical to numerical, and add the title "Actions" to the top of action table associated with Table 3.3.7–1.

Category 3 changes would delete footnotes no longer necessary. Specifically, footnotes would be deleted from technical specifications dealing with a one time hydrogen injection test authorized in Amendment 131 (Unit 2 only). Footnote ** would be deleted from surveillance requirement 4.1.3.5.b, (Unit 1 only) and footnote * would be deleted from surveillance requirement 4.5.3.1.c (both units).

Category 4 changes would manipulate footnotes and tables (ie. turn the tables, add appropriate headings, double-space, put parentheses around the footnotes notations, and rearrange the footnotes into alphabetical order).

Category 5 changes would repaginate existing pages to accommodate delection of information discussed above and eliminate the current "a" pages.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard 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 Carolina Power & Light Company (CP&L) has reviewed the proposed changes to the technical specifications and has determined that the requested amendment does not involve a significant hazards consideration.

The licensee has provided the following no significant hazards consideration rational for the Category 1 changes.

Delete Instrument Tag Numbers:

1. The proposed changes does not involve a change in the design, operation or testing of any plant system. It deletes information not required to be included in the Technical Specifications, thereby potentially reducing both NRC and CP&L administrative effort involved in keeping the Technical Specifications updated. No new equipment will be installed, nor will any new or different operational modes be created. The instrument tag numbers will be addressed in plant procedures and updated therein, as necessary. The tag number lists will be adequately controlled through 10CFR50.59. Therefore, this change has not effect on the probability of an accident, nor does it impact the consequences of any accident previously evaluated.

2. The proposed change deletes information not required to be addressed in the Technical Specifications. It does not reflect a change to the design, operation or testing of plant equipment; it only administratively deletes the instrument tag numbers from the Technical Specifications. The instrument tag numbers will be maintained and updated in the plant procedures. Therefore, no new or different accident possibilities are created.

3. The proposed change has no effect on the design or operation of any plant system. It only deletes references to instrument tag numbers for the Technical Specifications. The instrument tag numbers are not required to be incorporated in the Technical Specifications, and it takes a great deal of effort for both the NRC and CP&L to keep the information updated. The instrument tag numbers will be handled and updated via plant procedures, thereby potentially eliminating the need for several Technical Specification amendment requests per year. Therefore, since the information will continue to be maintained, only in a different form, there is no impact on the margin of safety of the plant.

Delete the words "Instrument Number" from column headings:

1. The proposed change does not directly affect any equipment or instrumentation. It only deletes the words "Instrument Number" from the column headings of the tables currently listing instruments and their associated instrument tag numbers. The instrument tag numbers are being deleted, as described in Proposed Change Number 3. Therefore, the column headings no longer need to reference the instrument numbers. Thus, the proposed change does not change the probability of any accident previously evaluated.

2. The proposed change is administrative in nature. It deletes column headings that are no longer necessary because the referenced information is being deleted as described in Proposed Change No. 3. No equipment or instrumentation is being changed or affected. Therefore, no new or different accident possibilities are created.

3. The proposed change does not affect any instrumentation or equipment. It is administrative in nature since it is being made only to provide consistency with the information provided in the associated columns. Therefore, there is no decrease in the margin of safety.

Replace instrument tag numbers with "Transmitters," "Trip Logic," "N017 Instrument Loop," and "Remaining Instrumentation," and combine footnotes on page 3/4 3–26:

1. The proposed change does not involve a change in the design, operation or testing of any plant system. It deletes information not required to be included in the Technical Specifications, thereby potentially reducing both NRC and CP&L administrative effort involved in keeping the Technical Specifications updated. The instrument tag numbers will be addressed in plant procedures and updated therein as necessary. Therefore, this change has no effect on the probability of an accident, nor does it impact the consequences of any accident previously evaluated.

2. The proposed change deletes information not required to be addressed in the Technical Specifications. It does not reflect a change to the design, operation or testing of plant equipment; it only administratively deletes the instrument tag numbers from the Technical Specifications. The instrument tag numbers will be maintained and updated in the plant procedures. Therefore, no new or different accident possibilities are created.

3. The proposed change has no effect on the design or operation of any plant system. It only deletes references to instrument tag numbers for the Technical Specifications. The instrument tag numbers are not required to be incorporated in the Technical Specifications, and it takes a great deal of effort for both the NRC and CP&L to keep the information updated. The instrument tag numbers will be handled and updated via plant procedures, thereby potentially eliminating the need for several Technical Specification amendment requests per year. Therefore, since the information will continue to be maintained only in a different form, there is no impact on the margin of safety of the plant.

The following is a combination of two determinations (12 and 16) from the licensee.

Delete footnote (a) from Table 3.3.5.3–1 and footnote (b) from Table 3.3.6.1–1:

1. The proposed change deletes a footnote which was meant to clarify the list of tag numbers associated with Items 9 and 10 of Table 3.3.5.3–1 and Items 1 and 2 of Table 3.3.6.1–1. The tag numbers associated with these items are being deleted, as described elsewhere in this submittal. The definition of instrument functions are required to be listed in the Technical Specifications. Deletion of this footnote will not affect the operation or testing of the instrumentation; therefore, it will not change the probability of an accident, nor will it change the consequences of any accident.

2. The proposed change deletes a footnote which clarifies a list of tag numbers associated with Items 9 and 10 of Table 3.3.5.3–1 and Items 1 and 2 of Table 3.3.6.1–1. The tag numbers are being deleted from the Technical Specifications, as described elsewhere in this submittal. Deletion of this footnote will not impact the operation or testing of the instrumentation, and therefore will not create the possibility of a new or different type of accident.

3. The proposed change deletes a footnote which becomes unnecessary once the instrument tag numbers are deleted from the Technical Specifications. The tag numbers

are being deleted from the Technical Specifications, as described elsewhere in this submittal. The change is administrative since the tag numbers are not required to be listed in the Technical Specifications. The footnote provides a clarification to the list of instruments associated with Items 9 and 10 of Table 3.3.5.3–1 and Items 1 and 2 of Table 3.3.6.1–1. Thus, this footnote is no longer necessary once the tag numbers are deleted. Since the change is administrative, there is no impact on the margin of safety.

The licensee has provided the following no significant hazards consideration rationale for the Category 2 changes:

Replace existing numerical and symbolic footnote notation with alphabetical notation:

1. The proposed change is an administrative change to the Technical Specifications to provide consistency throughout the Technical Specifications. The content of the footnotes has not changed unless specified elsewhere in this enclosure. The changes to the footnote or footnote table have been made to provide clarity and consistency to the Technical Specifications. Therefore, it does not involve a significant increase in the probability of an accident, nor does it involve a change in the consequences of an accident previously evaluated.

2. The proposed change is purely administrative. It will provide consistency with other entries provided elsewhere in the table and in the Technical Specifications. It does not represent a change in the content of the footnote. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change is an administrative change. It will provide consistency and clarity within the table and the Technical Specifications. It does not involve a change in the content of the footnotes. Therefore, there is no impact on the margin of safety.

Replace the word "condition" with the phrase "Operational Condition," or "Action" with "Actions," or "Table Notations" with "Notes" or "Action Statements" with "Actions":

1. The proposed change does not involve a change in design, operation or testing of any plant system. It is an administrative change intended to provide consistency throughout the Technical Specifications. Therefore, it has no effect on the probability of an accident, nor does it impact the consequences of any accident previously evaluated.

2. The proposed change is administrative in nature, intended only to provide consistency within the Technical Specifications. It does not change the design or operation of any plant system. Therefore, it does not create the possibility of a new of different kind of accident.

3. The proposed change does not affect system operation or design. It only provides consistency in terminology with other sections of the Technical Specifications. For this reason, it has no impact on the margin of safety of the plant.

The following is a combination of two licensee determinations (7 and 8).

Table 3.3.7.1–1 notation changes and add the title "Actions":

1. The proposed change is an administrative change to the Technical Specifications to provide consistency throughout the table. The content of the items has not changed unless specified elsewhere in this enclosure. It provides a missing title to the Action table associated with Table 3.3.7–1. It does not affect the design or operation of any plant system, nor does it change the content of the actions listed. Therefore, it does not involve a significant increase in the probability of an accident, nor does it involve a change in the consequences of an accident previously evaluated.

2. The proposed change is purely administrative. It will provide consistency with other entries provided elsewhere in the table and in the Technical Specifications. It does not represent a change in the content of the item. It merely adds a missing title. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change is an administrative change. It will provide consistency and clarity within the table and Technical Specifications. It does not involve a change in the content of the items. It only provides a missing title. Therefore, there is no impact on the margin or safety.

The licensee has provided the following no significant hazards consideration rationale for Category 3 changes.

Delete Footnotes for H Injection Test (Unit 2 only):

1. The proposed change deletes a footnote which no longer applies. The footnote was added to support a one-time hydrogen injection test, which was completed on January 5, 1987. No additional testing is planned. Thus, the proposed change has no effect on the probability of an accident, nor does it affect the consequences of any accidents.

2. The referenced footnote no longer applies to BSEP-2. The hydrogen injection test was successfully completed on January 5, 1987. Thus, the footnote is no longer necessary, and deletion of it will not create the possibility of a new or different type of accident.

3. Footnotes (7) and (i) were aded to support a one-time hydrogen injection test, which was completed on January 5, 1987. No additional testing is planned; therefore, the footnotes no longer apply and should be deleted. This deletion has no impact on the margin of safety.

Delete Foonote ** from Surveillance Requirement 4.1.3.5.b (Unit 1 only):

1. The proposed change deletes a footnote which no longer applies. The footnote was added to allow a one-time extension in the surveillance interval for Surveillance Requirement 4.1.3.5.b. The extension expired after the Spring 1981 outage; the footnote no longer applies. Thus, the proposed change has no impact on the probability or consequences of an accident.

2. The referenced footnote no longer applies to BSEP–1. The surveillance interval extension expired after the Spring 1981 outage. Thus, this footnote is no longer necessary. Therefore, its deletion will not create the possibility of new or different type of accident.

3. Footnote ** was added to the Technical Specifications to allow a one-time extension of a surveillance interval which expired after the Spring 1981 outage. Therefore, this deletion has no impact on the margin of safety of the plant.

Delete Foonote * from Surveillance Requirement 4.5.3.1.c on Page 3/4 5–6.

1. The proposed change deletes a footnote which no longer applies. The footnote was added to allow a one-time postponement of a flow test of the core spray. The extension expired on October 30, 1985 for BSEP–1 and November 15, 1984 for BSEP–2; therefore, the footnote no longer applies. Thus, the proposed change has no impact on the probability or consequences of an accident.

2. The referenced footnote no longer applies. The flow test extension interval expired on October 30, 1985 for BSEP–1 and on November 15, 1984 for BSEP–2. Thus, this footnote is no longer necessary. Therefore, its deletion will not create the possibility of a new or different type of accident.

3. Footnote * was added to the Technical Specifications to allow a one-time extension of a flow test requirement which expired on October 30, 1985 for BSEP–1 and on November 15, 1984 for BSEP–2. Therefore, this deletion has no impact on the margin of safety of the plant.

The following Category 4 determinations were made by the licensee.

Manipulate the footnote tables (i.e., turn the tables, add appropriate headings, double-space the footnotes, put parentheses around the footnote notation, and rearrange the footnotes into alphabetical order) and turn the tables upright:

1. The proposed change is an administrative change to the Technical Specifications to provide consistency throughout the Technical Specifications. The content of the footnotes and items in the table has not changed unless specified elsewhere in this enclosure. The changes to the footnote or footnote table have been made to provide clarity and consistency to the Technical Specifications. Therefore, it does not involve a significant increase in the probability of an accident, nor does it involve a change in the consequences of an accident previously evaluated.

2. The proposed change is purely administrative. It will provide consistency with other entries provided elsewhere in the table and in the Technical Specifications. It does not represent a change in the content of the footnote or items. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change is an administrative change. It will provide consistency and clarity within the table and the Technical Specifications. It does not involve a change in the content of the footnotes. Therefore, there is no impact on the margin of safety.

Lastly, Category 5 determinations are as follows:

Repaginate to accommodate tag number deletions:

1. The proposed change is administrative in nature. It has no impact on the design or

operation of any safety system; it only repaginates the affected section of the Technical Specifications to accommodate deletions on previous pages and to eliminate "a" pages. Therefore, the proposed change does not have any affect on the probability or consequences of any accident previosly evaluated.

2. The proposed change is administrative in nature. It's only purpose is to repaginate a section of the Technical Specifications where information is being deleted which is addressed by other proposed changes provided elsewhere in this submittal. Therefore, it does not create the possibity of a new or different kind of accident.

3. Repagination of this section has no bearing on the design or operation of any system. It is purely administrative. Thus, it does not impact the margin of safety of the plant.

The staff has reviewed the CP&L determinations and is in agreement with them. The instrument tag numbers will still be controlled by the licensee via a licensee controlled document subject to 10 CFR 50.59. The licensee stated that the one-time Unit 2 hydrogen injection test took place in January 1987, and the special footnotes are no longer necessary. The one-time Unit 1 extension in the surveillance interval for surveillance requirements 4.1.3.5.b expired after the Spring 1981 outage and is no longer necessary. The footnotes associated with surveillance requirement 4.5.3.1.c, which deals with the core spray system flow test, is no longer necessary because the tests were conducted within the time periods specified. Lastly, all other changes are administrative in nature. Accordingly, the commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

NRC Acting Project Director: Edward A. Reeves.

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: February 22, 1989.

Description of amendment request: The proposed amendment would revise the License Condition of Section 3.H of the Dresden 2 License and Section 3.G of the Dresden 3 License, and would delete all setpoints of the fire protection Technical Specifications (Section 3/4.12) and revise Sections 6.1.C, 6.1.G.1.a and 6.1.G.2.a of Appendix A of both licenses. Generic Letter 86–10, dated April 24, 1986, and Generic Letter 88–12, dated August 2, 1988, from the NRC provided guidance to the licensee to request removal of the fire protection Technical Specifications. The licensees' proposed amendment is in response to these Generic Letters.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 86–10 for licensees requesting removal of fire protection Technical Specifications. The incorporation of the NRC-approved Fire Protection Program, and the former Technical Specification requirements by reference to the procedures implementing these requirements, into the Final Safety Analysis Report (FSAR) and the use of the standard License Condition, on fire protection, will ensure that the Fire Protection Program, including the system, the administrative and technical controls, the organization, and the other plant features associated with fire protection will be on a consistent status with other plant features described in the FSAR. Also, the provisions of 10 CFR 50.59 would then apply directly for changes the licensee desire to make in the Fire Protection Program. In this context, the determination of the involvement of an unrevised safety question defined in 50.59(a)(2) would be made based on the "accident .* * * previously evaluated" being the postulated fire in the fire hazards analysis for the fire area affected by the change. Hence, the proposed License Condition establishes an adequate basis for defining the scope of changes to the Fire Protection Progam which can be made without prior Commission approval, i.e., without introduction of an unreviewed safety question. The revised License Condition or the removal of the existing Technical Specification requirements on fire protection does not create the possibility of a new or different kind of accident from those previously evaluated. They also do not involve a significant reduction in the margin of safety since the License Condition does not alter the requirement that an evaluation be performed for the identification of an unreviewed safety question for each proposed change to the Fire Protection Program. Consequently, the proposed License Condition or the removal of the fire protection requirements does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification of the Administrative Control Section of the Technical Specifications (Section 6) includes the review of the Fire Protection Program and implementing procedures and the submittal of recommended changes to the Off-site Review and Investigative Function as one of the responsibilities of the On-site Review and Investigative Function. In this manner, the Fire Protection Program will be addressed by administrative control requirements that are consistent with other programs addressed by License Conditions. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

The proposed amendment includes the removal of fire protection Technical Specifications in four areas: (1) Fire detection systems, (2) fire suppression systems, (3) fire barriers, and (4) fire brigade staffing requirements. While it is recognized that a comprehensive Fire Protection Program is essential to plant safety, many details of this program that are currently addressed in Technical Specifications can be modified without affecting nuclear safety. With the removal of these requirements from the Technical Specifications, they have been incorporated into the Fire Protection Program implementing procedures. Hence, with the additions to the existing administrative control requirements that are applicable to the Fire Protection Program and the revised License Condition, there are suitable administrative controls to ensure that the licensee initiated changes to these requirements, that have been removed from the Technical Specifications, will receive careful review by competent individuals. Again, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

Based on the preceding assessment, the staff believes the proposed

amendment involves no significant hazard 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: March 10, 1989.

Description of amendment request: The amendment proposes revisions of Technical Specification Section 4.3.8.2.c to allow a one-time extension for the disassembly and inspection of the turbine control valves, high pressure turbine stop valves until the first refueling outage, currently scheduled to begin in September 1989.

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)) for a proposed amendment to a facility operating license. 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 50.92. The licensee concluded that:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The turbine was first rolled on September 26, 1985. The valves will have only experienced operating conditions for approximately 24 months by the beginning of the first refueling outrage. Therefore, in actuality, the valves will be inspected prior to accumulating the amount of wear presently permitted by the Technical Specification. This does not represent any increase in the probablity of an accident. Additionally, the protection provided by the overspeed protection system is not needed to protect safety related components, equipment or structures from turbine missiles. Since extending the first interval does nothing to the consequences of an accident, this change will not change the consequences of an accident. Thus, there is no increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. A one-time extension to the surveillance interval for turbine valve disassembly and inspection does not create any new modes of operation or testing. The weekly high pressure turbine stop, low pressure turbine stop, high pressure turbine control and low pressure turbine intercept valves cycling surveillance is not changed by this proposed amendment. Therefore, no new or different kind of accident from any accident previously evaluated has been created.

(3) The proposed change does not involve a significant reduction in the margin of safety. As stated above, the valves will actually experience less operating time betwen inspections than what is presently permitted by Technical Specifications and the overspeed protection system is not needed to protect safety-related components, equipment or structures from turbine missiles. Therefore, the margin of safety wil not be reduced by approval of this change request.

The staff has reviewed the licensee's evaluation and concurs with it. On the basis of the above consideration, the staff proposed to find that the changes do not involve a significant hazards consideration.

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: Theodore R. Quay, Acting.

Duke Power Company, et. al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 19, 1987 as supplemented March 10, 1989.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) to add changes required by NRC Generic Letter (GL) 85–09, "Technical Specifications for Generic Letter 83–28, Item 4.3." Item 4.3 of GL 83–28 established the requirement for automatic actuation of shunt trip attachment on reactor trip breakers.

The specific changes would:

(1) Add a new Action Statement 12 to Item 19 "Reactor Trip Breakers" of TS Table 3.3–1.

(2) Add Item 21 "Reactor Trip Bypass Breakers" and its associated Action Statement 13, to TS Table 3.3–1.

(3) Add a new Table Notation 14 to Item 1 "Manual Reactor Trip" of TS Table 4.3–1.

(4) Add Item 21 "Reactor Trip Bypass Breakers" and its associated Table Notations 7, 15 and 16, and modify Table Notation 11 of TS Table 4.3–1.

Basis for proposed no significant hazards consideration determination: The proposed changes to the TSs are submitted by the licensee in response to GL 85–09 which states that: "* * * Technical Specification changes should be proposed by licensees to explicitly require independent testing of the undervoltage and shunt trip attachments during power operation and independent testing of the control room manual switch contracts during each refueling outage. The staff concluded that these tests are necessary to ensure reliable reactor trip breaker operation * * *."

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards consideration by providing certain examples (51 FR 7744). One of the examples of an amendment likely to involve no significant hazards consideration relates to changes that (ii) consititute additional limitations, restrictions, or control not presently included in the TSs. The proposed amendments match the example because they would impose additional limitations for operation and additional surveillance requirements for the reactor trip breaker undervoltage and shunt trip attachments not presently included in the TSs.

The above proposed changes would permit individual testing of the undervoltage and shunt trip attachments and would be in accordance with GL 85.09 for required actions based on generic implications of the Salem ATWS event. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: 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: January 22, 1989.

Description of amendment request: The proposed change would update pressure and temperature limits in

Technical Specification (TS) 3/4.4.9 for heatup and cooldown of the reactor coolant system, including associated Table 4.4–5 on the withdrawal and examination schedule for reactor vessel material irradiation surveillance specimens. TS Bases 3/4.4.9 would be similarly undated to reference revised heatup and cooldown curves and information associated with their derivation and use.

Basis for proposed no significant hazards consideration determination: TS 4.4.9.1.2 requires that reactor vessel material irradiation surveillance specimens be periodically removed and examined to determine changes in material properties as required by 10 CFR Part 50, Appendix H, in accordance with the schedule in TS Table 4.4.5, and that the results of these examinations be used to update TS figures defining allowable pressure and temperature limits for reactor coolant system heatup and cooldown. Thus, the TSs and Appendix H establish dynamic requirements involving periodic monitoring, evaluation and adjustments for changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region resulting from exposure of these materials to neutron irradiation and the thermal environment. The proposed changes are in accordance with these requirements for periodic updating.

The staff has reviewed the licensee's request for the above amendments and finds the proposed curves to be conservative with respect to the existing pressure-temperature operating limits, and to be based upon results of capsule analyses performed in accordance with NRC approved methods. Therefore, operation in accordance with the updated limits 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. By adjusting the limits to reflect the change in material toughness due to irradiation, the present margin of safety is not reduced, and therefore, the change would not (3) involve a significant reduction in margin of safety.

Accordingly, the Commission proposes to determine that the proposed amendments 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.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: March 31, 1983 as supplemented June 22, 1983 and revised February 24, 1984, May 31, 1984 and December 31, 1984.

Description of amendment request: The proposed amendment would provide Technical Specifications (TS) for the Reactor Coolant System (RCS) high point vents. These TS define actions to be taken should the RCS vents become inoperable and adds surveillance requirements to ensure vent operability. The RCS vents were installed in response to NUREG–0737 and the guidance provided by Generic Letter 83–37. The addition of this vent system can help to reduce the effects of an accident by venting gases that could inhibit natural circulation core cooling. The action and surveillance requirements provided in this TS proposal would assure the operability of the vents should they be needed.

The March 31, 1983 application, as supplemented June 22, 1983, was previously noticed in the **Federal Register** on December 21, 1983 (48 FR 56504). As originally submitted the proposed amendment would have allowed indefinite continued operation with one vent inoperable. The current revision requires restoring the inoperable vent to operable status within 30 days or submitting a report and schedule for corrective action within the next 30 days. If the pressurizer vent is inoperable, indefinite continued operation is acceptable provided an alternate vent path is available. In addition, the current revision adds requirements for demonstrating operatility of the vent system block valves and for verifying flow through the vent paths. Because of these revisions, the staff has decided to renotice the proposed amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of criteria for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7750). One of the examples of actions involving no significant hazards consideration is example (ii), "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g. a more stringent surveillance requirement." The proposed change involves additional actions the licensee must take in order to assure the operability of the RCS high point vents. Thus, the proposed changes are in accordance with the above example. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: Herbert N. Berkow.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 22, 1983, as revised February 24, 1984.

Description of amendment request: The amendment would change Sections 3.6.4.1 and 4.6.4.1 of the Technical Specifications (TS) to require that two containment hydrogen monitors be operable. The current TS require that one hydrogen analyzer and one gas chromatograph be operable. The change also addresses the frequency and method of checking and calibrating the hydrogen monitors. This change request is the result of the installation of two independent, in-place containment hydrogen monitors and of the requirements of Attachment 6 to Section II.F.1 of NUREG–0737.

The June 22, 1983 application was previously noticed in the **Federal Register** on December 21, 1983 (48 FR 56504). Due to the revised submittal dated February 24, 1984, the staff has determined that the proposed amendment should be renoticed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determnining 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 amendment request was analyzed in light of the above three criteria. In regard to the first criterion, it was determined that the requested change would not involve a significant increase in the probability or consequences of an accident previously evaluated. The function of the containment hydrogen monitor is to measure the amount of hydrogen in the containment building after an accident. The change would simply replace the current requirement to have a hydrogen analyzer and a gas chromatograph operable with a requirement to have two hydrogen monitors operable.

In regard to the second criterion, it was determined that the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated. Since the only real change proposed by this amendment is to replace the requirement for a gas chromatograph and a hydrogen analyzer to be operable with the requirement for two hydrogen monitors to be operable, there will be no risk of a new type of accident resulting from this request.

In regard to the third criterion, it was found that the proposed amendment would not involve a significant reduction in a margin of safety. The requirement for two hydrogen monitors to be operable will result in the ability to measure containment building hydrogen concentration in the event of an accident.

In addition, with respect to all three criteria, the changes to the surveillance requirements were found adequate by the NRC in a letter dated November 1, 1984 and will ensure that the hydrogen monitors will be operable if needed.

Therefore, the staff proposed to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: Herbert N. Berkow.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: February 3, 1989.

Description of amendment request: The amendments would modify the Technical Specifications (TS) for units 1 and 2 to: (1) Change the maximum operating times for certain primary containment isolation valves (PCIVs) to account for a different method of measuring; (2) exclude several unit 1 containment penetrations and PCIVs from the local leak rate test (LLRT) program; (3) revise Unit 1 TS section 4.7.A.2 and Unit 2 TS section 4.6.1.3 to achieve similarity between the two documents, to comply with current 10 CFR Part 50 Appendix J testing requirements, and to specify an allowable leakage; (4) delete penetration 218A from Unit 1 TS Table 3.7–2; and (5) remove the isolation valves associated with the primary feedwater and the torus drainage and purification systems from Unit 2 TS section 3.6.1.2.

Basis for proposed no significant hazard 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 February 3, 1989 submittal provided an evaluation of the proposed changes with respect to these three standards, as follows:

Proposed Change 1 would increase the maximum operating times for 15 PCIVs on Unit 1 and 22 PCIVs on Unit 2 to account for a change in the measurement method from the present "light-to-light" method to a "switch-to-light" method. The change does not involve a significant hazards consideration because:

1. It does not involve a significant increase in the probability or consequences of an accident previously evaluated, because neither plant operation nor design is affected by the proposed change. The use of switch-to-light methodology will ensure the continued operability of the valve at the required level of safety, while meeting ASME Code testing criteria. The revision of maximum operating time does not reflect any change in valve or system operation or design but reflects only a change in testing methodology.

2. It does not create the possibility of a new or different kind of accident from any previously evaluated, because no new modes of plant operation or change in design are involved. This change is based only on a change in valve operating time testing methodology, and the revised maximum operating time is a result of the use of this different technique. It does not represent, nor does it require, any change to actual system or valve operation or design. System response is not altered.

3. It does not involve a reduction in the margin of safety, because the proposed switch-to-light testing methodology and associated revised maximum operating time will ensure the continued operability of the valve at the current required level of safety and consistency with the ASME Code. The new maximum operating time is determined solely from the use of the switch-to-light methodology, while maintaining the same valve and system operation and response, and thereby the same margin of safety.

Proposed Change 2 would delete certain valves and associated penetrations from the Unit 1 LLRT program because the associated piping terminates in the torus below the water line, thereby precluding gaseous leakage. The change does not involve a significant hazards consideration because:

1. It does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the valves proposed for exemption from 10 CFR 50, Appendix J testing do not represent a post-LOCA release pathway to the environment.

2. It does not create the possibility of a new or different kind of accident from any previously evaluated, because these changes do not introduce any new modes of operation. Only testing requirements and acceptance criteria are affected.

3. It does not involve a reduction in the margin of safety, because primary containment integrity will be assured by routine valve surveillance testing per the requirements of ASME Code, Section I, Part IWV–3420.

Proposed Change 3 does not involve a significant hazards consideration because:

1. It does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the change assigns a specified value for testing purposes that will assure the allowable leakage under accident conditions will not be exceeded.

2. It does not create the possibility of a new or different kind of accident from any previously evaluated, because these changes do not introduce any new modes of operation. Only testing requirements and acceptance criteria are affected.

3. It does not involve a reduction in the margin of safety, because primary containment integrity will be assured by leak rate testing of the air lock in accordance with 10 CFR 50, Appendix J requirements.

Proposed Change 4 would delete from TS Table 3.7–2 for Unit 1, a value that had previously been removed from a

listing of PCIVs subject to Appendix J leak rate testing. The change corrects an oversight in that the valve should have been deleted from Table 3.7–2 as part of the earlier amendment. The change does not involve a significant hazards consideration because:

1. It does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the penetration has been previously determined not to represent a potential containment leakage path. This change is purely administrative in nature.

2. It does not create the possibility of a new or different kind of accident from any previously evaluated, because these changes do not represent a change to plant design or configuration. This change is purely administrative in nature.

3. It does not involve a reduction in the margin of safety, because this change is purely administrative in nature.

Proposed Change 5 does not involve a significant hazards consideration because:

1. It does not involve a significant increase in the probability or consequences of an accident previously evaluated, because this change merely acknowledges the actual fluid-sealed condition of the subject valves following a postulated LOCA, as allowed by 10 CFR 50 Appendix J, Section III.C.3.

2. It does not create the possibility of a new or different kind of accident from any previously evaluated. Removal of the isolation valves associated with the primary feedwater and the torus drainage and purification systems from the Technical Specification does not involve any physical modification to the plant and, therefore, will not introduce any new modes of plant equipment operation or failure.

3. It does not involve a reduction in the margin of safety. Because the subject valves are in a fluid-sealed condition following a ostulated LOCA, they will perform their intended function whether or not they are considered components of bypass leakage. Therefore, performance of the primary containment system is unaffected by this change.

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.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: March 4, 1988.

Description of amendment request: The proposed license amendment would change the "Instrumentation" and "Design Features" sections of the Technical Specifications for Units 1 and 2 of the Donald C. Cook Nuclear Plants. The amendment reflect recently completed enhancements to the D.C. Cook meteorological monitoring system. The enhancements were completed in response to concerns raised in a Nuclear Regulatory Commission Technical Evaluation Report issued June 18, 1986. The amendment addresses concerns for adequate instrumentation to provide a representative view of meteorological conditions within the 10 mile Emergency Planning Zone. The proposed amendment utilizes a three tower system to preclude a possible unrepresentative assessment of meteorological conditions due to the Lake Michigan shoreline effects.

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 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 50.92. We have reviewed the licensee's evaluation and concur with it. The licensee concluded that:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the change will enhance the meteorological monitoring system. The change does not alter or eliminate the functions previously reviewed.

2. The change does not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated (10 CFR 50.92(c)(2)) because the plant operation and design are not affected by the proposed change. The proposed amendment creates no new accident scenario.

3. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because all requirements necessary for safe operation have been retained in the proposed Technical Specifications.

On the basis of the above consideration, the staff proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Theodore R. Quay, Acting.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York

Date of amendment request: December 15, 1988.

Description of amendment request: The proposed amendment would revise the Technical Specification Sections 4.8.4.4, Reactor Protection System Electric Power Monitoring (RPS Logic), and 4.8.4.5, Reactor Protection System Electric Power Monitoring (Scram Solenoids) to change the minimum surveillance test frequency from six to eighteen months. However, testing will be required at each cold shutdown of greater than twenty-four hours if the test has not been performed within the previous 6 months. The purpose of the amendment is to prevent a required plant shutdown solely for the purpose of performing the surveillance test. The test configuration places the plant in a half-scram condition with partial reactor vessel isolation. This condition makes testing at power operation difficult. As a result the reactor is shut down prior to performing the test. By increasing the frequency to 18 months, the test can be performed on a refueling outage interval. Niagara Mohawk has indicated that a net improvement to plant safety can be realized by reducing the frequency of testing.

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 hazard consideration if operation of the facility in accordance

with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The staff has reviewed the licensee's December 15, 1988 submittal and finds that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the increase in the surveillance frequency will not have an adverse affect upon the ability of the Reactor Protection System (RPS) and the Nuclear Steam Supply Shutoff System to perform their intended safety functions. The increased frequency has been evaluated with respect to reactor shutdown reliability, incorporating failure probability from industry operating experience, and was found to have a negligible effect with respect to overall plant safety. Further, the proposed change would reduce the amount of time the reactor would be in a half scram condition and vulnerable to challenges to the plant shutdown systems if the testing was performed at power. Although the testing is currently performed at cold shutdown, the margin of safety provided by the Technical Specifications is based on performing the surveillance while at power. Increasing the frequency will also prevent unnecessary cycling of the facility.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because as discussed above, the increase in testing frequency will not adversely affect the Reactor Protection System and Nuclear Steam Supply Shutoff System responses to previously evaluated accidents. The responses remain within previously assessed limits. In addition, no modifications are being made to plant equipment which could create the possibility of a new or different accident.

3. The proposed amendment will not involve a significant reduction in margin of safety because as discussed previously, the change was evaluated with respect to reactor shutdown reliability and found to have a negligible impact with respect to overall plant safety. In addition, the margin of safety provided by the current Technical Specifications is based on performing the test while at power. This places the plant in a half-scram condition increasing the probability of an inadvertent scram. The licensee's submittal provides an evaluation indicating a net improvement to plant safety as a result of decreasing the frequency of placing the plant in the half-scram condition. Therefore, the proposed change will not result in a significant reduction in margin of safety.

Based upon the above, the staff proposes to determine that the proposed amendment will not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: January 26, 1989.

Description of amendment request: The proposed change to the Technical Specifications would delete the requirement to verify uniformity of air flow distribution across the charcoal absorber banks and HEPA filters of the Standby Gas Treatment System once per operating cycle.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes, in accordance with 10 CFR 50.92 and has concluded and the NRC agrees, that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The revised surveillance requirement does not adversely affect the consequences of the design basis accidents. In addition, it does not affect the reliability of the testing of the standby gas treatment system since uniform distribution of air across filter banks is only dependent on system geometry. Therefore, it is concluded that previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety. The proposed requirement does not have any adverse impact on the protective boundaries. Since the proposed change also does not affect the consequences of any accident previously analyzed, there is no reduction in a margin of safety.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: 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: February 2, 1989.

Description of amendment request: The proposed amendment would revise the Unit 1 Technical Specifications to support the forthcoming Cycle 5 operations, and to make some editorial changes.

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 operting 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 for consquences 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 February 2, 1969 submittal in support of its determination that the proposed changes involve no significant hazards consideration.

The following three questions are addressed for each of the proposed Technical Specification changes;

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

III. Does the proposed change involve a significant reduction in a margin of safety?

• Specification 2.2.1, Rector Protection System Instrumentation Setpoints.

The change to this specification is a correction of a typographical error on Table 2.2.1–1, Functional Unit 2.b, where footnote "#" has been added onto the allowable value.

I. No. The change is editorial in nature; the footnote is currently applicable to the trip setpoint, and should be applicable to the allowable value. Correct single loop operation limits are provided in Specification 3.4.1.1.2. This change corrects a typographical error in the issuance of Amendment 56 to License No. NPF–14. This correction has no impact on any safety analysis.

II. No. See I above.

III. No. See I above.

• Specification 3/4.2.1, Average Planar Linear Heat Generation Rate

The changes to this specification are editorial in nature in that they reflect the removal of the remaining General Electric fuel from the SSES Unit 1 core.

I. No. The changes to this specification and its associated figures are solely due to the fact that no GE fuel will reside in the Unit 1 Cycle 5 core. All references to the GE fuel and its limits are therefore deleted. The ANF fuel limits remain the same. These editorial changes have no impact on any safety analysis.

II. No. See I above.

III. No. See I above.

• Specification 3/4.2.2, APRM Setpoints

The changes to this Specification are editorial in nature in that they reflect the removal of the remaining GE fuel from the SSES Unit 1 core.

I. No. The changes to this specification are solely due to the fact that no GE fuel will reside in the Unit 1 Cycle 5 core. The definition of "T" for GE fuel is therefore deleted. This editorial change has no impact on any safety analysis.

II. No. See I above.

III. No. See I above.

• Specification 3/4.2.3, Minimum Critical Power Ratio

The changes to this specification correct an administrative error in the issuance of Amendment 72 to License No. NPF–14, and provide new operating limit MCPR curves based on cycle-specific transient analyses.

I. No. The administrative change corrects two pages that were inadvertently reversed in the issuance of Amendment 72; this has no impact on any safety analysis.

Limiting core-wide transients were evaluated with ANF's COTRANSA code * * * and this output was utilized by the XCOBRA-T methodology * * * to determine delta CPRs. Both COTRANSA and XCOBRA-T have been approved by the NRC in previous license amendments. A modified void history correlation was used in the neutronics calculations which ultimately affect the delta CPRs, but this change was needed to achieve the same degree of accuracy for higher fuel exposures as was previously provided for lower fuel exposures * * *. All core-wide transients were analyzed deterministically (i.e., using bounding values as input parameters).

Two local events, Rod Withdrawal Error and Fuel Loading Error, were analyzed in accordance with the methods described in XN-NF-80-19 (A) Vol. 1 * * *. This methodology has been approved by the NRC.

Based on the above, the methodology used to develop the new operating limit MCPRs for the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. No. the methodology described can only be evaluated for its effect on the consequences of analyzed events; it cannot create new ones. The consequences of analyzed events were evaluated in I above.

Regarding the administrative correction, see I above.

III. No. As stated in I above, and in greater detail in the * * *. Reload Summary Report, the methodology used to evaluated core-wide and local transients is consistent with previously approved methods and meets all pertinent regulatory criteria for use in this application. The new void history correlation could be considered an exception since it has not been previously utilized in reload submittals for SSES, but its uses ensures a more accurate result of the higher burnups which will be occurring in Cycle 5.

Based on the above, the use of the methodology used to produce the Unit 1 Cycle 5 MCPR operating limits will not result in a significant decrease in any margin of safety.

Regarding the administrative correction, see I above.

• Specification 3/4.2.4, Linear Heat Generating Rate

All proposed changes to this specification are editorial.

I. No. The proposed changes simply remove all references to GE fuel. This has no impact on safety since it is entirely administrative in nature.

II. No. See I above.

III. No. See I above.

• Specification 3/4.3.6, Control Rod Block Instrumentation

The changes to this specification correct an administrative error in the issuance of Amendment No. 64 to License No. NPF–14 by applying footnote "##" appropriately in trip functions 1a and 2a in Table 3.3.6–2.

I. No. Footnote "##" was inadvertently left off of the two trip functions for which revised limits are required for single loop operation. Placing the footnotes in their appropriate locations ensures a proper cross reference between specifications 3/4.3.6 and 3/4.4.1. This change is editorial in nature and has no impact on any safety analyses.

II. No. See I above.

III. No. See I above.

• Specification 3/4.4.1, Recirculation System

All changes to this specification support single loop operation (SLO).

I. No. The original GE SLO analysis required the adjustment of APRM scram, APRM Rod Block, and Rod Block Monitor setpoints in SLO to bound changes in the assumed drive flow to core flow relationship between two loop and single loop operation. The GE analysis indicated that the two loop to single loop change is typically less then 7% drive flow for a given core flow. SSES-specific data taken by PP&L indicates that an 8.5% drive flow change would bound differences between two loop and single loop operation. Therefore, specifications 3.4.1.1.2a.2, 4, and 6 incorporate setpoint adjustments to account for this 8.5% change.

Specification a.3 is revised to remove the GE fuel reference (an administrative change), and to provide the proper MAPLHGR limit for ANF fuel. LOCA analyses performed by ANF * * * indicate that the two loop MAPLHGR limits are applicable to SLO for ANF fuel.

New specification a.5 proposes new MCPR limits for SLO based on transient analyses performed by ANF for events initiated from SLO conditions * * *. These analyses show that the operating limit MCPR must be increased to a minimum of 1.42 for SLO. A 0.01 constant is added to the two loop operating limit MCPR for low power and low core flow conditions for SLO operating limit MCPR values greater than 1.42.

Based on the above analyses of the non-editorial changes to this specification, appropriate limits have been proposed to assure that SLO will not result in a significant increase in the probability or consquences of any accident previously evaluated. The editorial change has no impact on previous analyses.

II. No. The revised setpoints are based on actual data which makes them more restrictive; the revised limits for MCPR and MAPLHGR are based on approved LOCA and transient analysis methods. Neither of these, nor the editorial change, can create the potential for new events.

III. No. As stated in II. above, the revised setpoints are more restrictive and more accurate, and therefore cannot result in a significant reduction in any safety margin. The revised MCPR and MAPLHGR limits are based on analyses which ensure that no significant reduction in safety margins has occurred based on their inputs, applied conservatisms, and calculational methodologies as documented in this proposal. The editorial change has no safety impact.

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 Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: December 12, 1988.

Description of amendment request: The proposed amendments would revise the Unit 1 and the Unit 2 Technical Specifications to reflect revisions to the load profiles of battery banks ID610, ID620, ID630, ID640, 2D610, 2D620,

2D630, and 2D640. The licensee states that these changes are necessary to accommodate the transfer of control room instrumentation inverter loads from present ac power to battery banks and remove the emergency lighting loads from battery banks. The licensee states that the changes will result in a net reduction in battery loads.

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 12, 1988 submittal.

The proposed change does not:

(1) Involve an increase in the probability or consequences of an accident previously evaluated. FSAR Subsection 8.3.2.1.1.4 states that the station batteries have sufficient capacity without the charger to independently supply the required loads for four hours. The Technical Specifications require that the batteries be surveilled to dummy loads which are greater than the design loads. An assessment has been performed by our engineering department which verifies that the batteries have adequate capacity to power the actual loads on the 125V DC system. The new load profiles contained in the proposed amendment to the Technical Specifications envelop the actual loads.

(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.

(3) Involve a reduction in the margin of safety. IEEE 485 requires that the related battery capacity include a margin of aging of the battery and the temperature of the batteries' environment at the beginning of battery life. This margin allows replacement of the battery when its capacity is decreased to 80% of its rated capacity (100% design load). Our engineering department has determined that with the revised reduced load profiles the Class IE 125V DC batteries will supply their connected emergency loads with greater margins of safety at the battery electrolyte temperatures equal to or greater than 60 °F and with 25% aging margins relative to load as recommended by IEEE-485-1983. With the decreased battery loads it can be concluded that the overall margin of the plant is not diminished.

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.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 17, 1989.

Description of amendment request: The proposed Technical Specification (TS) changes will allow the use of the 6-inch line to Standby Gas Treatment System (SGTS) for inerting and deinerting the primary containment, ensure the integrity and operability of the SGTS if a design basis loss of coolant accident (LCOA) occurs while inerting or deinerting the primary containment, specify the actions required when a containment isolation valve becomes inoperable, restrict the maximum angle of opening of the vent and purge valves to ensure their operability during a design basis LOCA, reflect the addition of new containment isolation valves in the Reactor Building Closed Loop Cooling Water System (RBCLCWS) and the exclusion of these valves from quarterly surveillance requirements, and incorporate an administrative change for consistency.

Specifically, the changes affect pages 183, 183a, 185-186a, 191, 192, and 197. The proposed changes include: (1) The use of the 6-inch line with valve number 27 MOV-121 for inerting and deinerting the primary containment; (2) a monthly surveillance requirement for 12-inch valve number 27 MOV-120; (3) actions to be taken to ensure containment isolation; (4) maximum opening angle for vent and purge valves; and (5) a change to the quarterly surveillance requirements for the RBCLCWS valves.

The proposed change will allow the use of the 6 inch line with valve number 27 MOV-121 for inerting and deinerting the primary containment. If a LOCA occurs while inerting or deinerting the primary containment through the 6 inch line, the maximum flow through this line would be such that the delta P across the HEPA filter assembly of the SGTS will not exceed the design limits. Thus, the integrity and operability of the SGTS is assured.

The proposed change will provide assurance of containment isolation by requiring that at least one isolation valve be operable in each affected penetration that is open. Also, if a valve is inoperable, it will be necessary to either restore the inoperable valve to operable status within 4 hours or isolate the affected penetration within 4 hours.

The proposed change will ensure the operability of the containment vent and purge valves during a design basis LOCA. To ensure that the valves will close under the design basis LOCA loads, the maximum angle of opening for valve numbers 27 AOV-111, 27 AOV-112, and 27 AOV-113 is restricted to 40° and for valve numbers 27 AOV-114, 27 AOV-115, 27 AOV-116, 27 AOV-117, and 27 AOV-118 the maximum opening angle is restricted to 50°. This proposed change will also ensure that the containment vent and purse valves can be opened for other safety related reasons. These reasons may include, but are not limited to, inerting or deinerting the primary containment, maintaining containment oxygen concentration, maintaining drywell and suppression chamber pressures, and maintaining the differential pressure between the drywell and suppression chamber.

The proposed change will reflect the addition of new RBCLCWS isolation valves in the FitzPatrick Technical Specifications and the exclusion of these valves from quarterly surveillance schedule established for primary containment power-operated isolation valves. The proposed alternate surveillance test interval, of cycling the valves whenever the reactor is in the cold shutdown condition for greater than 48 hours if they have not been cycled within the preceding 92 days, is satisfactory because (1) The ability to mitigate the effects of an accident are not affected by an inoperable valve; (2) the limits do not communicate with either the containment atmosphere or reactor coolant pressure boundary; (3) the valves are not required to operate (i.e., close) in the event of an accident; and (4) less frequent testing will reduce the possibility of drywell equipment failure or degradation through overheating caused by interruption of cooling water. The valves cannot be cycled during power operation since the result would be loss of cooling water to vital drywell equipment.

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 propability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

The proposed change does not involve a significant hazards consideration, as defined in 10 CFR 50.92, because operation in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. The proposed change will ensure the integrity and operability of the SGTS if a LOCA occurs while inerting or deinerting the primary containment. The use of the 6 inch line will provide this assurance because the maximum flow through this line is such that the delta P across the HEPA filter assembly remains within the design limits.

b. The proposed change will ensure the operability and integrity of the vent and purge valves for closing during a design basis LOCA. In order to ensure that these valves will close again the design basis LOCA loads, the proposed change imposes new restrictions by limiting the maximum angle of opening to specified valves.

c. The proposed change will also provide greater assurance of containment isolation in the event of an accident by imposing new restrictions on isolation and restoration of inoperable valves to operable status.

d. The proposed change will increase containment isolation dependability by addition of remote manual RBCLCWS valves. The fail open/as-is design of these valves ensures a continous supply of cooling water during both normal and accident conditions. Surveillance testing cannot cause an accident because testing will be performed during plant shutdowns when the RBCLCWS is not required to cool the drywell atmosphere. Surveillance tests for the new valves will be conducted more frequently than the tests previously conducted on the manual RBCLCWS valves. This will further ensure increased valve reliability.

2. Create the possibility of a new or different kind of accident from any previously analyzed, because:

The proposed change will impose restrictions to ensure operability and integrity of the SGTS while inerting or deinerting the primary containment if a design basis LOCA occurs at that time. Furthermore, the proposed change will also impose additional restrictions to assure containment isolation by limiting the maximum angle of opening of the vent and purge valves and requiring actions to restore inoperable valves to operable status, or isolate each affected penetration, within 4 hours.

The change from manual to remote manual RBCLCWS containment isolation valves does not create the possibility of a new or different type of accident, because a continuous supply of water is assured during both normal and accident conditions by the fail open/as-is design of these new containment isolation valves. RBCLCWS containment isolation valve operability tests cannot create a new or different type of accident because testing will be performed during reactor shutdowns. This will preclude the possibility that their failure to reopen following a test conducted during power operation could precipitate drywell equipment degradation due to loss of drywell atmosphere cooling and high drywell temperatures.

3. Involve a significant reduction in the margin of safety because:

The proposed change will ensure the operability of SBGTS during inerting or deinerting if a design basis LOCA occurs at that time, operability of the vent and purge valves during a design basis LOCA, and isolation of the primary containment by imposing additional restrictions. The addition of remote manual RBCLCWS containment isolation valves will increase the margin of safety by increasing the extent to which the FitzPatrick plant complies with General Design Criterion 57 of Appendix A to 10 CFR Part 50. Compliance with this criterion improves containment isolation dependability. The ability of the plant to mitigate the effects of an accident are not affected by the failure of these valves.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: October 19, 1984.

Description of amendment request: The proposed amendments would revise the North Anna Units 1 and 2 (NA–1&2) Technical Specifications (TS) in order to provide leakage integrity tests of the isolation valves in the containment purge lines and the steam jet air ejector system lines each time the containment integrity is established. The proposed changes will help identify excessive degradation of the resilient seats of the system isolation valves. In addition, the TS format for NA–1 would be revised to be consistent with the NA–2 TS format. The proposed change (leakage integrity tests) is in response to NRC Generic Item B–24.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7550). Example (ii) of those examples involving no significant hazards considerations, which states "a limitation, restriction or control not presently included in the technical specifications, e.g. a more stringent surveillance requirement," is applicable to the proposed change regarding the performance of additional surveillance on the isolation valves in the containment purge lines.

In addition, the license proposed to reformat the NA–1 TS to be consistent with the format of the NA–2 TS. This proposed change is in accordance with Example (i) of the Commission's guidance, which states that changes which involve "a purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in "nomenclature" do not involve a significant hazards consideration.

Therefore, on the basis of the above, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael. W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Units Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: March 20, 1988.

Description of amendment requests: The proposed Technical Specifications (TS) changes will revise Sections 3.14 and 3.23 by imposing additional system

operating restrictions on the Main Control Room and Emergency Switchgear Room (MCR and ESGR) Air Conditioning System.

The MCR and ESGR Air Conditioning System has been modified, as an interim measure, to satisfy the design basis assumptions used in the design of the MCR and ESGR Air Conditioning System until a permanent upgrade is implemented in 1990. The interim modifications were made to maintain acceptable temperatures in the control rooms and in the emergency switchgear/relay rooms under normal operation and accident conditions.

The modified system will require the operation of two chillers, two of the four MCR air handling units, and four ESGR air handling units to maintain design temperatures under maximum heat load conditions. Taking credible single failures into consideration requires that redundant equipment be available during operation. As such, the interim limiting conditions for operation will require that three chillers and eight air handling units be operable when at power operation. Further, the interim limiting conditions for operation will require that both drive motors on each ESGR air handling unit be operable. In addition to the equipment restrictions above, a fire watch will be required during this interim period in both unit's ESGR and Mechanical Equipment Room (MER) #3 to address Appendix R considerations.

Action statements will allow that redundant equipment be inoperable for a period not to exceed seven (7) days facilitate preventative and corrective maintenance. If the inoperable equipment is not returned to operable status within seven (7) days, the appropriate reactor unit(s) must be brought to the shutdown condition. The action statements only allow continued operation (i.e., 7-days window) when sufficient equipment is operable to maintain design room temperatures under maximum design heat loads. The action statements require that the appropriate reactor unit(s) be shut down whenever less than the requisite equipment is operable.

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 determined and the NRC staff agrees that the proposed amendments will not constitute a significant hazards consideration in that:

(1) The implementation of this modification does not significantly increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety and previously evaluated in the Final Safety Analysis Report.

The installation of the interim modification will ensure that design temperatures are maintained under design basis conditions and credible single failure scenarios; therefore, the main control rooms and emergency switchgear rooms will remain at temperatures which afford habitability and reliable equipment operation. The imposition of interim system operating restrictions will ensure that the requisite equipment is operable to maintain design bulk air temperatures.

(2) The implementation of this modification does not create a possibility for an accident or a malfunction of a different type than any evaluated previously in the Final Safety Analysis Report.

The interim modification will uprate the existing air conditioning system to ensure that it will perform its safety related function of maintaining design temperatures in the main control rooms and emergency switchgear rooms during normal and accident conditions. The design considers and accounts for design basis conditions and credible single failure scenarios.

This interim modification requires manual action be taken to energize redundant mechanical equipment which is consistent with the original design basis. The manual action required as a result of this modification must be taken locally at the equipment. However, adequate time is available for local operation of equipment to be accomplished.

(3) The implementation of this modification does not significantly reduce the margin of safety as defined in the basis of any Technical Specification. Although the interim modification requires additional equipment to operate[,] the main control room and emergency switchgear room air conditioning system will be maintained within its design basis. Therefore, [the interim modification ensures] that safety equipment reliability and control room habitability [are] maintained under normal and accident conditions. This modification restores equipment redundancy and provides single failure protection under credible equipment failure scenarios.

Accordingly, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: March 3, 1989

Description of amendment request: The proposed amendment would revise several sections of the WNP–2 Technical Specifications to include limiting conditions of operation which would be applicable to the fifth cycle of plant operation.

For the fourth refueling of WNP–2, scheduled to begin in April 1989, the licensee will replace 144 of the General Electric (GE) initial core fuel assemblies with ANF reload fuel. The replacement assemblies will include 136 new assemblies of the 8x8 design currently in place in the core. The average enrichment of these assemblies is 2.62 percent uranium-235. Two of these assemblies are of a different cladding design. Four assemblies, also of the 8x8 design, fabricated for cycle four but not utilized, will be placed in the core with this refueling. These four assemblies are of an average enrichment of 2.64 percent U–235.

Also to be placed in the core as part of this refueling are four assemblies of a nine fuel pin by nine fuel pin design. These assemblies are referred to as lead fuel assemblies (LFA) because they represent a new design for the fuel supplier (ANF). The LFAs are also of two different cladding designs. The average enrichment of the LFAs is 2.53 to 2.59 percent U–235. The average enrichment and enrichment distribution within the lead fuel assemblies have been selected to match as closely as possible the neutron characteristics of the 8x8 assemblies included in the reload. The licensee has stated these LFAs will be placed in core locations which have been analyzed to have sufficient margin such that the LFAs are not expected to be the limiting assemblies in the core on either a nodal or a bundle power basis.

Specifically the proposed license amendment would revise Technical Specification (TS) 3.1.3.4, "Four Control Rod Group Scram Insertion Times, Limiting Conditions for Operation," to include the scram time values used by ANF in transient analyses of the reload fuel.

The amendment would revise TS 3.2.1, "Power Distribution Limits, Average Planar Linear heat Generation Rate, Limiting Condition for Operation," TS 3.2.3, "Power Distribution Limits, Minimum Critical Power Ratio," and TS 3.2.4, "Power Distribution Limits, Linear Heat Generation Rate, Limiting Condition for Operation," to include limits which would ensure protection of the LFAs, and would revise TS 5.3.1, "Design Features, Reactor Core, Fuel Assemblies," to show the presence of these lead assemblies.

The amendment also would make an editorial change to Bases section B 2.1.2, "Thermal Power, High Pressure and Low Flow," to delete reference to a table removed by a previous license amendment, and would revise the Index of the Technical Specifications to include items affected by this amendment.

The license amendment application submittal of March 3, 1989 is composed of three documents: WNP-2 Cycle 5 Reload Summary Report, Technical Report No. WPPSS-EANF-124 along with an attachment which provides the pages of the Technical Specifications to be changed; WNP-2 Cycle 5 Plant Transient Analysis, ANF-89-01, and WNP-2 Cycle 5 Reload Analysis, ANF-89-02. The reload report describes the reload fuel and summarizes the safety analyses. The WNP-2 Cycle 5 Reload Analysis Report is intended to be used in conjunction with ANF Topical Report XN-NF-80-19(P)(A), Volume 4, Revision 1, "Application of the ANF Methodology to BWR Reloads." This topical report gives a detailed description of the methods and analyses used.

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 proposed amendment to the WNP-2, Technical Specifications to support this reload is very similar to Example (iii) provided by the Commission (51 FR 7751, March 6, 1986) of the types of amendments not likely to involve significant hazards considerations. Example (iii) is an amendment to reflect a core reload where:

(1) No fuel assemblies significantly different from those found previously acceptable to the Commission for the previous core at the facility in question are involved;

(2) No significant changes are made to the acceptance criteria for the Technical Specifications;

(3) The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and

(4) The NRC has previously found such methods acceptable.

Items 2, 3 and 4 are adhered to explicitly, while the question of the significance of differences in the lead assemblies may merit further examination. The major difference between the four LFAs and the other 760 assemblies in the reactor core is the 9x9 configuration of the LFAs. The 9x9 array provides a smaller reactor coolant flow pathway between the pins. It also affords a larger cladding surface area. The LFAs will use the same channels as the 8x8 fuel assemblies.

As noted above, the enrichment and fuel placement are designed to match the neutron performance characteristics of the ANF 8x8 fuel. The licensee has determined that the insertion of the four 9x9 LFAs will have negligible effects upon core wide transient performance. From specific analyses of operating limits the licensee developed LHGR and MAPLHGR limits applicable to the LFAs. The analyses demonstrated that the remainder of the cycle five operating limits apply to the four LFAs. Analyses were performed consistently with the ANF methodology.

Because the lead assemblies are designed to match the 8x8 fuel, because the safety limits are analyzable using the methodology applicable to the existing fuel, and because the lead assemblies will be placed in the core at locations where they will not be limiting, the Commission finds that the four LFAs are not significantly different from those assemblies previously found acceptable.

In addition to providing examples of amendments not likely to involve a significant hazards consideration, the Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On the basis of the evaluation performed in accordance with 10 CFR 50.92, and the fact that the analytical methods used have been approved previously by the NRC staff and do not provide results significantly different, the licensee has concluded, and the staff agrees, that operation of WNP-2 in accordance with the proposed reload amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the transient analyses have been reanalyzed for the reload core. The proposed changes to the Technical Specifications reflect new operating limits associated with the reload core and are based on approved analysis methods and are within the current acceptance criteria;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the operation limitations applied to cycle 5 are identical to previous cycles. The values were derived from NRC qualified codes and by applying the most limiting transients throughout the cycle. These limitations are sufficient to ensure the plant is operated within previously accepted conditions. In addition, no changes sufficient to create a new type of malfunction are contemplated; or

(3) Involve a significant reduction in the margin of safety because the margin of safety for all accidents or operational occurences analyzed for cycle 5 operation is either identical to or more conservative than used for previous cycles.

Based on the above considerations the Commission proposes to determine that the requested changs to the WNP-2 Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., Washington, DC. 20005-3502 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington, Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Station, Unit Nos. 1 and 2, Rock Island County, Illinois

Date of amendment request: February 17 and 21, 1989.

Brief description of amendment: These amendment requests for Dresden and Quad Cities (respectively), revise the "Administrative Controls" Section (Section 6.0) of Technical Specifications (TS) to include: (1) Removal of station and corporate organization charts, (2) Position title changes for Radiation Protection and Chemistry Technicians and Supervisors to reflect a recent division of the Rad/Chem organization into two separate departments, (3) Changes to most of the station and corporate position descriptions, titles, lines of authority, and responsibilities, and (4) Miscellaneous typographical and editorial changes.

Date of publication of individual notice in **Federal Register:** March 15, 1989 (54 FR 10762).

Expiration date of individual notice: April 14, 1989.

Local Public Document Room location: For Dresden Station, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities Station, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of amendments request: February 17, 1989

Brief description of amendments: The amendments would revise Section 6.0 of the Technical Specifications by removal of the organizational figures, a position change from Radiation Chemistry Technician to Radiation Protection Technician, several position title changes, and a clarification to the distribution requirements for Onsite Reviews.

Date of publication of individual notice in **Federal Register:** March 15, 1989 (54 FR 10762)

Expiration date of individual notice: April 14, 1989

Local Public Document Room location: Public Library of Illinois Valley Comminity College, Rural Route No. 1, Oglesby, Illinois 61348.

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 fourth 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, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket No. 50–313, Arkansas Nuclear One, Unti 1, Pope County, Arkansas

Date of amendment request: November 17, 1986 and Janaury 13, 1989 as supplemented.

Brief description of amendment: This amendment revised the ANO–1 Technical Specifications to reflect changes in reporting requirements of 10 CFR 50.72 and 50.73 in accordance with NRC Generic Letter 83–43.

Date of issuance: March 21, 1989.

Effective date: March 21, 1989.

Amendment No.: 118.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4403).

The January 13, 1989 submittal provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Baltimore Gas and Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: December 14, 1988 as supplemented February 17, 1989

Brief description of amendments: This amendment provides a temporary, one-time 28-day extension to the surveillance interval, required by TS Surveillance Requirement 4.6.1.2.d, for the performance of each individual Type B or C containment local leak rate test.

This temporary change shall expire upon reaching 199.9°F average reactor coolant system (RCS) temperature during initial RCS heatup following the Unit 2 Cycle 9 refueling outage and then the specified maximum surveillance interval shall revert to the normally required 24-month period.

Date of issuance: March 15, 1989.

Effective date: March 15, 1989.

Amendment No.: 118.

Facility Operating License No. DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 3, 1989 (54 FR 4354).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

NRC Project Director: Robert A. Capra.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 28, 1988, as supplemented March 6, 1989.

Description of amendments: The amendment revises the Technical Specifications by modifying footnote * * *, in Table 1.2, "Operational Conditions." The revised footnote allows the reactor mode switch to be placed in the Refuel position while a single control rod is being moved, as opposed to only when being recoupled provided the one-rod-out interlock is operable.

Date of issuance: March 14, 1989.

Effective date: March 14, 1989.

Amendment Nos.: 125 and 155.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** January 11, 1989 (54 FR 1019) Additional information of a clarifying nature was submitted by the licensee by letter dated March 6, 1989. The additional information did not alter the action noticed and did not effect the staff's proposed no significant hazards considerstion determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 14, 1989. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 23, 1988.

Description of amendments: The amendments change Technical Specification Tables 3.3.5.7–1 for Units 1 and 2 to reflect the modification of the present fire detection system for the diesel generator cells. The detection system will be modified by replacing the present smoke detectors with a combination of heat and flame detectors.

Date of issuance: March 20, 1989.

Effective date: March 20, 1989.

Amendment Nos.: 126 and 156.

Facility Operating License No. DPR–71 and DPR–62: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5161)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601, S. College Road, Wilmington, North Carolina 28403–3297.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendments: September 7, 1988.

Brief description of amendments: The amendment imposes requirements on the incore thermocouples and the reactor vessel level indicating system (RVLIS). In addition, the existing specification on the subcooling margin monitor is revised to require at least one channel operable (from zero required).

Date of issuance: March 13, 1989.

Effective date: March 13, 1989.

Amendment No.: 137.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40965).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: September 1, 1988.

Brief description of amendment: This amendment changed the Technical Specifications associated with the boric acid makeup (BAMU) system. Specifically, the required boron concentration requirements were reduced, the borated water volume was increased, and the requirement to heat trace the BAMU was deleted.

Date of issuance: March 13, 1989.

Effective date: March 13, 1989.

Amendment No.: 40.

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39169).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Indian Michigan Power Company, Dockets Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 2, 1986, November 23, 1987 and July 21, 1988.

Brief description of amendments: The amendments modified paragraphs 2.D of the licenses to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: March 15, 1989.

Effective date: March 15, 1989.

Amendment Nos.: 122, 109.

Facility Operating License No. DPR–58 and DPR–74: These amendments revised the licenses.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53093). The Commission's related evaluation of the amendments is contained in a letter to Indiana Michigan Power Company dated March 15, 1989, and a Safeguards Evaluation Report dated March 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

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 application for amendment: January 26, 1989, as supplemented February 20, March 3, and March 6, 1989.

Brief description of amendment: The amendment provides one-time exceptions to TS 3.0.4 approved for use only during the third refueling outage. The exceptions will allow entry into specified operational conditions without meeting the Limiting Condition for Operation, provided the requirements of the associated action statements are met. Those TS affected are:

a. Residual Heat Removal—Cold Shutdown, TS 3.4.4.9.2, ACTIONs a and c

b. ECCS—Shutdown, TS 3.5.2, ACTION a

c. Suppression Pool, TS 3.5.3, ACTION c

d. Containment and Drywell Isolation Valves, TS 3.6.4, ACTIONs b and c

e. Secondary Containment Automatic Isolation Dampers/Valves, TS 3.6.6.2, ACTIONs b and c

f. Standby Service Water system, TS 3.7.1.1, ACTIONs b, c, and d.

g. Ultimate Heat Sink, TS 3.7.1.3, ACTION a.

h. Control Room Emergency Filtration System, TS 3.7.2, ACTION b.1.

i. Residual Heat Removal and Coolant Circulation—Low Water, TS 3.9.11.2, ACTIONs a and b.

Date of issuance: March 16, 1989.

Effective date: March 16, 1989.

Amendment No. 58.

Facility Operating License No. NPF–29. This amendment revises the Technical Specifications and/or License.

Date of initial notice in **Federal Register**: February 8, 1989 (54 FR 6199).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 29154.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 15, 1988 and February 1, 1989.

Brief description of amendment: This amendment allows operation of Millstone unit 2 for Cycle 10. The changes to the Technical Specifications reflect a revised safety analysis that includes the use of fuel designed and fabricated by Advanced Nuclear Fuels Corporation. Fuel designed and fabricated by ANF has not been previously utilized for Millstone Unit 2.

The changes to the Technical Specifications also reflect the effects of reduced reactor coolant flow from 340,000 to 325,000 gpm.

Date of issuance: March 20, 1989.

Effective date: March 20, 1989.

Amendment No.: 139.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 24, 1989 (54 FR 3545) and February 15, 1989 (54 FR 6977).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 15, 1988.

Brief description of amendment: The amendment revises Technical Specification Tables 2.2–1 and 3.3–4 to decrease the reactor trip setpoint and the engineered safety features actuation setpoints for auxiliary feedwater initiation identified as steam generator water level low-low from 23.5% to 18.10% of the narrow range instrument span. These changes increase the margin between the steam generator water level low-low trip setpoint and normal operating band and reflects the results of a revised calculation of the errors associated with related instrumentation.

Date of issuance: March 14, 1989.

Effective date: March 14, 1989.

Amendment No.: 31.

Facility Operating License No. NPF–49. Amendment revised the technical Specifications.

Date of initial notice in **Federal Register**: July 27, 1988 (53 FR 28293).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: December 14, 1988.

Brief description of amendment: The amendment changed the Technical Specifications to permit removal of the Rod Sequence Control System and to reduce the Rod Worth Minimizer low power setpoint.

Date of issuance: March 22, 1989.

Effective date: March 22, 1989.

Amendment No. 17

Facility Operating License No. NPF–39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 1, 1989 (54 FR 5172).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 21, 1988 as supplemented on November 30, 1988.

Brief description of amendments: These amendments revised the minimum count rate required on the source range monitors for the withdrawal of control rods for startup.

Date of issuance: March 15, 1989.

Effective date: March 15, 1989.

Amendments Nos.: 140 and 142.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1988 (53 FR 53096).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: June 12, 1987 as amended February 7, 1989.

Brief description of amendments: These amendments revised the Technical Specification Limiting Condition for Operation, Surveillance Requirements and BASES to reflect the incorporation of Recirculation Pump Trip and Alternate Rod insertion (Injection) features that are consistent with the requirements of 10 CFR 50.62 C(3) and C(5) as reported in the staff's safety evaluation dated December 21, 1988.

Date of issuance: March 22, 1989.

Effective date: Unit 2 prior to startup in Cycle 8; Unit 3 prior to startup in Cycle 8.

Amendments Nos.: 141 and 143.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1989 (54 FR 7313).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 11, 1982, as amended on August 24, 1983, November 1, 1985, September 30, 1986, September 8, 1987 and September 7, 1988.

Brief description of amendments: These amendments changed the Technical Specification Administrative controls to reflect the addition of restrictions on the use of overtime for plant personnel who perform safety related functions.

Date if issuance: March 22, 1989.

Effective date: March 22, 1989.

Amendments Nos.: 142 and 144.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40998) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1989.

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.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: January 3, 1989 and supplemented by letter dated February 16, 1989.

Brief description of amendments: These amendments redefined the FULLY WITHDRAWN position of the control rod cluster assemblies from 228 steps to a band between 222 and 228 steps withdrawn. Other changes: deleted Figure 3.1.2 from Unit 1 Technical Specifications; deleted Specification 3.10.5 from Unit 2 Technical Specifications; and incorporated rod testing requirements into Specification 3.1.3.2.2 for Unit 1 and Unit 2 Technical Specifications.

Date of issuance: March 22, 1989.

Effective date: For Unit 1: Effective as of startup from the eighth refueling outage, currently scheduled to begin April 1989. For Unit 2: Effective as of startup from the fifth refueling outage, currently scheduled to begin January 1990.

Amendment Nos. 91 and 66.

Facility Operating License Nos. DPR–70 and DPR–75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 8, 1989 (54 FR 6208).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: November 29, 1988, supplemented November 30, 1988.

Brief description of amendment: The amendment reflected personnel changes, corrected typographical errors, and made minor word changes to clarify the intent of Technical Specifications (TS).

Date of issuance: March 13, 1989.

Effective date: March 13, 1989.

Amendment No.: 81.

Facility Operating License No. NPF–30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 8, 1989 (54 FR 6213).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment requests: May 7, 1987.

Brief description of amendment: The amendment allows plant operation to continue for 72 hours for diagnosis and repair, for the case where one or more control rod assemblies are electrically inoperable.

Date of Issuance: March 6, 1989.

Effective date: March 6, 1989.

Amendment No.: 27.

Facility Operating License No. NPF–42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18991).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1989.

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 66621.

Dated at Rockville, Maryland, this 30th day of March 1989.

For the Nuclear Regulatory Commission.

B.D. Liaw,

Acting Associate Director for Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-7946 Filed 4-4-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project—A Public Sector Skill-Based Compensation System in a Participatory Work Environment

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed demonstration project.

SUMMARY: Title VI of the Civil Service Reform Act authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether a specified change in policies or procedures would result in improved Federal personnel management. This notice meets the legal requirement that OPM publish a project plan in the **Federal Register** before conducting, or entering into any agreement to conduct, a demonstration project.

DATES: *Comment Date:* To be considered, written comments must be received no later than June 5, 1989.

Hearing Date: A public hearing will be held on the proposed project plan on May 11, 1989 at Defense Depot, Ogden, Utah, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: *Comment Address:* Send or deliver written comments to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, Room 7638, 1900 E Street NW., Washington, DC 20415.

Public Hearing Address: Building 3 Training Room, Defense Depot, Ogden, UT.

FOR FURTHER INFORMATION CONTACT: *On proposed project and Ogden, Utah public hearing:* Fred Case, (801) 399-7776; (2) *on proposed project at OPM:* Les Bodian, (202) 632-6164.

SUPPLEMENTARY INFORMATION: *On the proposed demonstration project:* The Defense Logistics agency has submitted a proposed demonstration project for consideration under chapter 47 of title 5, U.S. Code entitled, "A Public Sector Skill-Based Compensation Program in a Participatory Work Environment."

The purpose of the project is to demonstrate that a skill-based compensation system, combined with structural changes and training to promote participatory work practices, can enhance the effectiveness of a public sector organization. Reduced costs, increased organizational flexibility, and improved quality are also expected to result.

To accomplish this purpose, the following changes to current personnel management policies and procedures are proposed:

1. An organizational structure based on multi-skilled work teams, in which each member acquires all the skills necessary for accomplishment of the team's mission;

2. A simplified compensation system consisting of 5 pay bands which will cover positions previously classified under both the General Schedule and the Federal Wage System; with increases to base pay based on the acquisition of necessary skills and knowledge;

3. A revised performance evaluation system that employs fewer summary performance levels, includes ratings of team performance, and bases individual ratings in part on peer input;

4. A formal job knowledge certification program.

5. An alternative disciplinary procedure for minor offenses under which managers may substitute non-punitive "letters of discipline" for formal disciplinary procedures.

The demonstration would cover all permanent employees (approximately 1600) at the Defense Depot, Ogden, Utah. The demonstration would run for 5 years from the date of implementation.

On public hearing: A public hearing will be held by OPM at Defense Depot, Ogden, Utah, in the Building 3 Training Room on May 11, 1989, during which interested persons or organizations may present written or oral views on the proposed demonstration project. The hearing will be informal in nature. However, anyone who wishes to testify at the hearing should contact the person listed under "For Further Information Contact" for a specific scheduled time, so that OPM can regulate the course of the hearing and provide enough time for all interested persons and organizations to present their comments. Priority will be given to those scheduled, and others will be heard in any remaining available time. Each speaker's presentation will be limited to 10 minutes. The hearing record will be left open for 2 weeks after the conclusion of the hearing to receive additional written data, views, and arguments from hearing participants.

U.S. Office of Personnel Management.

Constance Horner,

Director.

The proposed demonstration project plan reads as follows:

A Public Sector Skill-Based Compensation Program in a Patrticipatory Work Environment

Submitted by Defense Depot, Ogden, Utah, a primary level field activity of the Defense Logistics Agency, Department of Defense

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I. Executive Summary

Purpose

This project was developed by the Defense Logistics Agency (DLA) in response to Executive Order 12552 "Productivity Improvement for the Federal Government" (February 25, 1986) and House Appropriations Committee Report 99-332, both of which call for new ways to increase quality, timeliness, and productivity.

The demonstration project will test the effectiveness of a Skill-Based Pay (SBP) compensation system, combined with other organizational structure and

personnel system changes designed to bring about a more participatory work environment (PWE) in a Federal installation. Private sector organizations have used SBP systems and PWE concepts successfully in a variety of settings to achieve greater workforce flexibility, leaner staffing, higher quality output, greater long term productivity, and enhanced employee motivation and commitment.

Participating Organization

Defense Depot Ogden, Utah (DDOU) will be the test site for this demonstration project, which is projected to run for 5 years. DDOU is one of 6 DLA sites performing similar functions.

Types and Numbers of Participating Employees

The demonstration will cover all permanent employees at DDOU, which (as of October, 1988) includes 531 non-supervisory General Schedule (GS) employees, 93 supervisory GS and Performance Management and Recognition (PMRS) employees, 887 non-supervisory Federal Wage System (FWS) employees, and 59 Wage Supervisors, for a total of 1570 eligible employees.

Labor Participation

Employees at DDOU are represented by the American Federation of Government Employees (AFGE) which has exclusive recognition for the total depot work force. AFGE has been involved in the development of the project since its inception and the president of AFGE Local 2721 is a member of the project steering committee.

Methodology

Under the demonstration project, DDOU will implement a system of interrelated organizational structure and personnel system changes. Specific interventions will include:

(a) Restructuring the workforce into teams of multi-skilled individuals, such that each team is responsible for a total product, service, or process; all team members will have equal opportunity to learn and perform all the job skills necessary to achieve the team's objectives.

(b) Classifying positions at the team, rather than the individual, level based on a simplified system that integrates work previously classified under both the General Schedule and the Federal Wage System; work performed by teams will be classified based on 5 levels of difficulty.

(c) Establishing a skill-based compensation system consisting of 5 pay bands; advances within a pay band will be based on the acquisition of necessary skills and knowledge, meeting appropriate minimum time requirements, and having a Fully Successful or higher performance rating.

(d) Implementing a performance evaluation system that uses 3 summary performance levels and incorporates subordinate and peer input; the system will require ratings of both team and individual performance.

(e) Using an incentive/recognition program that includes productivity gainsharing for all employees and the option of paid leave in lieu of monetary incentives.

(f) Establishing a formal job knowledge certification program.

(g) Creating an alternative disciplinary procedure for minor offenses under which managers may substitute non-punitive "letters of discipline" for formal disciplinary procedures.

Training and Implementation

This project will represent a significant change to management and employee practices, and adequate training will be essential to successfully transform programs and attitudes. Training will be provided to all employees in project concepts and changes. Team leaders and managers will receive additional training in leadership skills, group dynamics, team building, problem solving, and communications.

Employee Protection

The project will provide for full employee protection on entry into and exit from the demonstration system. In no case will an individual's current salary be reduced as a result of these changes.

Evaluation

A comprehensive and methodologically rigorous evaluation will be conducted by an external evaluator with Office of Personnel Management (OPM) oversight. The objectives of the evaluation will be to assess project outcomes and determine the applicability of project changes to other Federal installations.

Benefits of the Proposed Project

The project is expected to demonstrate that an SBP system can be successfully implemented in a Federal installation in a way that increases employee involvement in work-related decisions, enhances the flexibility of the workforce, improves quality and on-time performance, and reduces operating costs.

II. Introduction

A. Background

Over the last several years, an innovative approach to employee compensation which encourages and rewards employee growth and skill development has evolved in the private sector. This alternative to traditional compensation systems is known by a variety of names. Frequently called Skill-Based Pay (SBP) or Pay For Knowledge, it bases employee pay on the acquisition of required skills rather than on the performance of a specific job.

Through the integration of SBP plans into the organization, companies such as General Motors, Procter & Gamble, Sherwin-Williams and others have improved the skills and abilities of their work force, enhanced their ability to shift employees according to workload demands, and have reduced total employment levels.

In addition to SBP, industry has introduced team structures and has used participatory work practices to enrich the work experience. These work innovations have improved both employee and organizational performance, e.g., employees gain opportunities for challenge, achievement, growth and development while organizational productivity is enhanced through increased output, quality, lower costs, and improved employee morale and motivation.

The intent of this project is to demonstrate that private sector flexibility in resource management can be applied to the public sector. It is also expected that the creation of an enriched work environment will stimulate the organization to respond creatively to the need for increased efficiency and effectiveness. No aspect of implementation will be effected until all appropriate bargaining responsibilities with the union have been met.

This project is an operational approach to effect major modifications to the existing personnel management system in support of the Defense Logistics Agency's (DLA) Logistics System Modernization Program. These changes are intended to move DLA and its demonstration site, Defense Depot Ogden, Utah toward greater operational flexibility. The plan encompasses 2 successful strategies employed by private industry: skill-based compensation and participatory work practices.

This demonstration project responds to the goals of the 1986 Executive Order on Productivity Improvement. It also answers the request contained in House Appropriations Committee Report 99–332 to study and propose test plans to alleviate productivity losses resulting from classification and compensation constraints. The report to the President by the White House Conference on Productivity recommended several major government initiatives including:

—Evaluating government actions, regulations, and legislation to determine their effects on productivity in the public sector.

—Making productivity and quality improvement a standard for evaluating government employee performance.

—Setting good productivity improvement examples by applying successful private sector productivity improvement techniques to government operations.

In addition, the Task Force on the Federal Personnel Management Project identified a number of areas where changes in the Federal personnel system were needed to increase the efficiency and effectiveness of the Federal work force. Many of these problem areas were directly addressed by the Civil Service Reform Act (CSRA) of 1978, which provided for demonstration projects to determine if the removal or change of constraints or regulations would increase effectiveness and efficiency.

B. Problems with the Existing System

This demonstration project addresses problems in key areas within the existing personnel system. The project proposes solutions for these problems by changing the way employees are paid, motivated, and managed. The problems addressed include:

Classification

The complexity of the current Federal classification system has a negative impact upon management's success in developing a productive and efficient work force. It contains numerous classifications by occupation and grade level within both General Schedule (GS) and Federal Wage System (FWS) pay systems. These classifications encourage narrow job designs which limit the types and numbers of skills an employee acquires and uses. This classification system serves to restrict management's capability to meet fluctuations in workload or changing mission requirements, even though mixed work is not prohibited under the current system.

Besides being complex, the current classification system is time consuming to administer. It is perceived as delaying recruitment and transfer actions, which reduces productivity and management effectiveness.

This project employs a simple and flexible classification/compensation system based on broad groupings of GS and FWS skills and knowledge. This system encourages the assigning of a wider variety of work to each employee. Each employee has the opportunity to acquire a variety of skills, thus promoting a flexible, multi-skilled work force. This concept, coupled with a team organization structure, will minimize supervisory layering and will result in a leaner work force.

Staffing

The current system for promoting employees is time consuming. Once a position becomes vacant within the organization, a domino effect in competitive actions is created when filling behind it.

Under the demonstration project, broad pay bands will cover work previously assigned to more than one grade level under current systems. Advancement from one pay level to another within the pay bands is based on acquiring relevant skills and demonstrating performance rather than competitive selection.

Performance Evaluation

Although a study conducted by the Merit Systems Protection Board (MSPB) in 1988 on the effectiveness of performance management in the Federal government concluded that the program was basically sound in concept, some problems have diminished its effectiveness. Among these are the lack of good performance feedback; perception that good performance had no real impact on pay decisions; the lack of equity due to the existence of the "buddy system"; and the finding that the distribution of performance ratings is so far from a normal curve suggests that some bias may be present in the assignment of ratings.

The intent of this project is to increase the significance of performance evaluation by providing a stronger link between performance and pay decisions. The project's performance evaluation system allows for peer input and requires performance standards to consider the variety and number of skills acquired, as well as the quality of performance at both the individual and team level.

Organization

Many public sector organizations are hierarchically arranged with a functional and highly specialized structure in which the work force labors in distinct, often isolated, jobs. In applying this division of labor principle, work has been traditionally divided into "thinking" and "sweating" jobs. Consequently, organizations are structured and jobs are designed in ways which discourage a majority of employees from using their creativity and problem-solving abilities to serve the organization.

The project's skill-based compensation system and participatory work practices have a significant impact on organizational structure through work redesign and the development of the work force into knowledgeable participants in organizational performance. Employees acquire skill redundancy for a large segment of work. Adding a skill-based compensation system will reward employees for acquiring additional skills a team needs. Employee's skills increase, and job rotations are sanctioned through cross-training to ensure proficiency. The team structure is more efficient and adaptable than individual jobs or the fragmented assembly line approach. Additionally, the work team can facilitate performance by encouraging the development and use of all skills and capabilities.

C. Purpose

This project will demonstrate how a participatory work environment with a skill-based compensation system can enhance the effectiveness of public sector organizations by creating a more interactive and knowledgeable work force.

To accomplish the stated purpose of the demonstration project, the following specific objectives must be achieved:

—Increase employee involvement in day-to-day decision processes,

—Improve the flexibility of the work force to respond to workload changes,

—Improve product/service quality and timeliness, and

—Reduce the overall cost of Depot operations.

D. Changes Required

In order to accomplish this purpose, changes are proposed that include:

—Participatory Work Environment
—Multi-Skilled Work Teams
—Skill-Based Pay
—Workforce Certification Program
—Job Series and Grade Consolidation
—Pay Banding
—Gainsharing
—Incentive Leave
—Revised Performance Evaluation
—Alternative Disciplinary Procedures

—Streamlined Organizational Structure

Examples of anticipated effects caused by the changes are depicted in Table 1. It is expected that the principles and practices in this project will be applicable elsewhere in the public sector.

TABLE 1.—EXAMPLES OF ANTICIPATED EFFECTS CREATED BY PROPOSED CHANGES

Interventions	Anticipated effect
Participatory Work Environment.	Increased job satisfaction. Increased productivity. Increased timeliness and quality. Increased employee involvement.
Multi-skilled work teams	Increased work flexibility.
Skill-Based Pay	Increased pay satisfaction. Broadened skill levels.
Workforce Certification Program.	Increased pay satisfaction. Increased career opportunities.
Job Series and Grade Consolidation.	More flexible and manageable classification process. Increased workforce flexibility.
Pay Banding	Increased pay satisfaction. Decreased pay compression.
Gainsharing	Increased pay satisfaction. Increased link between organizational performance and reward. Increased identification with overall mission of organization.
Incentive leave	Increased productivity. Increased job satisfaction.
Revised Performance Evaluation.	Increased link between system performance and rewards.
Alternative Disciplinary Procedures.	Decreased productivity losses due to disciplinary actions.
Streamlined Organizational Structure.	Increased productivity. Increased work force flexibility. Improved timeliness. Reduction of staffing level through attrition.

E. Participating Organization

The project will be conducted at the Defense Depot Ogden, Utah, for a period of 5 years. Approximately 1600 employees in a broad range of technical, professional and nonprofessional series will be involved. This includes full-time permanent and part-time permanent employees. It does not include temporary, term or non-appropriated fund employees.

As one of 6 major distribution depots within the Defense Logistics Agency, the mission of Defense Depot Ogden is to provide effective and economical support of assigned common supplies and services to the Military Departments and other DoD components. DDOU also supports Federal civilian agencies as provided for in interservice support agreements, and 3 major tenant activities: the DLA Systems Automation Center, the Defense Reutilization and Marketing Region and the Army's Continental Communications Support Center. Current mission workload of 300,000 average annual receipts and 3.1 million average annual issues is supported by an 835,000 line item inventory valued in excess of $1.2 billion.

F. Participating Employees

All employees at DDOU will be involved in some aspect of the demonstration project. Every position will be considered for possible inclusion in a team structure under the Skill-Based Pay concept. The entire work force is expected to contribute and benefit from the participatory work environment initiatives. Table 2 is a listing of the number of employees, by series, currently employed by DDOU.

TABLE 2.—NUMBERS AND TYPES OF EMPLOYEES CURRENTLY EMPLOYED AT DDOU (AS OF OCTOBER, 1988)

Series	Titles	Number of employees
0018	Safety and Occupational Health Management.	3
0028	Environmental Protection Specialist.	2
0080	Security Administration	4
0081	Fire Protection and Prevention.	14
0083	Police	16
0085	Guard	11
0188	Recreation Specialist	1
0189	Recreation Aid and Assistant.	3
0201	Personnel Management	4
0203	Personnel Clerical	9
0204	Military Personnel Technician.	2
0212	Personnel Staffing	8
0221	Position Classification	7
0230	Employee Relations	2
0235	Employee Development	3
0260	Equal Employment Opportunity.	2
0301	Miscellaneous Administration.	3
0303	Miscellaneous Clerk and Assistant.	10
0305	Mail/File	2
0318	Secretary	35
0322	Clerk Typist	30
0332	Computer Operation	19
0334	Computer Specialist	15
0335	Computer Clerk and Assistant.	15
0340	Program Manager	1
0342	Support Services Administration.	1
0343	Management Analyst	24
0344	Management Clerical and Assistance.	13
0345	Program Analysis	8
0350	Duplicating Equipment Operator.	1
0356	Data Transcriber	8
0382	Telephone Operator	5
0391	Communications Management.	1
0392	General Communications Equipment.	4
0393	Communications Specialist.	1
0394	Communications Clerical	1
0501	MWR Financial Administrator.	1
0503	Financial Clerical & Assistance.	1
0505	Financial Management	1
0510	Accounting	2
0511	Auditing	7
0525	Accounting Technician	5
0530	Cash Processing	2
0540	Voucher Examining	3
0544	Payroll	5
0560	Budget Analysis	2
0690	Industrial Hygiene	1
0801	General Engineer	7
0802	Engineering Technician	3
0818	Engineering Drafting	5
0855	Electronic Engineer	1
0856	Electronics Technician	6
0895	Industrial Engineering Technician.	2
0905	General Attorney	1
0986	Legal Clerk & Technician	1
1020	Illustrator	1
1035	Public Affairs	2
1060	Photography	1
1102	Contracting	6
1105	Purchasing	4
1106	Procurement Clerical & Assistant.	5
1152	Production Control	10
1411	Library Technician	1
1601	General Facilities & Equipment.	2
1670	Equipment Specialist	1
1750	Instructional Systems Specialist.	2
1910	Quality Assurance	26
2001	General Supply	4
2003	Supply Program Management.	7
2005	Supply Clerical & Technician.	116
2030	Distribution Facilities & Storage Management.	25
2032	Packaging	5
2101	Transportation	1
2130	Traffic Management	3
2131	Freight Rate	15
2132	Travel	1
2134	Shipment Clerical & Assistance.	34
2135	Transportation Loss and Damage Claims.	6

TABLE 2.—NUMBERS AND TYPES OF EMPLOYEES CURRENTLY EMPLOYED AT DDOU (AS OF OCTOBER, 1988)—Continued

Series	Titles	Number of employees
2151	Dispatching	2
2502	Telephone Mechanic	3
2604	Electronics Mechanic	2
2606	Electronic Industrial Control Mechanic.	7
2805	Electrician	7
2810	Electrician (High Voltage).	1
2854	Electrical Equipment Repairer.	5
3105	Fabric Worker	6
3106	Upholstery Worker	1
3111	Sewing Machine Operator.	2
3341	Scale Worker/Mechanic	1
3414	Mechanist	1
3502	Laborer	107
3546	Railroad Repairer	1
3566	Custodial Worker	22
3703	Welder	1
3725	Battery Repairer	1
3806	Sheet Metal Mechanic	3
3809	Mobile Equipment Metal Mechanic.	1
4102	Painter	9
4104	Sign Painter	1
4204	Pipefitter	5
4206	Plumber/Plumbing Worker.	2
4602	Blocker and Bracer	5
4604	Wood Worker	1
4605	Wood Crafter	1
4607	Carpentry Worker/ Carpenter.	8
4749	Maintenance Worker	1
4806	Office Appliance Repairer.	2
4816	Safety Equipment Repairer.	1
4850	Bearing Reconditioning Inspector.	1
5003	Gardener	1
5026	Pest Controller	2
5210	Rigging Worker	3
5301	Miscellaneous Industrial Equipment.	1
5306	Air Conditioning Equipment Mechanic.	2
5352	Industrial Equipment Repairer/Mechanic.	39
5402	Boiler Tender	14
5413	Fuel Distribution System Worker.	2
5423	Sandblaster	2
5435	Carton and Bag Maker Machine Operator.	2
5439	Test Equipment Operator	3
5703	Motor Vehicle Operator	33
5704	Fork Lift Operator	6
5705	Tractor Operator	4
5716	Engineering Equipment Operator.	4
5725	Crane Operator	2
5803	Heavy Mobile Equipment Mechanic.	1
5806	Mobile Equipment Servicer.	1
5823	Automotive Worker	11
5876	Electromotive Equipment Worker.	3
6901	General Commodities Inspector.	52
6904	Tools and Parts Attendant.	5
6907	Warehouse Worker	283
6912	Material Sorter and Classifier.	42
7002	Packer	201
7004	Preservation Packer	8
	Total	1570

G. Labor Participation

Employees at DDOU are represented by the American Federation of Government Employees (AFGE) which has exclusive recognition for the total depot work force. AFGE has been involved in the development of the project since its inception and the president of AFGE Local 2721 is a member of the project steering committee. AFGE represents all non-supervisory non-professional employees. Excluded are professional employees, management officials, supervisors, employees engaged in Federal personnel work in other than a purely clerical capacity, and temporary employees.

H. Transferability

OPM demonstration projects are conducted to test concepts that have broad transferability to other Federal agencies and installations. To enhance the generalizability of this project, a non-Defense agency may join DLA in testing SBP/PWE interventions at one or more of its sites.

III. Methodology

A. Organization Structure

This demonstration project focuses on a team structure. Each team will consist of a group of employees with common objectives who have the opportunity to learn and perform all job requirements of the team. There are several reasons why this approach fits well with SBP/PWE. First, the team approach provides an opportunity for employees to acquire more skills since the skills are grouped together on a functioning team. Second, teams provide a way of organizing work in a meaningful fashion by simplifying the handling of an entire process or whole unit of work. And third, teams are a way of institutionalizing participatory work practices and the exchange of information.

Team Structuring

Teams will be formed by combining functions so that a team can influence and be responsible for a total product, service or process. Teams will consist of groups of employees responsible for achieving the objectives assigned to the team. Each team will have an entry level requiring basic qualifications. Teams will be structured so that team members can learn job knowledge requirements within 36 months. Some functions such as those requiring highly specialized skills/knowledge will continue to be performed and compensated under the current system. Although excepted appointing authorities will not automatically limit participation in multi-skilled teams, the specialized requirements inherent in the coverage of the authority (e.g., attorneys, experts and consultants) must be considered to ensure no work is assigned that is clearly outside this coverage.

The transition from the traditional organization structure to a multi-skilled team structure will require analysis of the work processes/products. Examining the work flow and mixing compatible skills to provide adequate flexibility in shifting the work force to workload demands will increase productivity through improved effectiveness and efficiency. Team size may vary but should not be so large that it is unmanageable. Group interaction and the communication process must not be adversely affected by team size (e.g., either too large or too small). Teams will consist of employees with multiple skills, organized to promote the goals of the team, satisfy the needs of individual members, and create team synergism. Team structuring will consider elements integral to team work to include work processes, skill mix, work flow, and the sharing of a common function/product/service. Tables 3, 4, and 5 show examples of skill mixes that achieve these objectives.

TABLE 3.—MOBILE EQUIPMENT MAINTENANCE TEAM

Current series/ grade	Current title
Skill Mix:	
WG-3725-07	Battery Repairer.
WG-5703-08	Motor Vehicle Operator.
WG-5803-10	Heavy Mobile Equipment Mechanic.
WG-5806-07	Mobile Equipment Servicer.
WG-5823-08	Automotive Worker.
WG-5823-10	Automotive Mechanic.
WG-5823-11	Inspector.
WG-5876-08	Electromotive Equipment Worker.
WG-5876-10	Electromotive Equipment Mechanic.

Estimate: I Team (19 Employees).
Duties: Preventive maintenance, maintenance and repair for all wheeled operating equipment.
Position Title: Vehicle Mechanic.

TABLE 4.—TECHNICAL ASSISTANCE TEAM

Current series/ grade	Current title
Skill Mix:	
GS-345-09	Program Analyst.
GS-1152-09	Production Controller.
GS-2030-07	Distribution Facilities Specialist.
GS-2030-09	Distribution Facilities Specialist.
GS-2030-11	Distribution Facilities Specialist.
GS-2032-09	Packaging Specialist.
GS-2032-11	Packaging Specialist.

Estimate: One Team (16 Employees).
Duties:
- Develop Directorate plans, programs and procedures
- Provide Directorate workload planning and analysis
- Administer Directorate storage plan and space utilization
- Coordinate equipment requirements
- Administer Internal Controls Program
- Administer Directorate budget
- Administer Directorate training program
- Review and analyze production reports
- Provide Operations support for day to day business
- Provide PPP&M technical support

Position Title:
- Distribution Specialist

TABLE 5.—WAREHOUSING TEAM

Current series/ grade	Current title
Skill Mix:	
GS-2005-03	Supply Clerk (Clerical).
GS-2005-05	Supply Clerk (Inventory/Location Audit).
WG-6901-07	General Commodities Inspector.
WG-6907-04	Warehouse Worker.
WG-6907-05	Warehouse Worker.
WG-6907-06	Warehouse Worker.
WG-7002-04	Packer.
WG-2005-05	Packer.
WG-7002-06	Packer.

Estimate: 20 Teams (Approximately 420 Employees).
Duties:
- Select
- Rewarehouse
- Utilize MHE
- Care for material
- Inventory/location audits
- Pack
- CRT input
- Offer for shipment
- Inspection
- Hang stack labels
- Mark/label materials
- Quality

Position Title:
- Distribution Worker

The number of skills assigned to teams will correlate with the number of skills an employee can reasonably learn. This consideration is based on the fact that pay levels will be linked to the number of skills an employee learns and the requirement to remain reasonably proficient in acquired skills. A balance will be reached so that the number of job knowledges/skills does not exceed an employee's ability to learn these knowledges/skills within 36 months.

Skill Groupings

There are 3 basic types of skill groupings around which an SBP/PWE system can be organized. Any combination or number of the different skill groupings can exist on the same team.

1. *Horizontal*—skills upstream or downstream within a functional process or other skills horizontal to the tasks individuals already perform, e.g., receiving and warehousing in a distribution process.

2. *Vertical*—skills above or below a functional process, or other skills vertically upward or downward, e.g., a skilled employee could take on custodial skills (downward) or management skills (upward).

3. *Depth*—increased knowledge and skill within a job category or field, e.g., skilled trades employees when individuals learn skills that allow them to perform their jobs in greater depth.

The order in which job knowledges are learned may be structured or unstructured. A structured order of learning is referred to as "sequential" and is required when the acquisition of a new skill is dependent on the satisfactory acquisition of some previous skill(s). This is similar to the traditional apprentice, journeyman, master concept. Unstructured or non-sequenced skills simply means that they can be acquired in any order. The majority of teams are expected to have non-sequenced job knowledges.

Table 6 shows the conceptual evolution of team participation. As teams develop, increased responsibility and team participation are demonstrated.

TABLE 6.— DEGREE OF PARTICIPATION

Traditional Structure.	Supervisor makes individual decisions and assigns work. Employees perform.
Initial Work Team.	Team leader manages operation of work team. Team members share in work related decisions.
Autonomous Work Team.	Team leader/members share in personnel and work related decisions (PWE).

Team Responsibilities

Teams will become responsible for establishing team goals, evaluating team performance, and sharing information. As teams mature and develop, they will become more self-managing and progress to autonomous work teams in which members make most personnel and work related decisions. As the project progresses, team members will participate in decision making, interviews and recommendations for selection, peer appraisals, equipment recommendations, work methods analysis, and day-to-day problem resolution.

Team Leaders

Team leaders are critical to the success of the team and they will receive extensive training in team leader development, group dynamics, team building, and other interpersonal skills as identified in the Training Section of this plan. The team leader is a working team member who provides leadership and coordination to other team members. This leader will oversee team member development and obtain required training for team members. It is up to the team leader to see that the group process is effective and that the work is accomplished through group processes. Team leaders will also assure that skills and individual rotation requirements are met. Team leaders will initially be selected by management from the current supervisory work force and will be considered "supervisors" in the Central Personnel Data file. As teams mature and develop, and as vacancies occur, management may change this designation and appropriate pay adjustments made to reflect the different status.

Facilitators

As current supervisors assume new roles as team leaders, assistance and support will be required in performing their duties. A team of facilitators will provide this by interrelating with the team leader and team members.

Facilitators will be competitively selected from the current work force through the use of assessment centers. Facilitators will receive intensive interpersonal and facilitator skills training. Responsibilities will include coaching team members in techniques of participative management, and evaluating and monitoring team development.

This role will be complicated by the fact that as levels of supervision flatten, some responsibilities from managers or specialists will shift to a team responsibility. Initially, team leaders/members will lack technical and interpersonal skills required to be effective and self-managing and will require assistance. Facilitators will assist teams in the following areas:

1. Monitoring team meetings,
2. Providing orientation and awareness training,
3. Evaluating and monitoring team progress,
4. Obtaining logistics support (meeting rooms, materials, etc.),
5. Assisting in obtaining technical resources as required,
6. Coordinating activities and events, and
7. Apprising management and union of progress.

In addition, selected first-line supervisors from the existing workforce will serve as "work facilitators." These individuals will assist teams in the following tasks:

1. Solving work flow problems,
2. Monitoring work in progress,
3. Obtaining technical resources when needed,
4. Developing performance measures and goals,
5. Redesigning work methods,
6. Serving as an on-call expert to solve immediate problems,
7. Eliminating cross functional barriers,
8. Seeking ways to improve effectiveness and efficiency, and
9. Training and certification.

Management Role

SBP/PWE requires managers to help employees work together as self-managing teams to surpass prior mission accomplishments. The manager must be a catalyst, a source of advice and guidance, and a communicator. While an SBP/PWE management style incorporates elements of "traditional" management practices, the concepts ask more of the SBP/PWE manager. Successful managers will have to generate and apply mission improvement ideas creatively and get the work done while promoting an environment that enables individuals to make contributions and, at the same time, realize their personal goals.

The SBP/PWE manager must facilitate work team operations by assuring the effectiveness of functional and management support systems and by counseling work team leaders on realizing team potential and individual employee growth. The SBP/PWE manager is responsible for establishing goals and objectives which apply activity and agency program guidance. He/she must translate agency/activity goals and policy to the teams while simultaneously communicating team improvement ideas to other managers. The manager must also establish a viable dialogue with teams and other managers.

B. Classification

Under traditional management practices and current classification systems, work is allocated to a job series on the basis of similarities in the tasks performed and the knowledges, skills, and abilities required. Under the new SBP/PWE system, the allocation of work to a specific team will be based on its contribution to a common product or service. Each work team may perform several kinds of work related to a given product, process or service and employees may be required to perform any or all of a wide variety of tasks encompassing work currently classified as either blue or white collar.

The proposed SBP system calls for a simpler classification system than is required in traditional Federal installations. Teams, not individuals, will be classified. Because a single team may be responsible for work that was traditionally classified under both blue and white collar systems, a single classification system will be used for all teams. Distinctions among classification levels under the new system will focus on those key features of team functions which are common to both blue collar and white collar occupations. Because team descriptions will include a broader range of work than current position descriptions, fewer distinctions among levels of work will be necessary.

Classification Standards

The present system of classification standards for both Wage System and General Schedule positions will be replaced by a highly streamlined system under the demonstration project. Two of the 9 factors evaluated under the current OPM Factor Evaluation System (FES) will serve as a starting point for the new classification system: Knowledge Required by the Position (factor 1) and Scope and Effect (factor 5). FES factor 1 and the FWS factors of Skill and Knowledge will be integrated in the new classification standard. The other factor will be based on a synthesis of FES factor 5 and the Scope and Effect portion of the FWS factor Responsibility. Because project employees will work as participative members of multi-skilled teams, sharing in work-related decisions unencumbered by rigidly defined roles and work methods, these 2 new factors are considered adequate to describe the differences among the broad classification levels. For demonstration purposes, the revised Primary Standard will be referred to as the Master Standard. The Master Standard will be reviewed by OPM's Office of Classification prior to final project approval.

Team Descriptions

When teams are formed, individual position descriptions will be replaced by team descriptions. Every member of a team will have the same team description in his/her OPF in lieu of an individual position description. These descriptions will primarily emphasize the knowledges and skills required as well as the scope and effect of the duties and responsibilities assigned to the team.

In some instances, work teams may perform work that requires highly specialized qualifications such as formal training or apprenticeship periods. Such requirements will be clearly identified in the team description under Conditions of Employment.

Classification of Team Descriptions

Team descriptions will be classified into one of 5 pay bands under the new system. Each team description will be evaluated using the Master Standard. The Master Standard will combine the ranges of job content traditionally covered by grades 1 through 11 of the General Schedule and grades 1 through 11 of the FWS. The combined range will be divided into 5 levels of difficulty which correspond to the 5 pay bands.

Appeal Procedures

Appeals regarding the level of difficulty assigned by the Office of Civilian Personnel will be forwarded to Headquarters DLA, Office of Civilian Personnel, Position Classification and

Personnel Management Evaluation Division (DLA-KM) for resolution. Prior to filing an appeal with DLA-KM, an informal effort must be made to resolve the appeal at the local level. Appeals will be accepted only if they are based on a unanimous team decision.

Classification Review

To assure that team descriptions accurately describe the work actually performed, and to verify that descriptions have been properly assigned to the proper pay bands, the Office of Civilian Personnel will conduct an annual audit of 20% of the positions engaged in the project.

Reclassification Actions

Skills or job knowledge mixes can be changed by planned management action or technological changes. The assignment of a team to one of the 5 pay bands may change as functions are either added or deleted as a result of reorganization, new mission requirements, modernization, etc.

If reclassification results in assignment to a higher pay band, team members will not receive the pay increase until they have been certified as acquiring all newly identified skills. If reclassification results in assignment of a lower pay band, pay retention will apply to those employees whose pay exceeds the newly assigned pay band.

C. *Compensation*

A new SBP Compensation System designed for the demonstration project will apply to all employees assigned to teams. The system has been designed to achieve the following objectives:

—Provide a positive incentive to acquire the additional job knowledges, skills and abilities necessary to perform all functions required of a work team;

—Replace current pay grades with fewer, broader pay bands; and

—Combine current hourly and salaried pay systems into a single salaried system.

Pay Bands

A pay structure will be established consisting of 5 pay bands which correspond to the 5 levels of difficulty defined under the new classification system. The level of difficulty for each of the 5 pay bands will be defined and described consistent with criteria in the Master Standard. Pay bands under the new system will be broader than traditional grades under the GS and FWS systems, supporting the concept of broader classification levels. The 5 new pay bands will cover all depot employees who are assigned to multi-skilled work teams, eliminating the distinction between an hourly pay system for trades, crafts, or laboring positions and a salary system for professional, administrative, technical, or clerical positions. Pay bands will be designated as CS-1 through CS-5. Additional pay bands may be added above CS-5 at a later date, subject to OPM approval, in the event that "management teams" are formed.

Levels Within Pay Bands

All pay bands will consist of 4 pay levels, corresponding to 4 levels of skill acquisition, and 4 "time gates" for pay progression. Level I will be for new employees who meet only the minimum qualifications for the team, but are not certified in any of the team-specific skills. Level II will be for team members who have mastered 25% of the team's skills and passed a minimum 6 month time gate, level III for team members who have mastered 60% of the team's skills and passed a minimum 18 month time gate, and Level 4 for members who have attained all of the team's required skills and passed a minimum 36 month time gate. The range of pay will be approximately 40% for all pay bands except CS-1, which will have a range of about 100%.

The level I pay rate for each pay band (above CS-1) will be set at 4% above the maximum rate of the next lower band. The level IV rate for each band will be set at a rate corresponding to the highest level paid under current Federal pay systems for the highest level of work assigned to teams classified at the corresponding difficulty level. Levels II and III will be set as follows:

Level II = Level I + $^{6}/_{36}$ × (Level IV − Level I)

Level III = Level I + $^{18}/_{36}$ × (Level IV − Level I)

Pay Level I of pay band CS-1 will be set at the current GS-01 step 1 pay rate, representing the rate paid for the lowest entry-level work under either the GS or FWS pay systems. Level IV of Pay band I will be set at a rate corresponding to WG-01 step 5.

Level I of the CS-2 pay band will be set at 4% above the maximum rate (Level IV) of the CS-1 band. Level IV will be set at a rate corresponding to WG-04 step 5.

The CS-3 band will have a Level I rate set at 4% above the maximum rate of CS-2 and a Level IV set at a rate corresponding to GS-07 step 10.

The CS-4 band will have a Level I rate set at 4% above the maximum rate of CS-3 and a Level IV set at a rate corresponding to GS-09 step 10.

The CS-5 band will have a Level I rate set at 4% above the maximum rate of CS-4 and a Level IV set at a rate corresponding to GS-11 step 10.

Using current pay rates for GS and FWS employees, the application of the above procedures results in the SBP Compensation System Pay Schedule represented in Table 7. Pay levels T1 and T2 are for trainee positions and are further explained under the Hiring Section.

TABLE 7.—SBP COMPENSATION PAY SCHEDULE*

	T1 (35%)	T2 (15%)	Level I	Level II	Level III	Level IV	Team leader
CS-1			4.89	5.44	6.53	8.17	9.80
CS-2			8.50	8.78	9.33	10.15	12.18
CS-3			10.56	10.82	11.35	12.14	14.57
CS-4	8.21	10.74	12.63	13.00	13.74	14.85	17.82
CS-5	10.04	13.12	15.44	15.86	16.71	17.97	21.56

*As of February, 1989.

Movement Within Pay Bands

Progression through each level of a particular pay band will be function of performance, time, and successful certification of job knowledge requirements (Table 8). Advancement to the next pay level will require successful certification of a specific percentage of the team job knowledge requirements and a minimum amount of time on the team. The amount of time at each successive pay level will be determined by minimum and maximum "time gates". Minimum time gates are viewed as necessary to assure a reasonable return to the activity for the investment in training. Maximum time gates are

viewed as necessary to ensure satisfactory progress toward learning the required job knowledges.

Assuming the ability to learn all job knowledges, an employee will reach maximum pay after 36 months. The only increase in base pay beyond this point will be the full comparability increase for the General Schedule.

TABLE 8.—PROGRESSION REQUIREMENTS

Pay level	Time gate progression requirement		Team job knowledge requirement (percent)
	Minimum	Maximum	
I (entry)	0 months	0 months	0
II	6 months	9 months	25
III	18 months	21 months	60
IV	36 months	39 months	100

Team Leader Pay Rates

Compensation for team leaders under SBP will be set at 20% percent above the Level IV of the pay band to which the team leader is assigned. This approach to compensating leaders will eliminate pay inversion and assure that team leaders are equitably compensated for the additional knowledge and responsibilities required for team leadership.

Non-team Member Compensation

Pay for employees not assigned to a multi-skilled work team will continue to be provided for in accordance with the provisions of their current applicable pay system.

Premium Pay Entitlements

The compensation entitlement for all premium pay will be provided to all project employees as applicable under the current GS guidelines to individual team members.

Fair Labor Standards Act

For the purpose of this demonstration project, all the provisions of the Fair Labor Standards Act (FLSA) will be applied.

D. Hiring

This section addresses the basic changes to the hiring process, i.e., promotions, transfers and reassignment actions that are necessary after project start-up in an SBP/PWE program. There are 2 important conceptual changes that must be addressed. The hiring process in a participatory work environment must provide a mechanism for team members to contribute to the selection process. It must also provide more latitude to the team leader/manager in support of the concept of evolving team autonomy. The changes in the recruitment process for new hires was developed with these objectives in mind.

Hiring From Outside

The ability to make quality selections is critical to SBP/PWE, where employees must learn a range of skills while participating effectively on teams. Corporations, companies, and plants that have implemented SBP and related innovations have found that the quality of new hires is essential to long-term success. It is essential that new hires fully understand and accept SBP/PWE employment conditions and the expectations of both the employer and the team.

The ability to learn and perform a repertoire of skills while operating effectively in a participatory team environment is a necessary quality for SBP/PWE employees. Although this quality is not intended to be part of the basic examination process, it will be an additional factor to be considered in making final selections. The current examining process OPM employs will remain unchanged by DDOU, and no special examination for the project is envisioned. OPM X–118 qualification requirements will continue to be used. DDOU will work with OPM to develop innovative approaches to recruiting from outside the Federal service for the new SBP/PWE environment.

Because integrated recruitment, examination, and selection are seen as key to effective SBP/PWE implementation, delegated examining authority will be requested by the project test site. Examinations conducted under delegated authority will be limited to the team entry level. Delegated examining authority for team entry levels will permit a unified approach to the process of examination and selection in this new environment. This will not only assist in ensuring applicant availability, but will also place responsibility for success of the entire demonstration project at the project activity.

The Office of Civilian Personnel at DDOU will review qualification requirements and refer the best qualified applicants to the manager. All veteran preference requirements will continue to apply in accordance with current statute and regulation. The manager, in conjunction with the team leader, will determine which of the referred applicants will be interviewed. The number of applicants to be interviewed will be based on performance expectations and EEO parity goals for both the team and the activity.

Having identified the interviewees, the manager and team leader will conduct interviews in the presence of at least 2 team members. After each interview, team members present will be given an opportunity to provide their comments for consideration by the team leader and manager. The interview process will include a tour of the worksite and an orientation concerning the concepts of SBP/PWE. Upon completion of all interviews, the team leader will make a selection subject to review and approval by the manager.

Hiring From Within

1. *Selection of Team Members—(a) Promotion.* Defined as movement from one position or pay band to a position or pay band offering a greater basic salary potential.

The majority of team vacancies will be filled at the entry level and all movement from one team to another team with a higher pay band will be effected through merit promotion procedures. Promotion opportunity announcements will reflect that any such movement implies a full acceptance of SBP/PWE. Advancement through all skills on the new team is a condition of employment. As with outside hiring, evidence of the ability to learn and perform a variety of skills while operating effectively in a PWE setting, will be considered. To provide career paths and upward mobility, trainee positions may be established for pay bands CS–4 through CS–5. The pay level of trainee positions will be established at 35% below the team entry level (Pay Level T1), and selectees must spend 24 months in training before progressing to the team entry level. At completion of 12 months training and a favorable team leader recommendation based on team input, the employee will receive a pay adjustment to 15% below the entry level (Pay Level T2). Upon successful completion of the training program, the employee will advance to Level I and can begin the formal process of certification in the team job knowledges.

Qualification requirements for both team entry levels and trainee positions will be keyed to the current X–118 OPM Handbook to the maximum extent possible. Modifications may be developed as necessary. Time-in-grade restrictions will not apply.

Employees can apply for a position on a team with a higher pay band at any time as long as they meet minimum qualification requirements. Promotion from a lower pay band will normally be to Level I of the higher pay band.

Crediting plans and rating and ranking of candidates will be accomplished by appropriate team

subject matter experts in accordance with the current Merit Promotion Program. Selection procedures will then follow those established for outside recruitment.

(b) Reassignment. Defined as movement from a position or pay band to a position or pay band with the same basic salary potential.

Moving an employee from one team to another within the same pay band and identical skills can occur at any time. This might result from an employee's request or at management's discretion because of work load changes or other related issues.

Moving an employee from one team to another with the same pay band but different skills can be effected without financial penalty to an employee in 2 situations:

(1) At the employee's request, when the employee has at least a Fully Successful performance rating, is at Pay Level IV, and has been certified in all team skills on the currently assigned team for at least 6 months. Team leader support is required from both the losing and gaining team. A vacancy must exist or a member of the gaining team must request a similar transfer. Maximum time gate requirements of the new team will apply. The horizontal integration of skills between teams resulting from this kind of move may prove very beneficial to activity flexibility and employee job enrichment. These expanded skills may warrant a pay adjustment at some future time.

(2) Following a management directed move because of the need to reallocate team resources or to establish new teams. Maximum time gate requirements of the new team will apply.

In other instances, such as a voluntary request, salary on the new team with the same pay band but different skills will be set at whatever level is supported by formal skill certification for the new team. Non-competitive movement must be preceded by a determination that entry level qualification requirements are met in accordance with X–118 and X–118C.

(c) Changes to Lower Levels. Defined as movement from one position or pay band to a position or pay band offering a lesser basic salary potential.

Moving an employee from one team to another team with a lower pay band and different skills can be effected without financial penalty to an employee in one situation — following a management directed move because of the need to reallocate team resources or to establish new teams. In this situation, normal pay retention and revised RIF provisions will apply.

Pay setting for voluntary requests will be based on the formal certification process unless the employee has been certified in all team skills on the currently assigned team for 6 months and is already at Pay Level IV. In this case, movement can be effected to the lower pay banded team at Pay Level IV, but without pay retention.

2. *Selection of Team Leaders.* Team leaders must be completely knowledgeable regarding all of the team skills and work processes. Accordingly, those selected for team leader positions will be subject to the existing probationary period for new supervisors, and a condition of completing this probationary period will be the requirement to become certified in all skills on the team within 12 months. Team leaders who come from the existing supervisory work force and have already completed a one year supervisory probationary period, will not be subject to another probationary period. However, performance based action will be warranted if satisfactory progress toward developing team leader skills is not achieved.

Qualification requirements for team leaders will be based on experience related to the major function(s) of the team and on demonstrated ability to lead and work with groups.

Selection for team leader vacancies will be made by the responsible manager with input from team members. As teams move toward greater autonomy and the team leader role changes, selection of the team leader may become a team responsibility subject to manager review.

The non-competitive movement of team leaders will be consistent with the same principles as movement of team members. Movement from one team to another team with the same pay band and identical skills can occur at any time. Movement to another team with the same pay band but with different skills can occur whenever the team leader has been certified in all skills on the currently assigned team for at least 6 months or following a management directed move. Movement to a lower pay band can occur voluntarily (without pay retention) following certification in all skills on the currently assigned team for at least 6 months. Qualification requirements must be met for non-competitive movement. If such a move is management directed, normal pay retention and revised RIF provisions will apply.

3. *Selection of Managers.* The flattening of the organizational structure virtually eliminates hierarchical levels between team leaders and organizational managers. This should lead to a larger competitive base from which to select future managers. Team leaders who have developed good leadership skills and have taken advantage of team rotation opportunities should be better able to compete for managerial vacancies.

The qualification process for managers will remain basically the same but will emphasize management skills and will eventually provide for a broader experience base in keeping with the concept of a "Logistics Manager". Selection procedures may require the use of assessment center technology. An objective during the project will be to organize managers into business teams with qualification requirements reflecting the new concepts of operation and pay banding based on the new Compensation Schedule.

E. Performance Evaluation

Performance evaluations are an important feedback mechanism which lets employees know how they are meeting organizational expectations. The appraisal system used during this period links pay and performance and will answer these kinds of questions:

—Does the individual's performance merit progression to the next pay level?
—Does the individual deserve recognition?
—Does the individual need additional training?
—Does the individual's work measure up to expectations?

Performance Standards

Performance Standards will be developed and applied to each individual assigned to a team. The standards will specifically address 2 elements of performance: (1) Operational and (2) team participation. Performance standards will also be developed for non-team members, team leaders and teams.

All employees will not fit into a team structure. However, non-team members will participate in PWE. Their performance standards will be structured around the critical elements of their position. In addition, their performance standards will include critical elements related to the quality, timeliness of service, etc., relating to the service or product they provide to teams. The system will accommodate input from the team leaders of the teams supported by these individuals during the evaluation period.

1. *Operational Performance Standards.* The mission of the test site dictates that performance goals be clearly defined and communicated

throughout the organization. These goals are further translated to the operational or functional level. Performance monitoring is continual and, in most operations, supported by objectively established measurement standards. The majority of these performance measurements will be the same as currently used for operational performance, such as the receipt, selection, packing and shipment of material, or quality.

In many mission support operations, performance measurements are not as clearly defined and are often dependent on the requirements of the "customers", such as the Personnel Office. In these areas, performance measurement will be tied to operational objectives developed to support the customer. In either situation, operational performance evaluation factors will be developed to describe what is expected and should be:

—Attainable,
—Skill-relevant,
—Pay Level-relevant,
—Specific,
—Realistic, and
—Observable.

2. *Team Participation Performance Standards.* Each individual employee's contribution to the performance of the team will be considered as critical. The team participation portion of the appraisal will consist of factors, such as:

—Maintenance of an orderly work environment,
—Constructive participation in group meetings,
—Individual efforts which improve group performance, and
—Initiative to perform additional team functions not specifically assigned.

Team participation evaluation factors, to the extent possible, will be uniformly applied to all teams covered by the project. Using common evaluation factors when possible, and providing for peer input, will reduce current employee perceptions that performance appraisals are inconsistent and unfair.

3. *Team Leader Performance Standards.* The leader of each team, in addition to being evaluated on operational performance, will also be evaluated on individual evaluation factors assessing ability to effect the team process and build team competence and autonomy. The factors will include:

—Facilitating team member interaction,
—Leading team meetings,
—Working with the group to develop performance measures and goals,
—Providing continuous feedback on performance, and
—Facilitating interaction among teams.

4. *Team Performance Standard.* Performance evaluation factors for the teams will reflect common elements, such as meeting unit cost goals, safety and quality. Additional elements will be developed to assess the unique multi-skilled operations of the teams.

Mechanics of Evaluations

The performance evaluation will be written, and the format sufficiently detailed to define critical skill-related elements. The evaluation process will consider the assigned tasks during the rating period and the individual's level of skill acquisition. A menu of critical elements and performance standards addressing all skill-relevant evaluation factors will be developed for each team. This menu will accommodate the multi-skilled environment and the fact that skills can be acquired by the individual in either a sequenced or unsequenced manner.

The development of the critical elements will be a team leader responsibility with team member participation. Performance will be evaluated based on criticality of assigned tasks using only 3 levels of performance: Exceptional, Fully Successful and Unacceptable. Performance standards will simplify the evaluation process and facilitate peer input. Performance standards may be modified during the performance period to accommodate changes in work load, resource allocations, etc.; however, the team members will have input to these modifications.

1. *Individual Evaluation.* The performance of employees will be assessed every 6 months based on performance standards in effect at least 60 days. Although the final evaluation will be completed by the team leader, this process will involve active participation of the team members. Each team member will complete a performance evaluation for all other members. Their input will be provided to the team leader for consideration during discussions with the employee.

It will be the responsibility of the team leader, based in part on input from the team members, to identify those individuals that have Exceptional or Unacceptable performance. If an individual has an Exceptional rating, and the team is rated satisfactory or better, the individual will be eligible for recognition. Individuals receiving an Unacceptable rating will not be eligible to move to a higher pay level until their performance is at least Fully Successful.

Individuals identified as having unacceptable performance will be provided with an opportunity to demonstrate acceptable performance as required by 5 U.S.C. 4302(b)(6) and OPM regulations at 5 CFR Part 432. All current requirements in 5 CFR Part 432 for reduction in grade or removal based on unacceptable performance will be followed.

2. *Team Leader Evaluation.* The team leader evaluation will be completed by the manager. The process will be identical to that of the individual evaluation. Input will include that of team members and other team leaders. Input from other leaders will be mandatory for a team where interaction is critical and input will be optional for all other team leaders.

3. *Team Evaluation.* Management will evaluate team performance at least every 6 months using a 2 level system, as either satisfactory or unsatisfactory. If the team evaluation indicates satisfactory performance, it will be eligible for gainsharing bonuses. This evaluation will be based on team performance standards and will be as frequent as necessary. The minimum frequency will be dictated by the frequency of gainsharing bonuses.

4. *Manager Evaluation.* The process for evaluating a manager's performance will be consistent with current PMRS concepts, with one additional enhancement. The process will provide for input from other managers as well as team leaders directly affected by the manager being evaluated.

Review and Management Process

All reviews of performance appraisals will be done by the next level of management. The Personnel Office will be responsible for assisting and advising teams in the performance appraisal system, evaluation techniques, dispute resolution, etc.

F. Incentive/Recognition

In developing the incentive/recognition program, specific minimum objectives were established. The program will be fair and based on achieving clear and measurable objectives. The individual, the team and the activity must all be considered in developing a balanced and comprehensive incentive/recognition program. The following program, which is applicable to all activity employees, provides a mechanism to recognize individual performance without disrupting team efforts and provides the incentive for a total commitment to the activity. With the exception of the Employee Suggestion Program and certain honorary awards, the current performance award incentive/recognition system will no longer be applicable.

Individual Incentive

Employees rated as Exceptional will be eligible for an additional time off award if team performance has been evaluated as satisfactory. Two days time off with pay will be authorized for Exceptional employees during each semiannual performance appraisal cycle. A maximum of 4 additional days off per year for Exceptional employees is possible. Receiving an Exceptional performance appraisal will automatically result in the 2 days time off. It will be the team leader's responsibility to assure that appraisal at the Exceptional level is fully justifiable and warranted. The additional time off must be scheduled during the 6 month period following the award.

Authorization for performance based discretionary time off for an entire team will be provided for at the manager level as teams move toward greater autonomy. Extended lunch periods or partial days off may be forms of rewarding special achievements or outstanding production-related situations attained by a team.

Individual Incentives for Managers

The current PMRS incentive program for managers will be expanded to include all depot managers. The mechanisms for rating and distributing the PMRS performance award pool will remain the same.

Management of Incentives

The incentive/recognition program is designed not only to enhance cooperation between teams, but to encourage individual teams to take maximum advantage of the tools provided to contribute to the overall success of the activity. Team productivity will be tracked and measured to the maximum extent practical. Productivity measures are a valuable feedback mechanism to a team that is motivated to do their best to support the activity. Teams could be excluded from gainsharing. The decision to preclude an entire team from participating in gainsharing will be made by the manager when the team fails to meet the established team performance standards.

All aspects of the demonstration project's incentive/recognition program will be operative during the first year of the demonstration project. The effectiveness of the incentive/recognition program will be evaluated as the project evolves and will be adjusted accordingly.

Gainsharing System

The gainsharing program to be used in conjunction with the demonstration project is based on the Agency wide program entitled Success Share. The objective of Success Share is to motivate the work force to increase productivity, thereby reducing the cost of doing business. The employees will then share in the savings which they create. The program is just one facet of the larger objective; to enhance quality, and thereby increase productivity, by instilling job pride and a sense of teamwork in the work force. This program must be negotiated to the extent permitted by law by the Agency with the DLA Council of AFGE Locals. Although this has not yet been accomplished, the DLA proposal envisions the following provisions:

—Success Share is much the same as a profit sharing program in the private sector. Determination of a "profit" will be based on actual costs being below the depot budget, and within quality, performance and efficiency factors. Employee incentives will be in the form of cash bonuses, incentive leave, or a combination of the two. All employees will receive program orientation prior to program implementation. All civilian employees on board as of 30 September of the program year, will have the opportunity to participate, however any employee may decline payment of a bonus.

—The program will be conducted under the authority of Title 5, U.S.C. and 2 Comptroller General Decisions. The Success Share Program will be conducted in accordance with DoDI 5010.39, "Work Force Motivation," 16 November 1984; and DoDI 5010.31–G, "Guide for the Design and Implementation of PGS Programs," 12 March 1985. Success Share will also be conducted under the supplementary policy and guidelines issued by HQ DLA to provide for unique requirements of the Agency.

Leave in Lieu of Pay Option. All employees will have the option of choosing their bonuses in all cash, all leave, or a combination of leave and cash. Leave will be computed by dividing the employees' individual base salary rates into the cash value of their bonuses.

Employees will be notified in writing of the cash value of their individual bonuses and will be given the option to select payment in cash, leave or a combination of cash and leave.

The Depot Commander will have the flexibility of setting a cap on incentive leave from 80 hours to 240 hours. Incentive leave will be allocated in whole hours only. Current local procedures concerning the granting and use of leave will apply.

G. Job Knowledge Certification

The job knowledge training and certification program will provide the mechanism for employees to learn additional skills. Documentation of this accomplishment will be placed in an employee's Official Personnel Folder (OPF). It will be a comprehensive program designed to qualify employees to perform every job function within their assigned team.

Complete training packages will be developed for each job knowledge/function required by a team. These packages will identify and explain all aspects of the specific function to be learned and provide the method to certify that an acceptable level of knowledge of the function has been achieved.

The certification process will involve training and demonstrated proficiency. The reviews will be administered by either the team leader or a qualified instructor. Demonstrated proficiency will be witnessed by the team leader and at least one team member who has previously been certified in the particular function being performed.

Failure to meet certification within maximum time requirements will necessitate appropriate action based on individual performance related criteria.

For all new employees and team leaders entering a team, a condition of employment will exist that requires he/she learn all the job knowledges and be certified within the time frames specified. It is the responsibility of management to assure that training programs are developed for all required team skills/knowledges and that all team members are afforded equal opportunity to obtain such training in a timely manner.

The requirement for job rotation at least every 9 months will allow members to maintain proficiency in the job functions, and in some instances preclude any additional training requirements.

IV. Personnel Subsystem Administration

A. SBP/PWE Letters of Discipline

The present system for disciplinary actions is based on the Agency "Table of Penalties", which lists most offenses and provides for a range of penalties which depend on the nature of the offense and the number of times it has been committed. For minor offenses, such as AWOL, penalties are

progressive if behavior is not corrected. These penalties range from a reprimand, through a series of suspensions, culminating in removal. These actions often detract from productivity and do not fit well in a participatory team environment.

Under the demonstration project, when it has been determined that an employee has committed an offense for which formal disciplinary action is appropriate, a letter of discipline may be issued under the terms of this SBP/PWE process in lieu of a letter of reprimand or a suspension from duty and pay of not more than 10 workdays (14 calendar days).

The use of letters of discipline under this process is to be considered an adjunct to the regular, formal disciplinary procedures outlined in DLAR 1406.1. In those circumstances where it is determined that it is not appropriate to substitute a letter of discipline for a formal disciplinary action, a regular formal disciplinary action will be taken according to DLAR 1406.1. Substitution of a letter of discipline for formal discipline, such as a reprimand or suspension, will in all cases be at the discretion of the agency.

In situations where reprimands and suspensions are replaced by letters of discipline for repetitive offenses, the letters will specify the degree of seriousness and at what point another incident might result in proposed removal. Current procedures for emergency suspensions in the event of criminal activity will be retained.

Letters of discipline will cite the specific charge(s) and a reasonable account of the offense(s) including such facts as time, date, names, place, and circumstances. As appropriate, letters of discipline will include a statement of any past disciplinary actions taken which were considered as supporting the severity of the penalty the letter of discipline is being taken in lieu of. Employees will have the right to formally question a letter of discipline taken under terms of this process using the regular grievance process (either the negotiated grievance procedure or the agency procedure, whichever is applicable). Therefore, letters of discipline must inform employees that they have the right to seek formal reconsideration of the letter of discipline by citing the appropriate grievance procedure in the letter. On receipt of a letter of discipline, the employee will be asked to acknowledge receipt. This copy of the letter will become the Official Personnel Folder (OPF) copy.

Letters of discipline will be filed in the employee's OPF as a temporary (left side) document for a period not to exceed 2 years. At the expiration of the 2-year period or sooner if so determined by the issuing supervisor or based on the outcome of the employee's grievance, the letter of discipline and supporting documents will be purged from the OPF.

These modified disciplinary procedures can be easily understood by the work force and can also be easily applied in a consistent manner.

B. Reduction in Force (RIF)

Competitive areas will be limited to functional areas (Distribution, Installation Services, etc.), grouping employees on the basis of acquired skills to determine competitive levels, and ranking on the basis of veterans preference, performance appraisal, tenure, and service computation date.

Competitive levels will be based on acquired skills and pay levels rather than classification series and grades of positions. Positions with identical skills and pay levels will be in the same competitive level regardless of whether they are on the same or a different team. Whenever entry level requirements for different teams are substantially the same, their entry levels will be in the same competitive level. However, when the required skills are not substantially the same between teams with the same pay levels, these positions will be in different competitive levels.

Since grades are not a factor in this RIF procedure, adverse impact on employees will be determined by where an employee is placed in the compensation schedule. RIF placement of employees, e.g., bumping and retreating from one team to a lower pay banded team, from team leader to team member, from manager to team leader or member are considered as downgrades of more than 2 grades for purposes of determining eligibility for discontinued service retirement. There is no limit on bumping or retreating. As referred to in the Classification Section of this plan, pay retention will be applied as appropriate, but current provisions for grade retention are not meaningful and will not be applied. Additional retention credit for performance will follow the procedures outlined in 5 CFR 351.504, as modified by DLA for the 3-level rating system and the 6-month appraisal period.

C. Appeals and Grievance Procedures

This project does not waive any existing appeal or grievance procedures. Negotiated grievance procedures will apply for bargaining unit employees and the existing administrative grievance procedures will apply for employees not covered by negotiated procedures. No provisions of this project waive a right or remedy available to an employee under Equal Employment Opportunity (EEO) laws. Classification appeals are modified to adapt them to the team environment. See appeal procedures under Classification Section.

V. Project Costs

The costs associated with the project will be borne by DLA and the participating activity. Major costs to date have been for project development, and future costs will be for training, implementation and evaluation. Increased costs will occur at the beginning of the project, cost neutrality is anticipated by the end of the third year and cost savings at the beginning of the fourth year.

The demonstration project will have increased costs in its development, formulation, and implementation. It is important to the success of this project to have a clear, distinct separation of the routine activity costs from the additional costs resulting from the project. The design, implementation, and operation of a skill-based compensation system requires resourcing the same types of costs as other traditional pay systems. However, cost increases are sometimes incurred by activities using SBP plans in 3 main areas: training, wages, and one time overhead costs. Job rotation opportunities to develop employee skills will result in increased training costs.

Under SBP systems, basic labor costs are generally higher than under traditional compensation systems. The pay of employees increases as they learn new skills. Therefore, the wages of an employee with a short length of service may be higher than those of someone with comparable service at another activity using traditional pay systems. The majority of private SBP plans reported paying wages higher than the prevailing rate. Although the basic labor costs per hour are higher under SBP plans, the overall depot operating costs will be lower through decreased staffing requirements. Therefore, this project is cost neutral.

Increases in overhead costs will arise from SBP/PWE plan development, implementation, maintenance, administration, and evaluation. Some administrative overhead costs may be offset by decreases in turnover and absenteeism and, in some cases, reduced support personnel.

VI. Project Administration

A. Training

This demonstration project represents a significant change in the management practices in both the product and service arenas at the test activity. Many traditional programs and attitudes will require change. To pursue these changes, a great deal of training will be necessary in all phases of the project to provide managers and employees with the necessary knowledge to successfully participate in the evolution from current structured roles to the proposed environment. The following courses have been identified to effect this change:

Project Concepts—Training for all employees will include the following: description of the project plan; how personnel enter and exit the plan, pay adjustment process (pay banding); team/individual performance evaluation; incentives, measurement and evaluation of the plan, and skills certification.

Team Leader Development—Training will include the project personnel management initiatives, human relations, leadership skills and appraising performance.

Group Dynamics—Training will include working effectively in groups, enhancing listening skills, and promoting effective interaction within groups.

Team Building—This will include training individuals to be energetic team players without sacrificing individual pride and determination. It also includes providing direction without being authoritarian.

Problem Solving—Training will include a look at various systematic problem solving approaches and their applications.

Communications—Training will include examination of the communication process, including barriers, feedback, and communication levels.

Instructor Training

Some of the courses will be contracted while others will be accomplished by certified instructors at the activity. The number of certified instructors at the activity will be expanded to meet these additional training requirements. This can be accomplished by giving instructor training to subject matter experts, thereby minimizing the cost of training.

Facilitator Training

To ensure the smooth transition from traditional roles to those of managers, team leaders and team members, some facilitators will be required. These facilitators will be trained in interpersonal skills to provide encouragement and coaching for the team and team leaders.

B. Project Evaluation Plan

A comprehensive and methodologically rigorous evaluation of this project will be conducted to assess its success in meeting its stated objectives, to determine the effectiveness of individual interventions, to document any unanticipated consequences, and to determine the applicability of project changes to other Federal installations. The evaluation will be conducted by an external evaluator with OPM oversight as provided for in 5 U.S.C. 4703h.

This section presents a preliminary evaluation plan. An external evaluator will work with the demonstration site, DLA, and OPM to finalize the plan. The final plan will include, in addition to the material presented here:

—Specification of project monitoring activities at experimental and comparison site(s);
—A data analysis plan; and
—A data collection schedule that includes specific data instruments/ sources, a timetable for collection of each measure, and the data collection responsibilities of the test and comparison sites, DLA, OPM, and the external evaluator.

Evaluation Phases

The project evaluation will be conducted in 3 phases, each with a slightly different focus. Reports on all evaluation phases will be submitted to DLA HQ, project officials at DDOU, and to OPM.

Implementation Evaluation. The implementation phase of the evaluation will focus primarily on events occurring between development of the project plan and the time when all interventions are considered operational. Through examination of project-related documents, ongoing contact with key players in the participating organizations, interviews with project participants, and other data collection methods, the implementation evaluation will address such issues as:

—The timing of various aspects of project implementation,
—The degree to which project elements are implemented as designed,
—What training/orientation is delivered to facilitate implementation,
—What new organizational structures and operating procedures/ guidelines are developed to manage the project implementation,
—The extent to which project participants understand and support the demonstration project,
—The similarity of experimental and comparison sites,
—The extent to which "unrelated" events occurring at the same time may confound project results, and
—What unintended consequences of project initiatives may be observed.

The implementation evaluation will be presented in a report compiled shortly after the project has been deemed operational; however, the monitoring and documentation of project implementation will continue throughout the life of the project in order to provide a qualitative context in which to understand and interpret other evaluation findings.

Experimental Evaluation. Although data collection for this phase must begin prior to project implementation to provide an adequate baseline for future comparisons, the primary focus of this evaluation phase will be on the period after the project is considered to be operational. Data collection initiated prior to implementation will continue on a periodic basis. Reports analyzing the effects of the various interventions will be issued by an external evaluator on at least an annual basis.

Summative Evaluation. Upon conclusion of the demonstration period, an overall assessment of the combined effects of project interventions will be made. Impact of specific system changes will be discussed separately and in combination. The effect of each intervention and the project as a whole in meeting stated objectives will be assessed. Both positive and negative unanticipated outcomes will be discussed, as well as any unanticipated events that may have influenced project outcomes. The final report will also address the generalizability of project results to other Federal installations.

Evaluation Design

The evaluation design will be "quasi-experimental," comparing before-and-after changes at the test site to before-and-after changes at non-equivalent comparison site(s). DLA has 5 other sites throughout the country performing functions similar to those at the proposed test site. Although they are different in many respects from DDOU, one or more of these sites will be used for comparison purposes. Baseline information will be gathered prior to the start of the demonstration project at the test site and the designated comparison site(s). This design, combined with ongoing implementation monitoring, will provide a reasonable basis for making

causal attributions regarding project results to the demonstration project interventions.

Because of the interaction of the various interventions to be implemented simultaneously, it may not be possible to isolate the effects of every intervention. Conclusions regarding the effects of specific interventions, therefore, will be more tentative than those regarding the demonstration project as a whole.

Project Objectives

Assessment of the results of this demonstration project will ultimately rest upon its success or failure in meeting its stated objectives. Four main objectives have been set by DLA for this project. This section discusses each objective, its relationship to the project interventions, and the types of data that will be collected to assess whether or not the objective has been met.

Objective 1: Increase employee involvement in day-to-day decision processes. The introduction of PWE concepts, along with corresponding changes in organizational structure, are intended to increase employee participation in work-related decisions. As part of the project, team leaders will be taught to encourage participation, and team members will be expected to participate in interviews and recommendations for selection, peer appraisals, work methods analysis, equipment recommendations, and day-to-day problem resolution. Revised classification will support a more participative structure, as all members of a team will be classified at the same level. Changes to the performance evaluation and incentive awards systems will also encourage individual employees to see a greater link between their actions and group and organizational performance.

Increased employee involvement is expected in turn to improve the quality of worklife, as perceived by employees. This should include increases in employee satisfaction levels and greater commitment to the organization.

In order to track progress toward this objective, an attitude survey will be administered prior to project implementation and annually thereafter to all depot employees. In addition to perceptions regarding employees involvement, the instrument will cover a wide range of issues such as job satisfaction, pay equity, organizational climate commitment, authority relationships, and attitudes regarding personnel procedures and policies.

Changes in the quality of worklife will also be measured using non-survey techniques including exit interviews, examination of personnel records, and analysis of computerized personnel data. Such measures will include absence and turnover rates, reasons for leaving, grievance activities, and adverse actions.

Objective 2: Improve the flexibility of the work force to respond to workload changes. Under a team-based organizational structure, employees will learn and perform all of the job skills related to a product or service. Having employees with multiple skills in an environment where broadened classification expands the range of possible assignments will mean that work assignments within teams will be able to be varied quickly to meet workload fluctuations. The Workforce Certification Program will provide managers with an ongoing inventory of available skills that will aid in planning large scale workload changes.

Perceived changes in organizational flexibility will be measured through the annual attitude survey and through interviews with employees, team leaders, and managers. Personnel office data regarding reassignments, details, and temporary promotions will also be monitored. Actual production data will be used to assess depot responses to workload changes occurring during the project.

Objective 3: Improve product/service quality and timeliness. The introduction of PWE practices is expected to contribute to increases in quality and timeliness. The test site already has a number of quality initiatives in place. Project orientation and training will continue to stress the importance of quality and of employee involvement in team efforts to improve quality. As project employees and teams become more self managing, they are expected to take more pride in the quality and timeliness of their work. Quality considerations will also be included in team performance appraisals and computation of productivity gainsharing bonuses.

The test site currently has many goal-oriented activity performance and quality measures. Analysis of these measures will focus on DLA and DoD directed indicators. This will ensure that comparable measures will be available at both test and comparison sites. These measures cover such Depot supply functions as effectiveness of processing receipts, accuracy of stock selection for shipment, transportation functions, and inventory accuracy. Safety measures will also be analyzed.

Objective 4: Reduce the overall cost of Depot operations. While the introduction of the proposed skill-based compensation system will result in higher operating costs during the initial phases of the project, the institutionalization of the SBP/PWE concepts is expected to ultimately result in increased efficiency and productivity with a corresponding decrease in resource requirements. Leaner staffing, achieved through natural attrition over several years, will enable the test site to accomplish the same workload at reduced cost. Although increased costs will occur at the beginning of the project, cost neutrality is anticipated by the end of the third year, and cost savings are expected at the beginning of the fourth year.

Currently, DLA Depots employ a unit cost method to depict operational costs, which allows tracking of costs at the cost center level. Cost savings analysis will examine all aspects of operations including non-labor costs, e.g., the cost of supplies, equipment, service, and related support. Costs will not be analyzed independently, i.e., changes in cost will be considered along with changes in efficiency (the number of actual hours required to accomplish the workload) and changes in wage rates.

Quality measures will also be included in the cost savings analysis. The inclusion of these measures will ensure that observed declines in cost which may be gained at the expense of quality and timeliness are not erroneously attributed to increases in productivity. Data will be collected from existing systems and will be analyzed monthly.

Evaluation Model

Because the interventions will be implemented as an integrated system, the effects of any single intervention cannot be isolated completely. However, each system change does have specific, measurable expected effects that can be examined in the context of the other interventions. The evaluation model outlined in Table 9 presents each system change along with its expected effects, the measures that will be used to assess those effects, and the data sources that will be used to provide the necessary information.

TABLE 9.—EVALUATION MODEL

Intervention	Expected effect	Measures	Data sources
Participatory Work Environment	Increased job satisfaction	Job satisfaction	Attitude survey.
		Organizational commitment	Attitude survey.
		Organizational climate	Attitude survey.
(Includes:			
—Replacement of supervisors with team leaders.	Increased productivity	Earned hours/worked hours	Production data.
—Management & employee training in PWE concepts/skills.		Unit cost	Production data.
		Manpower strength	Workforce data.
—Creation of participatory work teams).	Improved timeliness and quality	Timeliness rates	Production data.
		Quality measures	DDOU–Q Quality Data.
		Customer satisfaction	Customer complaint system.
	Increased employee involvement	Opportunity for participation	Attitude servey interviews/observations.
	Attiude survey interviews/observations	Impact of participation	Attitude survey.
		Decreased turnover	Workforce data.
Multi-skilled Work Teams	Increased workforce flexibility	Response to workload changes	Production data.
		Managers' perceptions of organizational flexibility.	Attitude survey interviews.
		Number of reassignments/details	Personnel Office data.
Skill-Based Pay	Increased pay satisfaction	Pay satisfaction	Attitude survey.
		Perceived pay equity	Attitude survey.
	Broadened skill levels	Skill base of workforce	WCP data.
Workforce Certification Program (WCP)	Broadened skill levels	Skill base of workfoce	WCP data.
	Increased career opportunities	Satisfaction with career opportunities	Attitude survey.
		Satisfaction with intrinsic rewards	Attitude survey.
Job Series and Grade Consolidation	More flexible & manageable classification process.	Number of classification actions	Personnel records.
		Time, cost required for classification actions.	Personnel office data.
		Classification error rate	Personnel records audits.
		Classification appeals	Personnel office data.
		Number of temporary and permanent promotions.	Personnel office data.
	Increased workforce flexibility	Response to workload changes	Production data.
		Managers' perceptions of organizational flexibility.	Attitude survey interviews.
		Number of reassignments/details	Personnel office data.
		Number of temporary promotions	Personnel office data.
Pay Banding	Increased pay satisfaction	Pay satisfaction	Attitude survey.
		Perceived pay equity	Attitude survey.
	Decreased pay compression	Supervisors' pay vs. nonsupervisors' pay.	Workforce data.
Gainsharing	Increased pay satisfaction	Pay satisfaction	Attitude survey.
	Increased link between organizational performance and reward.	Perceived link between organizational performance and reward.	Attitude survey.
		Actual link between organizational performance and gainsharing payouts.	Gainsharing/production data.
	Increased identification with overall mission of organization.	Organizational commitment	Attitude survey.
Incentive leave	Increased productivity	Earned hours/worked hours	Production data.
		Unit cost	Production data.
		Manpower strength	Workforce data.
	Increased job satisfaction	Job satisfaction	Attitude survey.
		Satisfaction with extrinsic rewards	Attitude survey.
Revised Performance Evaluation System.	Increased link between performance and rewards.	Perceived link between performance and rewards.	Attitude survey.
	Increased employe involvement	Opportunity for participation	Attitude survey interviews/observations.
		Impact of participation	Attitude survey.
		Organizational commitment	Attitude survey.
Alternative Disciplinary Procedures	Decreased productivity losses due to disciplinary actions.	Manhours lost to disciplinary actions	Personnel Office data.
		Perceived productivity losses to disciplinary actions.	Attitude survey.
Streamlined Organizational Structure	Increased productivity	Earned hours/worked hours	Production data.
		Unit cost	Production data.
	Increased workforce flexbility	Response to workloa changes	Production data.
		Managers' perceptions of organizational flexibility.	Attitude survey.
		Number of reassignments/details	Personnel office data.
	Improved timeliness	Timeliness rates	Production data.
	Reduction of staffing level through attrition.	Staffing levels	Workface data.
		Overall payroll costs	Workforce data.

C. Entry/Exit

Current Employees

A "full employee protection" approach will be used to enter the SBP plan without a loss of pay. Employees placed on teams will be converted from the current wage and general schedule grade and step into the proposed compensation schedule at the same dollar salary they hold in the current compensation system. If current pay exceeds the top of the CS pay band, employees will be "grandfathered" into the new system. Other employees entering the new compensation schedule at their current salary will have their pay set at some point between 2 pay levels, or, in rare instances, it may fit exactly at one of the new pay levels. If pay falls between 2 pay levels, employees can advance at any time after entry on the team to the next higher pay level as soon as they are certified for all the skills required at that level. Although no minimum time gate will apply in this situation, the maximum time gate will apply. If pay is initially set at an exact pay level, the normal minimum and maximum time gates will apply for advancement to the next level, just as they apply for all subsequent advancement of employees between levels who achieve the next, or target level.

Employees who are placed on a team but choose not to participate in SBP will continue normal duties, will not be subject to rotation, and will not lose status or be subject to adverse actions because of this choice. An employee not participating in SBP will be transferred into the new compensation schedule at their exact current rate of pay. There will be no loss of pay, and future increases will be based on full comparability increases for the General Schedule. They will be required, however, to be certified in those job knowledges needed to accomplish their normal duties.

As conditions of employment, employees participating in SBP will be required to be certified in all of the team skills within time limits and will be required to maintain proficiency through rotation.

Employees competing for positions at other activities during the course of the project may request a statement of comparison between the SBP pay levels to corresponding wage and general schedule positions and grades. These statements may then be submitted with applications. Eligibility for job positions outside DDOU will be determined by the outside activity from employee application information as is currently the case.

Grandfathering/Saved-Pay

Employees assigned to teams whose current pay rate exceeds the maximum of a pay band at the time the SBP demonstration project is implemented will be covered by the current saved pay provisions, such that they will be covered by their current pay rate but will only receive one half of the general pay increase until such time as their pay rate equals the maximum of the pay band to which they are assigned. These "grandfathered" employees will have the option of participating in the SBP aspects of the demonstration project or continuing to specialize in their current job. As an incentive to participate in SBP, grandfathered employees will be offered a one-time bonus of 10% of their annual base salary. This single cash payment is contingent on successful certification of all team job functions within a 12 month period. A decision on whether to participate in SBP must be made within 90 days of the SBP implementation date. Employees who elect to participate in SBP but are unable to complete all certification requirements in the required 12 months may be given a 3 month extension to meet all certification requirements at the recommendation of their manager or team leader. If such an extension is granted, the bonus award will be reduced by 25%. Should the employee fail to meet the certification requirements by the end of the 3 month extension, all bonus entitlements will be negated and the appropriate performance based corrective action will be initiated. Employees will be given an opportunity period as required by 5 U.S.C. 4302(b)(6). All other current requirements for reduction in grade and removal based on unacceptable performance will be followed.

Team Members Not Electing To Participate in SBP Compensation

Employees who are assigned to multi-skilled work teams, but who do not elect to participate in SBP, will have their pay set at their current level, with full comparability increases for the General Schedule. Step increases will no longer be applicable.

Current Supervisors

Although the team leader will initially be appointed from the current supervisory work force, he/she will also be required to be certified in the job knowledges of the team within a 12 month period. The demonstrations of proficiency will be performed and witnessed by a subject matter expert and at least one team member certified in a particular skill. The sequence of administering the training and proficiency demonstrations are the same as for team members.

New Hires

Newly hired personnel from outside the Federal service will be brought in at team entry level. Hires from other Federal agencies may be brought in at any dollar salary or team pay level within the appropriate pay band dependent upon their qualifications and the activity's staffing needs. During the initial phases of the project, however, most newly hired individuals will be employed at the entry level of the team or at the trainee level for pay bands CS-4 and above. Mastery and certification of the job knowledge on that team will be a condition of employment.

Table 10 briefly summarizes the pay setting conditions under the demonstration project.

TABLE 10.—PAY SETTING SUMMARY

Team Leaders	20% above Level IV of assigned pay band.
Trainees	35% & 15% below Level 1 of assigned pay band.
New Hires (from outside Federal Service).	Level 1 of pay band.
New Hires (current Federal employees).	Pay rate individually based on existing dollar salary, highest previous rate, or team pay level dependent upon their qualifications and activity staffing needs.
Current Employees.	Dependent upon current pay. 1—Exceed level IV—grandfathered. 2—May match pay Level I, II, III, or IV. 3—Between levels until certified to next higher pay level.

Termination of the Project

All positions will be reclassified in accordance with non-demonstration criteria to determine the traditional series, pay plan and grade level. Employee placement rights will then be considered as outlined below:

1. An employee's new grade level will not be lower than his/her grade at project entry.

2. If an employee is converted to a grade whose maximum rate falls below his or her current salary, the employee will retain his/her current pay under 5 U.S.C. 5363 and 5 CFR Part 536, but receive the lower grade designation.

3. If an employee's salary falls between 2 steps, salary will be set at the higher rate, except for employees placed in a PMRS position (who will continue to receive their current rate of pay). The placement authority will be 5 CFR 335.102.

4. Realignment placement, if necessary, will be based on RIF procedures.

Exit from the Project

To accomplish employee pay adjustments at exit, conversion will apply the pay protection procedures of the "base grade principle." The base grade is the wage or general schedule grade most comparable to the employee's current pay level as determined by the most recent event affecting wages, i.e., SBP plan entrance, comparability pay adjustment, promotion or demotion. If the salary at plan termination is between 2 overlapping Wage System or General Schedule grades, the base grade is set by first determining the appropriate pay system for exit based on team duties and proceeding as follows:

General Schedule. The higher of the 2 overlapping General Schedule grades, if current salary meets or exceeds step 4 of the higher GS grade. If current salary is less than step 4, the conversion will be to the lower GS grade.

Wage System. The higher of the 2 overlapping wage grades, if current salary meets or exceeds step 2 of the higher wage grade. If current salary is less than step 2, the conversion will be to the lower wage grade.

Prior to exit of employees from the SBP plan for any reason, each employee will be converted to the appropriate wage or general schedule grade according to the above base grade rules. An information sheet describing the SBP plan and the grade conversion procedure will be inserted in the official personnel folder of each employee who has been a test participant.

VII. Authority Requirements

Authorities for a number of plan elements are not included in present Civil Service laws and regulations. They are needed to implement the SBP/PWE plan, and include the following provisions:

1. The establishment of a CS (compensation schedule) wage system with multiple pay bands to compensate different levels of multi-skilled work teams, each with a broad range of work skills.

2. A classification system based on skill levels within teams which encompasses a broad range of skills and which are described by a team position description.

3. A formal skill acquisition certification program as a basis for promotions within pay bands.

4. A performance appraisal system that encompasses 3 summary rating levels, that uses a performance rating period of 6 months and that incorporates a peer review input process.

5. The use of excused absence as an individual incentive award for Exceptional performance not to exceed 32 hours per year per individual. [This is currently authorized for DLA under Public Law 100-463 Section 8067.]

6. A Performance Management and Recognition System which is expanded to include all managers above team leader level.

7. A modification of competitive areas in reduction-in-force situations to coincide with functional areas and acquired skills.

VIII. Waivers of Law and Regulation

Provisions of civil service laws or regulations that must be waived to implement this demonstration project are included as Table 11. The project is in accordance with 5 U.S.C. 4703(c) and is consistent with all merit system principles.

TABLE 11.—PROVISIONS OF LAWS OR REGULATIONS THAT REQUIRE WAIVERS

Title 5, United States Code

Section 5101 (1)(B) and (2)
Classification (grouping of positions by classes and grade)
Section 5102
Classification, Definitions—e.g., classification, grade, etc.
Section 5104
Basis for grading positions*
Section 5105(c)
Standards for classification of positions*
Section 5106 (a) and (b)
Basis for classifying positions*
Section 5107
Classification of positions*
Section 5110
Review of classification of positions*
Section 5111
Revocation and restoration of authority to classify positions*
Sections 5331 through 5336
General Schedule pay rates and step increases*
Section 5342 (a)(2)
Definition of "prevailing rate employee"*
Section 5343
Prevailing rate determinations; wage schedules; night differentials*
Section 5346
Job grading system*

TABLE 11.—PROVISIONS OF LAWS OR REGULATIONS THAT REQUIRE WAIVERS—Continued

Section 5361
Grade and pay retention, Definitions*
Section 5362
Grade retention following a change of positions or reclassification*
Section 5402(a)
Performance management and recognition system, Coverage
Section 5544
Wage-board overtime and Sunday rates; computation
Section 7503
Suspension for 14 days or less; cause and procedure

Title 5, Code of Federal Regulations

Section 300.601
Time in grade restrictions, applicability*
Section 315.902
Probation on initial appointment to a supervisory position, Definition of "supervisory position," as applied to team leader positions
Section 351.402(b)
Reduction in force, Competitive area
Section 351.403(a)
Reduction in force, Competitive Level
Section 351.504
Retention standing, Credit for performance
Section 351.701
Retention standing, Bump and retreat rights
Section 430.204(h)
Performance appraisal systems for General Schedule and prevailing rate employees*
Part 511, Subpart B
Coverage of the general schedule*
Part 511, Subpart F
Classification Appeals*
Part 511, Subpart G
Effective dates of position classification actions or decisions*
Part 531
Pay under the General Schedule*
Part 532
Prevailing rate system*
Part 536, except section 536.104
Grade retention*
Section 540.102
Performance Management and Recognition System, Definitions
Section 752.203
Suspension for 14 days or less, Procedures

*Only as applied to employees assigned to teams.

[FR Doc. 89-7996 Filed 4-4-89; 8:45 am]
BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—16898; 811-4677]

The Tecumseh Tax-Free Fund; Application for Deregistration

March 29, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Tecumseh Tax-Free Fund ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N–8F was filed on December 6, 1988, and amended on March 23, 1989.

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 April 19, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, The Tecumseh Tax-Free Fund, 33 North Third Street, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Legal Technician Patricia Copeland (202) 272–3009, or Branch Chief Karen Skidmore, (202) 272–3023 (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 (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is organized as a Massachusetts business trust and is registered as an open-end diversified management investment company under the 1940 Act. On May 20, 1986, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1A with respect to one class of securities of an indefinite amount. The registration statement never became effective and was withdrawn by Applicant on October 20, 1986. Applicant has never made a public offering of its securities.

2. Since the Applicant never raised capital, other than a $1.00 purchase of shares by the Applicant's Massachusetts legal counsel on April 23, 1986, no distributions to securityholders has been made.

3. Applicant states that it has no outstanding debts, is not a party to any litigation or administrative proceedings and its assets will not be invested in securities. The Applicant is neither engaged, nor proposes to engage in any business activities, other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–8030 Filed 4–4–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–16899; 812–6976]

Thomas J. Herzfeld Advisors (Canada) Inc.; Notice of Application

March 30, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Conditional Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Thomas J. Herzfeld Advisors (Canada) Inc.

Relevant 1940 Act Sections: Conditional exemption requested under section 6(c) from section 12(d)(1)(A).

Summary of Application: Applicant seeks an order to conditionally exempt T.J. Herzfeld Discount Asset Fund ("Fund"), a Canadian closed-end holding company, to allow the Fund to invest more than 10% of the value of its total assets in securities issued by closed-end investment companies.

Filing Dates: The application was filed on January 29, 1988, and amended on November 14, 1988, December 30, 1988, and February 13, 1989.

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 April 24, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Alan Rosenblat, Esq., Dechert Price & Rhoads, 1500 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3026 or Stephanie M. Monaco, Branch Chief, 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 which can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Canadian corporation proposing to register with the Ontario Securities Commission ("OSC"). Applicant will organize and become the investment adviser to the Fund, a Canadian closed-end fund holding company. The Fund and its securities (or "units") will be registered with the OSC and will comply with all other applicable Canadian regulatory requirements and restrictions. The Fund also will list its securities on the Toronto Stock Exchange. However, neither the Fund nor its securities will be registered under the 1940 Act or the Securities Act of 1933, respectively, because the Fund's securities will not be offered, sold or transferred in the United States or to United States persons. In this regard, the Fund and its underwriters have agreed, as a condition to the order, to take a number of steps not to offer, sell, or permit the transfer of its securities in the United States or to United States citizens or residents.

2. The Fund will invest all of its assets in other closed-end investment companies, including closed-end investment companies registered under the 1940 Act, Canadian and United Kingdom companies, and other foreign, closed-end companies qualified for sale in Ontario. The Fund will purchase these securities when they trade at a discount from net asset value and sell them when that discount narrows.

Applicant's Legal Analysis

1. Section 12(d)(1) of the 1940 Act places several restrictions on investment companies, regardless of whether they are registered under the 1940 Act. Among these restrictions is the provision of section 12(d)(1)(A)(iii) that prohibits an investment company, and any companies it controls, from investing, in the aggregate, more than ten percent of its assets in the securities of other investment companies. Section 12(d)(1)(F) provides an exception from

the restrictions of section 12(d)(1) if certain conditions are met, including that the investment company will register under the 1940 Act. Since the Fund will not register under the 1940 Act as required by section 12(d)(1)(F), the Fund cannot avail itself of this exception.

2. Applicant submits that an order under section 6(c) granting an exemption from section 12(d)(1)(A) to enable the Fund to invest more than ten percent of the value of its total assets in other closed-end investment companies is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Applicant's reasons are summarized below and are set forth fully in the application.

3. The Fund will comply with all but one of the conditions of section 12(d)(1)(F) of the 1940 Act. The Fund and its securities will not be registered under the 1940 Act or the Securities Act of 1933, respectively; however, the Fund will not offer, sell or permit the transfer of its securities in the United States or to United States citizens or residents. Applicant states that because the Fund will only offer, sell or permit the transfer of its securities abroad to Canadian and other foreign investors, this obviates any direct investor protection concerns relating to United States investors in the Fund.

4. Applicant claims that because the Fund will comply with most of the provisions of section 12(d)(1)(F) and all of the other conditions listed below, the Fund's structure and operation address adequately the concerns about fund holding companies and the abuses that section 12(d)(1) was designed to prevent. Specifically, the Fund's activities should not create the potential to exercise undue influence on, or control over, the management of the underlying domestic registered investment companies because the Fund will limit its investments in such companies. The Fund does not pose a threat of large scale redemptions of securities issued by the underlying investment companies because the Fund is closed-end and will invest only in closed-end investment companies. The Fund's proposed operation and conditions limiting its sales loads to no more than one and one-half percent and limiting its investments in the securities of other investment companies to purchases in the secondary market, thus avoiding the payment of any underwriting spread, should minimize concern about the layering of costs.

5. Applicant asserts that the Fund's investors will be protected by Canada's extensive system of securities regulation and, in this regard, the Canadian provincial securities authorities have stated that the Fund's structure is acceptable to them and that it has utility. In addition, Applicant argues that United States investors will indirectly benefit from the Fund's purchase of securities of United States registered closed-end investment companies since these purchases (a) will provide greater depth and liquidity in the market for these securities, (b) will provide United States investors with a possible purchaser of their securities if they wish to dispose of the securities, and (c) may narrow the discount between the securities' net asset values and market prices.

6. Applicant maintains that SEC enforcement of the proposed conditions will be strengthened by the Fund's consent to SEC jurisdiction and appointment of an agent in the United States for service of process. In addition, Applicant believes that the SEC's Memorandum of Understanding, dated January 7, 1988, with the OSC, Commission des valeurs mobilieres du Quebec, and British Columbia Securities Commission will facilitate the SEC in obtaining information concerning the Fund's compliance with the proposed conditions and other federal securities laws. Finally, Applicant states that this relief would be consistent with recent SEC efforts to promote internationalization of the securities markets.

7. Applicant acknowledges that because of the affiliation among the Fund, Applicant, Thomas J. Herzfeld Advisors, Inc. ("Herzfeld U.S."), and the investment companies advised by Herzfeld U.S., any purchases or sales between or joint transactions among them may be prohibited by Section 17 of the 1940 Act and the rules thereunder.[1]

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. The Fund will not convert to an open-end company unless it receives an amended order from the SEC, provided that if the Fund changes its operation so that it complies with, or is no longer subject to, the provisions of section 12(d)(1) of the 1940 Act and any other applicable provisions of the 1940 Act, an amended order is not required.

2. Applicant and the Fund will agree to cooperate fully to make available to the SEC staff for inspection or copying their books and records and, to the extent they are prohibited by applicable law from doing so, they will use their best efforts to secure permission to do so.

3. Applicant acknowledges, understands, and agrees that the SEC's issuance of the order requested by the application shall not prejudice or limit the SEC's right in any manner with respect to any investigation, enforcement action, or proceedings for violations of the representations, undertakings, or conditions contained in the application or for violations of the provisions of the federal securities laws.

4. The fund will not purchase or otherwise acquire the securities issued by any registered investment company if immediately after such purchase or acquisition more than three percent of the total outstanding stock of such issuer is owned by the Fund and all its affiliated persons.

5. The Fund will not offer or sell any securities issued by it through a principal underwriter or otherwise at a public offering price which includes a sales load of more than one and one-half percent.

6. If the Fund invests in a closed-end investment company which subsequently changes to an open-end investment company, the Fund will not redeem the securities of such company in any amount exceeding one percent of such company's total outstanding securities during any period of less than thirty days.

7. The Fund will exercise the voting rights of the securities of underlying investment companies by either seeking instructions from its security holders and voting the proxies in accordance with such instructions or voting the securities held by it in the same proportion as the vote of all other holders of such underlying investment companies. Moreover, if the Fund passes such voting rights through to its security holders, the Applicant will absorb all costs in connection with soliciting votes from such security holders.

8. The Fund will consent to the jurisdiction of the SEC and will appoint Alan Rosenblat, Esq., Dechert Price & Rhoads, 1500 K Street, NW.,

[1] Mr. Thomas J. Herzfeld owns 100% of Applicant's voting securities and is president and sole stockholder of Herzfeld U.S., a Florida corporation registered as an investment adviser under the Investment Advisers Act of 1940. Therefore, Applicant is affiliated with Herzfeld U.S.

Washington, DC, as its agent in the United States for service of process.

9. The Fund will invest only in securities of other closed end investment companies which are registered under the 1940 Act or are qualified for sale in Canada, and up to ten percent of its assets in United Kingdom funds, but will not invest in any other fund holding companies. The Fund will not invest during the "primary" distribution or in initial or underwritten offerings of investment company securities, but will invest only in the secondary market (*i.e.*, securities exchanges or over-the-counter).

10. The Fund's securities will not be offered or sold to United States persons. The Fund will take the following steps (a) to prevent the offer or sale to United States persons of Fund units in the initial public offering; (b) to prevent Fund units sold in the secondary market from falling into the hands of United States persons; and (c) to prevent Fund units from being purchased by United States persons on the Toronto Stock Exchange or some other stock reporting entity:

The Fund's governing document will permit it to restrict or prevent the ownership of its units by any person, firm or corporate body, including any "United States person." For These purposes, "United States person" means a citizen or resident of the United States of America, a partnership or corporation organized under the laws of or existing in any State, territory or possession of the United States or the District of Columbia, an estate the administrator or executor of which is a United States person, resident of the United States, or a trust the trustee of which is a United States person.

Such governing documents also will provide that any attempt to transfer ownership to a United States person shall be void and that, if it shall come to the attention of the officers or employees of the Fund at any time that any of its units are beneficially owned by a United States person, either alone or in conjunction with any other person, the Fund will cause such units to be sold promptly in the open market and remit the proceeds to the purported beneficial owner. Once the Fund gives notice of such a sale, any affected unitholder shall cease to be the owner of such units.[2]

In this regard, upon any purchase of or attempt to transfer Fund units, each purchaser or transferee is not a United States person, (b) none of the funds used by the purchaser to effect the purchase of the units have been obtained from United States persons, (c) the purchaser or transferee will not transfer any of his units or any interest therein to a United States person, and (d) the purchaser or transferee will notify the Fund immediately if he should at any time become a United States person. If the purchaser or transferee is a bank or broker, it will be required to represent and warrant that it is acquiring the units on behalf of clients, that such clients are not United States persons, that it will notify the Fund immediately if it shall come to its knowledge that any such client has become a United States person, and that it will not at any time knowingly transfer or deliver the units or any part thereof or interest therein to any entity within the United States of America, its territories or possessions.

When units of the Fund are issued in certificated form, each certificate will contain a prominent legend substantially as follows:

The Fund's units have not been registered under the United States Securities Act of 1933, nor has the Fund registered under the United States Investment Company Act of 1940, and the units may not be directly or indirectly offered or sold in the United States of America or any of its territories or possessions or areas subject to its jurisdiction, or to or for the benefit of a United States person.

11. Where there is a transnational linkage of securities exchanges, Applicant agrees not to permit the Fund's securities to qualify as a "linkage security."

12. The Fund will not purchase or otherwise acquire securities of any other investment companies advised by Herzfeld U.S. or Applicant.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-8031 Filed 4-4-89; 8:45 am]

BILLING CODE 8010-01-M

[2] The Fund will sell the units and remit the proceeds to the purported beneficial owner rather than redeeming the units at net asset value because if the Fund's units were selling at a discount from net asset value, a redemption commitment would be an open invitation to United States persons to purchase them on the Toronto Stock Exchange, and then confess the persons' identity to the Fund, necessitating redemption. Such a state of affairs would be contrary to the interest of the Fund unitholders in that, depending on the number of units tendered, it could result in shrinkage of the Fund and loss of some of the economies of scale related to managing a larger Fund.

[Release No. 34-36672; File No. SR-PHLX-88-36]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to the Creation of an Emergency Committee Authorized to Determine the Existence of Extraordinary Market Conditions and To Take Certain Action with Respect to Such Conditions.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 10, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. proposes to adopt new Rule 98 establishing an Emergency Committee to make decisions during extraordinary market conditions and other emergencies.[1]

The following constitutes the text of the proposed rule change (all language is new after the asterisks).

Rules of Board of Governors

* * * * *

Rule 98. An Emergency Committee, consisting of the Chairman of the Exchange, the President of the Exchange and the Chairmen of the Floor Procedure, Options and Foreign Currency Options Committees, shall be established and authorized to determine the existence of extraordinary market conditions or other emergencies. When the Committee determines that such an emergency condition exists, the Committee may take any action regarding the following: 1) Operation of PACE, AUTOM, CENTRAMART or any other Exchange quotation, transaction reporting, execution, order routing or

[1] The Phlx has represented to the Commission that "extraordinary market or emergency conditions" include, among other conditions, a declaration of war, a presidential assassination, an electrical black-out or events such as the October 1987 market break or other highly volatile trading conditions that prompt intervention for the market's continued efficient operation. *See* Letter from William W. Uchimoto, General Counsel, Phlx to Sharon L. Itkin, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, dated March 15, 1989. ("Letter")

other systems or facility; 2) operation of, and trading on, any Exchange floor; 3) trading in any securities traded on the Exchange; and 4) the operation of members' or member organizations' offices or systems.[2] Any member of the Emergency Committee may request the Committee to determine whether an emergency condition exists. If the Committee determines that such an emergency exists and takes action, the Committee shall prepare a report of this matter and submit it promptly to the Securities and Exchange Commission [3] and submit it to the Board of Governors at the Board's next regular meeting.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (b), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of this Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change establishes a mechanism for the Phlx to take concerted action during extraordinary market conditions or other emergencies. While absence of an emergency authority rule has not prevented the Exchange from taking the necessary and appropriate action to respond to emergencies in the past, proposed Rule 98 would establish a regular procedure, thus assuring continued orderly responses to any future emergency conditions.

Specifically, proposed Rule 98 would establish an Emergency Committee consisting of the Phlx Chairman and President and the Chairmen of the Phlx's three floor committees. The Committee would be authorized to determine the existence of an emergency and what, if any, action should be taken in response thereto. Should the Committee take action, a report of the action and the emergency circumstance precipitating such action will be sent to the Commission as well as submitted to the Board at its next regular meeting.[4]

The Committee will be authorized to act under normal committee rules, *e.g.*, a quorum must be present to constitute a meeting and a majority of those members at that meeting must approve any specific action.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange. Specifically, the proposed rule change is consistent with section 6(b)(1) of the Act which provides in pertinent part that the Exchange is organized and has the capacity to carry out the purposes of the Act. Moreover, the proposal is also consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 28, 1989.

[FR Doc. 89-8027 Filed 4-4-89; 8:45 am]

BILLING CODE 8010-01-M

[2] The Exchange has indicated that action taken with respect to member organizations' offices or systems would be in connection with the operation of the Exchange's PACE and AUTOM systems. For example, the Exchange may request retail member firms to reprogram their systems to route all orders to these Exchange systems on a manual basis as opposed to an automated execution basis in times of extreme market price volatility. Moreover, the Phlx has noted that it is the designated examining authority for sole Phlx member broker-dealers and has established a series of rules governing books, records and retail customer account responsibilities (see the 700 series of Phlx rules relating to the Exchange's Committee on Business Conduct) to govern such firms. Accordingly, the Exchange believes that it is its regulatory responsibility to assure the existence of its emergency authority over members' offices or systems during emergency conditions. *See* Letter *supra* note 1.

[3] The Exchange has represented that it will coordinate any exercise of its emergency authority with all self-regulatory organizations that might be impacted by such actions. In addition, the Exchange has committed to using its best efforts to consult with the Commission or its staff prior to taking any such action, and will promptly file notice of any consummated actions with the Commission pursuant to section 19(b)(3)(A) of the Exchange Act.

[4] See note 3, *supra*, indicating other coordination efforts and rule filing requirements for actions taken by the Emergency Committee.

[Release No. 34-26679; File No. PHLX 89-10]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Floor Procedure Advices Relating to Priority and Parity Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 13, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to Rule 19b–4, hereby proposes the following floor procedure advice in accordance with PHLX Rule 970: (The following constitutes all new text).

B–11 *Priority of Equity Option and Index Option Orders by Account Type*

Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, certain equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described below.

For the purposes of this rule a controlled account is any account of a broker-dealer (including a Registered Options Trader), a person associated with a broker-dealer or for which any of a broker-dealer's associated persons exercise discretion, except that specialist accounts are not subject to yielding requirements placed upon controlled accounts by this rule. Customer accounts are all other accounts.

Section A

(i) Equity and index "opening" option orders of controlled accounts must yield priority to customer orders. Closing orders of controlled accounts are not required to yield priority to orders of customer accounts.

(ii) Equity and index option orders of controlled accounts are not required to yield priority to other controlled account orders, except that when opening and closing orders of controlled accounts compete at the same price as a customer order the opening order of a controlled account must yield to the closing order of a controlled account as well as yield to the customer order.

Section B

All equity and index option orders of controlled accounts must be verbally communicated to the crowd as opening or closing, as appropriate, whenever a competing customer account bid or offer is voiced. In addition, orders of controlled accounts, other than ROTs market making in person, must be (1) verbally communicated as for a controlled account when represented to the trading crowd and (2) record as for a controlled account by appropriately marking the "Y" field on the floor ticket(s) of any such order. Fine schedule:

Section A—No fine applicable.
Matters subject for review by the Business Conduct Committee.
Section B—
1st Occurrence—Warning; 2nd Occurrence—$100.00; 3rd Occurrence—$250.00; 4th Occurrence—Sanction; Discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to clarify the parity and priority rules governing auction trading in PHLX equity and equity index options. PHLX Rules 119, 120 and 1014, Commentary .12 generally set forth such rules. The proposed rule change, which would give rise to a new options floor procedure advice, eliminates previous provisions which had the effect of allowing "firm" orders parity with and priority over "customer" orders in certain circumstances. This proposal shall have the effect of providing orders of public customers with priority over firm and ROT opening orders in all circumstances. The proposal would eliminate the distinction currently in the Exchange's rules between ROT and firm orders, which under certain circumstances accords priority for firm orders over ROT orders. The proposal would continue in effect provisions that PHLX specialist accounts, because of the regulatory responsibilities imposed on specialists, are not required to yield to other such orders. The proposed rule change is consistent with section 11 of the Act and section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, will promote just and equitable principles of trade, and protect investors and public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change has been reviewed and approved by the PHLX's Options Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 26, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Date: March 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-8028 Filed 4-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26676; File No. SR-PHLX-88-31]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; to add a new Rule 806 Voting Rights Listing Standards—Disenfranchisement Rule in Order to Bring the Exchange's Rules Into Compliance With Rule 19c-4, Which Was Recently Adopted by the Securities and Exchange Commission Under the Securities Exchange Act of 1934

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 3, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. proposes to add a new rule 806 Voting Rights Listing Standards—Disenfranchisement Rule in order to bring it into compliance with Rule 19c-4, which was recently adopted by the Commission. Italics indicate additions, [brackets indicate deletions].

Rule 806

[Certification to Securities and Exhange Commission]

Voting Rights Listing Standards—Disenfranchisement Rule

(a) No rule, stated policy, practice, or interpretation of this exchange shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer if, on or after July 7, 1988, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Act.

(b) For the purpose of paragraph (e) of this rule, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

(1) corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

(2) corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

(3) any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer;

(4) any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any oustanding class of the common stock of the issuer.

(c) For the purpose of paragraph (a) of this rule, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

(1) the issuance of securities pursuant to an initial registered public offering;

(2) the issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

(3) the issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(4) corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

(5) such other action, including the issuance of any class of securities under specified circumstances, which is deemed, pursuant to the rules of another exchange or an association, to be excluded from the prohibition in paragraph (a) of this rule.

(d) Definitions:

The following terms shall have the following meanings for purposes of this rule:

(1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

(3) The term "equity security" shall include any equity security defined as such pursuant to Rule 3all-1 under the Act.

(4) The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Act.

(5) The term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

(6) the term "exchange" shall mean a national securities exchange, registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act, which makes transaction reports available pursuant to Rule 11Aa3-1 under the Act.

(7) The term "association" shall mean a national securities association registered as such with the Securities and Exchange Commission pursuant to section 15A of the Act.

Rule 807 Certification to Securities and Exchange Commission

Pursuant to Rules 802 through [805] *806*, the Board may delegate to the Committee, in respect to securities, the authority to list, admit dealings, suspend from dealings and remove from the list.

The Committee is authorized to certify to the Securities and Exchange Commission the approval of the Exchange of the listing and registration of securities and the admission of

securities to dealings, and to file applications on behalf of the Exchange for the removal of securities from listing and registration and from dealings.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to add to the Exchange's Rules Rule 806 Voting Rights Listing Standards—Disenfranchisement Rule in order to bring the Exchange into compliance with Rule 19c–4, which was recently adopted by the Commission under the Securities Exchange Act of 1934.[1] Rule 19c–4, which establishes a minimum voting rights listing standard among the self-regulatory organizations, was adopted by the Commission in order to ensure management accountability; to protect shareholder interest in connection with contests for corporate control; and to protect shareholders from being disenfranchised while permitting companies to utilize disparate voting rights plans for capital raising purposes.

The proposed rule change by the PHLX incorporates and is substantially identical to Rule 19c–4 as promulgated and adopted by the Commission. In this regard, the rule prohibits the listing by the Exchange of the equity securities of a domestic issuer if that issuer takes any corporate action with the effect of nullifying, restricting or disparately reducing the voting rights of existing shareholders. It should be noted that, by permitting the listing and trading of securities of issuers that adopt disparate voting rights plans that do not have a disfranchise effect on existing shareholders, the Rule avoids unduly burdening issuers and thereby allows flexibility in devising a corporation's capital structure.

The text of the proposed rule differs from Rule 19c-4 in two respects. First, it includes in the text of the Exchange's proposed rule the July 7, 1988 grandfather date provided in the Commission's order adopting Rule 19c-4. Second, it includes in paragraph (c)(5) of the proposed rule a provision that would automatically incorporate into PHLX's rules any exclusions from the voting rights listing standard rules of the other exchanges or the NASD. This will assure that PHLX's rules remain consistent with those of the other markets, and in particular will assure that PHLX will not be prevented from seeking listings of the securities of issuers that are eligible for listing on the other markets.

The proposal is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors, particularly in its promotion of corporate suffrage.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 29, 1989.

[FR Doc. 89–8029 Filed 4–4–89; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376 (July 12, 1988) ("Adopting Release"). Rule 19c-4 has the effect of amending the rules of national securities exchanges and national securities associations (collectively "SROs") to prohibit the common stock or other equity securities of a company from being or remaining listed on an exchange or from being or remaining authorized for quotation and/or transaction reporting through an automated inter-dealer quotation system operated by an association if such company issues securities or takes other corporate action that would have the effect of nullifying, restricting or disparately reducing the per share voting rights of existing common stock shareholders of the company.

[Release No. 34-26674; File No. SR-NYSE-88-45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

On December 30, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to impose fees for processing new member organization, non-public floor professional and option trading right holder applications and the applications of Exchange members seeking to associate with persons subject to a statutory disqualification under section 3(a)(39) of the Act.

Notice of the proposal together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No.

[1] 15 U.S.C. 78s(bj)(1).

[2] 17 CFR 240.19b–4.

26463, January 17, 1989) and by publication in the **Federal Register**, 54 FR 3711. No comments were received in connection with the proposed rule change.

Under the proposal, clearing firms and introducing organizations will be assessed an application processing fee of $20,000 and $7,500 respectively, while both non-public floor professional and option trading right holder applicants will be charged a $2,500 processing fee.[3] In addition, the Exchange will impose a new $1,000 fee to process the applications of members seeking to establish or maintain a business relationship with persons barred either from Exchange membership or from associating with Exchange members pursuant to section 3(a)(39) of the Act.[4]

The Exchange indicates that the fees are designed to recoup, in part, the cost associated with processing these applications. The Exchange further indicates that the fee will be payable upon submission of a new application and will not be imposed upon current Exchange members, member firms, or successor organizations (*e.g.*, partnerships converted to corporations, merged organizations, reorganized member firms or individual Exchange members who incorporate). In addition, the Exchange notes that where a new applicant falls into several application categories, the applicant will be charged the higher fee.

After careful consideration, the Commission believes that the proposal authorizing fees for processing the applications of the above mentioned parties is consistent with section 6(b)(4) of the Act. In this regard, the Commission believes that the new fees should, as the Exchange contends, enable it to recoup a portion of the costs it incurs when it processes these applications. Although the new fees, and especially the processing fees for new clearing members and introducing brokers are substantial, they reflect the fact that the Exchange expends significant resources in processing these membership applications. Thus, the Commission believes that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons utilizing its facilities. Accordingly, the Commission has determined to approved the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 29, 1989.

[FR Doc. 89-8089 Filed 4-4-89; 8:45 am]

BILLING CODE 8010-01-M

[3] In addition to establishing the specific fees, the filing also proposes to amend generally NYSE Rules 311 and 346 to authorize the payment of fees for processing the various applications. Of course, any changes in the future to the specific fees being imposed would have to be submitted for Commission review pursuant to section 19(b) of the Act.

[4] Under this Section, when a person has been expelled or suspended from membership of a self-regulatory organization ("SRO"), is subject to an outstanding Commission order barring such person from associating with a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or has been convicted of certain specified criminal activities, that person is ineligible for SRO membership and is prohibited from associating with any SRO member. Section 19(h) of the Act, however, permits an SRO to petition the Commission, on behalf of its member, for permission to allow such member to associate with the statutorily disqualified person.

[Rel. No. 35-24849]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 20, 1989.

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 amendments 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 April 24, 1989 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.

The Potomac Edison Company (70-7618)

The Potomac Edison Company ("PE"), Downsville Pike, Hagerstown, Maryland 21740, a subsidiary of Allegheny Power System, Inc., a registered holding company, has filed an application-declaration pursuant to section 6(b) of the Act and rule 50(a)(5) thereunder.

PE proposes to issue and sell short-term notes from time to time to banks and to dealers in commercial paper through March 31, 1991, in an aggregate principal amount not to exceed $72 million outstanding at any one time. Each note payable to a bank will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, and will bear interest at no greater than the then current prime commercial credit or equivalent interest rate of the bank at which the borrowing is made. The notes may or may not have prepayment provisions.

PE has agreed to pay for lines of credit with a group of banks by maintaining compensating balances (no greater than 2½% of all or a portion for the line of credit) and/or by paying an annual cash fee (no greater than ⅛ of 1% of all or the balance of the line of credit).

The commercial paper will not be prepayable and will have varying maturities, none more than 270 days. The commercial paper will be sold directly to dealers at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. An exception from the competitive bidding requirements of Rules 50 has been requested for the proposed issuance and sale of commercial paper.

AEP Generating Company, Indiana Michigan Power Company (70-7621)

AEP Generating Company ("AEGCo") and Indiana Michigan Power Company ("I&M") (collectively, "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, subsidiary companies of American Electric Power Company, Inc. ("AEP"), a registered holding company, have filed an application-declaration pursuant to sections 9(a), 10, 12(b), 12(c) and 12(d) of the Act and Rules 44, 45 and 46 thereunder.

Applicants each propose to sell and lease back their separate 50% undivided ownership interests ("Undivided Interests") in Unit 2 of the Rockport Generating Station ("Unit 2"). Applicants plan to enter into Participation Agreements providing for

the sale of their Undivided Interests to a trustee ("Owner Trustee" or "Lessor") acting on behalf of an equity investor or investors ("Owner Participant"), and the simultaneous lease of such Undivided Interests pursuant to separate net lease agreements ("Lease") to be entered into with the Owner Trustee which will not exceed a term of 33 years. Applicants expect that the maximum aggregate fair market value of their Undivided Interests in Unit 2 will not exceed $1.7 billion. Applicants anticipate that the annual lease rate will be 9.3%, assuming a selling price of $1.7 billion, a 10.63% cost of debt and a 33 year lease term. It is proposed that 15–25% of the aggregate cost will be provided by the Owner Participants and 75–85% of the cost will be borrowed by the Owner Trustee. Subject to certain conditions, Applicants may have the right to renew the lease for successive terms for the useful life of Unit 2 at rentals as will be specified in the Lease.

Interim financing will be provided by one or more domestic or foreign financial institutions ("Original Loan Participants"), in return for non-recourse notes ("Initial Series Notes") of the Lessor, secured by the Lessor's interest in Unit 2.

In order to refund the Initial Series Notes the Lessor will issue refunding notes ("Refunding Notes") expected to bear interest at fixed rates. In the case of a public offering, Refunding Notes will be purchased by a special purposes corporation ("Funding Corporation"), unaffiliated with the Applicants, with the proceeds of debt securities to be issued pursuant to a collateral trust indenture ("collateral Trust Indenture"). The Funding Corporation may, or may not, be utilized if the Original Loan Participants are repaid from the proceeds of a long-term private placement debt financing.

It is expected that the Initial Series Notes will be refunded shortly after the inception of the Lease, either through a public offering as described above or through a private placement, in which case utilization of the Funding Corporation and the Collateral Trust Indenture may not be required.

In addition, AEP proposes to enter into a side letter with the Owner Participants ("Side Letter") to become effective at the closing of the proposed sale and leaseback. The Side Letter generally provides that, should an AEGCo bankruptcy occur, AEP will not exercise any rights it may have under sections 365(c)(1) and (2) of the Bankruptcy Reform Act of 1978 that would adversely impact on AEGCo.

Proceeds from the sale of its ownership interest would be used by AEGCo to pay outstanding short-term debt, notes outstanding under its Revolving Credit Agreement and maturing bank loans, and to reduce the equity investments of AEP, such that the resulting long-term debt and common equity ratios will be approximately 65% and 35%, respectively. To this end, AEGCo requests authorization to liquidate its Other Paid-in Capital to the extent necessary to achieve these objectives.

Proceeds from the sale of its ownership interest would be used by I&M to pay outstanding short-term debt, to call outstanding series of its first mortgage bonds at special redemption prices and preferred stock and to reduce AEP's equity investment by dividend payments out of I&M's retained earnings, such that the resulting long-term debt and common equity ratios would be approximately 52% and 40%, respectively.

National Fuel Gas Company, et al. (70–7650)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its subsidiaries National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation ("Supply"), Penn-York Energy Corporation ("Penn-York") and Seneca Resources Corporation ("Seneca"), all located at 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45, 50 and 50(a)(5).

National proposes to issue and sell under its Indenture prior to December 31, 1990, or prior to June 1991, subject to further Commission approval, in one or more transactions pursuant to Rule 415 under the Securities Act of 1933, as amended, an aggregate of not to exceed $250 million principal amount of debt securities consisting of (i) one or more series of its debentures ("Debentures") and/or (ii) medium-term notes ("MTNs"), in each case on terms to be determined when the agreement to sell is made or at the time of delivery.

The Debentures will be offered at competitive bidding, but National believes that, in respect to the MTN's the standard structure of an MTN program could not be operational under the conditions of Rule 50. MTNs are primarily sold on the basis of their credit ratings and as a result, are usually sold with interest rates negotiated at the time of the sale on the basis of spreads over comparable maturity Treasury securities. National states that the interests of its investors and the public require National to negotiate the terms of its program of continuously offered MTNs, with an agent (or agents) through whom bids will be submitted. National has requested an exception from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5), authorizing it to undertake negotiations with respect to the issuance and sale of the MTNs. It may do so.

The MTNs will have maturities of from nine months to thirty years from the date of issue, will be issued at 100% of its principal amount and may or may not be redeemable. Offers to purchase the MTNs will be solicited through an agent(s), and will be sold at a cost of money not exceeding the rate prevailing at the time of issuance for medium-term notes of comparable quality and of the particular maturity.

The proceeds from the proposed financing will be contributed to the capital of Distribution, Supply and Penn-York (i) to reduce short-term borrowings under their credit lines, (ii) for their construction program and (iii) for general corporate purposes, and to Seneca to reduce its short-term borrowings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–8088 Filed 4–4–89; 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 May 5, 1989. 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), supporitng 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: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340

Title: SBA 1986 Data Base Validation Survey
Form Number: SBA Form 1670
Frequency: One time
Description of Respondents: Large firms present in SBA data base
Annual Responses: 317
Annual Burden Hours: 176

Title: Record of Hotline Calls
Form Number: SBA CO Form 266
Frequency: On occasion
Description of Respondents: Individuals issuing complaints concerning possible abuse or mismanagement of SBA programs
Annual Responses: 110
Annual Burden Hours: 55

Title: Liability Certificate
Form Number: SBA Form 856
Frequency: On occasion
Description of Respondents: Small Business Investment Companies being audited by the SBA Office of the Inspector General
Annual Responses: 200
Annual Burden Hours: 200.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89–7997 Filed 4–4–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 30, 1989.

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: New
Form Number: None
Type of Review: New Collection
Title: Opinion Survey of Users and Non-Users of the IRS Private Letter Rulings Program
Description: The data collected will be used to evaluate the quality of services provided by the Associate Chief Counsel (Technical) program for the issuance of private letter rulings and to identify possible areas of improvement.
Respondents: Individuals or households
Estimated Number of Respondents: 2,000
Estimated Burden Hours Per Response: 25 minutes
Frequency of Response: One-time survey
Estimated Total Reporting Burden: 834 hours

OMB Number: 1545–0046
Form Number: 982
Type of Review: Revision
Title: Reduction of Tax Attributes Due to Discharge of Indebtedness
Description: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency or a qualified business indebtedness. Section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 5 hours 16 minutes
Learning about the law of the form, 1 hour 41 minutes
Preparing and sending the form to IRS, 1 hour 51 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 4,395 hours

OMB Number: 1545–0202
Form Number: 5310 and 6088
Type of Review: Revision
Title: Application for Determination Upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities; Distributable Benefits From Employee Pension Benefit Plans
Description: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. They are required to notify IRS of any plan mergers, consolidations or transfer of plan assets or liabilities to another plan. Form 5310 is used to make the required notifications and the request for a determination letter. IRS uses the data on Form 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 26,364
Estimated Burden Hours Per Response/ Recordkeeping:

	5310	6088
Recordkeeping	55 hrs. 43 mins.	7 hrs. 10 mins.
Learning about the law or the form.	4 hrs. 43 mins.	42 mins.
Preparing and sending the forms to IRS.	8 hrs. 13 mins.	51 mins.

Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 1,019,891 hours

OMB Number: 1545–0991
Form Number: 8633
Type of Review: Revision
Title: Electronic Filer Application to File 1989 Individual Income Tax Returns Electronically
Description: Form 8633 will be filled in by tax preparers and submitted to IRS as an application to file individual income tax returns electronically; and by software firms, service bureaus, electronic transmitters, to develop auxiliary services.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 20,000
Estimated Burden Hours Per Response: 58 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 19,400 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5771, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-8014 Filed 4-4-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 30, 1989.

The Department of Treasury has made revisions and resubmitted 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: 1545-0183
Form Number: 4789
Type of Review: Resubmission
Title: Currency Transaction Report
Description: Financial institutions are required to file Form 4789 within 15 days of any transaction of more than $10,000. The information is used to check tax compliance.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 5,800,000
Estimated Burden Hours Per Response: 36 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,283,624 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 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-8015 Filed 4-4-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol 54, No. 64
Wednesday, April 5, 1989

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).

INTERNATIONAL TRADE COMMISSION

[USITC SE-89-12]

TIME AND DATE: Tuesday, April 4, 1989 at 3:00 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:
   Certain Novelty Teleidoscopes (D/N 1495)
5. Inv. Nos. 731-TA-406 and 408 (F) (Electrolytic Manganese Dioxide from Greece and Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

March 24, 1989.

[FR Doc. 89-8109 Filed 3-31-89; 4:49 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, April 11, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Derailment of Amtrak Passenger Train While Operating on the Burlington Northern Railroad, Saco, Montana, August 5, 1988
2. Proposed Safety Study on Air Carrier "Code Sharing"

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

March 31, 1989.

[FR Doc. 89-8118 Filed 4-3-89; 9:02 am]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 54, No. 64
Wednesday, April 5, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 251

Appeal of Decisions Concerning the National Forest System

Correction

In rule document 89-1222 beginning on page 3342 in the issue of Monday, January 23, 1989, make the following corrections:

§ 217.2 [Corrected]

1. On page 3358, in the first column, in § 217.2, in the definition for "*Decision Notice*", in the third line, "ws" should read "was".

§ 217.12 [Corrected]

2. On page 3361, in the 1st column, in § 217.12(a), in the 16th line, "Officer's" should read "Officer".

§ 217.17 [Corrected]

3. On page 3362, in the second column, in § 217.17(e), in the last line, "who" should read "whose".

§ 251.81 [Corrected]

4. On page 3363, in the first column, in § 251.81, in the definition for "*Deciding officer*", in the fifth line, "occupany" should read "occupancy".

5. On the same page, in the same column, the definition heading "*Forest System line officer*" should read "*Forest Service line officer*".

§ 251.90 [Corrected]

6. On page 3365, in the second column, in the third line, "reserved" should read "reversed".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review

Correction

In notice document 89-7213 beginning on page 12467 in the issue of Monday, March 27, 1989, make the following correction:

On page 12468, in the second column, under **ANALYSIS OF COMMENTS RECEIVED**, in the sixth paragraph, in the seventh line, "direct" should have read "indirect".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection Regulations

Correction

In rule document 89-7540 beginning on page 13326 in the issue of Friday, March 31, 1989, make the following corrections:

1. On page 13327, in the third column, under **Executive Order 12291**, in the second line, "Executive" was misspelled.

2. On page 13328, in the third column, in the table of sections for Subpart F, the heading that reads "**Modification of Vacation of Order of Administrative Law Judge**" should read "**Modification or Vacation of Order of Administrative Law Judge**"

BILLING CODE 1505-01-D

federal register

Wednesday
April 5, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Flight Restrictions in the Vicinity of Prince Williams Sound, AK; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25857; Special Federal Aviation Regulation (SFAR) No. 55]

Flight Restrictions in the Vicinity of Prince William Sound, AK

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action authorizes the issuance of flight restrictions in the vicinity of Prince William Sound, Alaska and other areas affected by the disastrous oil spill from the oil tanker Exxon Valdez, during disaster relief operations. These restrictions are intended to: (1) Protect persons and property involved in relief/cleanup activities on the surface and in the air; (2) protect non-participating aircraft from potential oil fires and chemical contamination; (3) provide a safe environment for the operation of emergency support aircraft; and (4) to prevent unsafe congestion of sightseeing and other aircraft over the oil contaminated areas.

DATE: *Effective date:* March 30, 1989.
Expiration date: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Manager, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

On Friday, March 24, 1989, the oil tanker, Exxon Valdez, went aground approximately 25 miles south of Valdez, Alaska, spilling over ten million gallons of crude oil into the Prince William Sound. This is the largest oil spill in United States history. As a result, numerous and extensive cleanup and support activities are being conducted. These operations involve both surface activities and airborne support activities, including the aerial delivery of chemicals to the spill area. Controlled burning of surface oil is also under consideration. An emergency exists which requires that special rules be established to: (1) Protect persons and property involved in relief/cleanup activities on the surface and in the air; (2) protect non-participating aircraft from potential oil fires and chemical contamination; (3) provide a safe environment for the operation of emergency support aircraft; and (4) prevent unsafe congestion of sightseeing and other aircraft over the oil contaminated areas.

Federal Aviation Regulations, at 14 CFR 91.91, provide for restriction of aircraft operations in the vicinity of surface hazards or disaster relief efforts For several reasons the FAA considers a special regulation to be more effective and appropriate than a § 91.91 restriction in the Valdez situation. First, none of the three levels of restriction provided in § 91.91 precisely fits the needs of the Valdez situation, where the Coast Guard needs to have knowledge of and to be able to direct all aircraft in a large area, but does not desire a general prohibition of flights in the area. Second, the Valdez situation is more complex than the instances when a § 91.91 restriction is generally used. The oil clean-up operation could continue for many weeks, and the various activities will move from one location in the area to another. Accordingly, flexible control of the entire affected area, by special rule, is preferable to a succession of § 91.91 restrictions at different levels in different areas.

On the basis of the above, I find that these conditions constitute an emergency situation requiring immediate action by the agency in order to maintain safety of flight. It is necessary for the FAA to issue temporary restrictions to flight operations while the emergency conditions exist.

The specific times and locations where flight operations will be restricted will be announced by the issuance of Notices to Airmen (NOTAM) by the Director, Air Traffic Operations Service or his designee. These restrictions may include, but are not limited to, a prohibition on flight operations in the designated airspace, a requirement for two-way radio communications, and special authorization to operate in the designated areas.

NOTAMs issued under this rule will incorporate a reference to this Special Federal Aviation Regulation.

Effective Date of Final Rule

Because the emergency condition in the Prince William Sound, Alaska is currently in effect and that condition involves a potential hazard to both participants and non-participants in the relief/cleanup activities, immediate action is required to maintain safety of flight until the emergency situation abates. For this reason, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reason, I find that good cause exists for making this rule effective immediately upon issuance.

The FAA has determined that this action is not a "major rule" under Executive Order 12291 and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The immediate nature of the action required does not permit the prior completion of a full regulatory evaluation. Because the action is a nonsignificant rulemaking and is temporary, a subsequent regulatory evaluation will not be performed.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Visual flight rules.

The Special Federal Aviation Regulation

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*;

E.O. 11514; Pub. L. 100–202; 49 U.S.C 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 55 to read as follows:

SFAR No. 55—Flight Restrictions in the Vicinity of Prince William Sound, Alaska

1. *Applicability.* This rule applies to all aircraft operations in the vicinity of Prince William Sound, Alaska, and other areas affected by the oil spill on March 24, 1989, within airspace and at times specifically described by NOTAM.

2. *Special flight restrictions.* No person may operate an aircraft or initiate a flight in the area of applicability except in accordance with the provisions of this special rule.

3. *Definition.* For the purposes of this special rule:

"Responsible agency" shall mean the U.S. Coast Guard, Valdez, Alaska, or other office or person designated by the Director, Air Traffic Operations Service, Federal Aviation Administration, as responsible for approval and monitoring of aircraft operations in an area designated by NOTAM under this special rule. The responsible agency is not an air traffic control facility and will not provide separation of aircraft.

4. *Operating procedures.*

A. No person may operate an aircraft contrary to the requirements and terms of any Notice to Airmen issued under this special rule by the Director, Air Traffic Operations Service or his designee.

B. No person may operate an aircraft in any area designated by NOTAM without receiving prior approval from the responsible agency, if the NOTAM establishes a prior approval requirement for that area.

C. No person may operate an aircraft within any area designated by NOTAM unless all of the following conditions are met:

(1) The operator complies with all instructions and special identification procedures issued by the responsible agency, including by NOTAM or by radio through the designated communications facility;

(2) The operator establishes and maintains 2-way radio communications with the Coast Guard Cutter Rush or other communications facility designated by the responsible agency;

(3) The operation is conducted under VFR at all times while in the area.

D. Operating procedures to and from established landing areas within the designated areas in support of communities (such as Ellamar, Tatitler, and Perry Island) and/or existing commercial interests will be provided by the responsible agency.

5. *Expiration.* This special rule expires July 1, 1989.

Issued in Washington, DC, on March 30, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89–7998 Filed 3–31–89; 10:39 am]

BILLING CODE 4910–13–M

federal register

Wednesday
April 5, 1989

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701 et al.

Surface Coal Mining and Reclamation Operations; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 740, 750, 773, 774, 800 and 843

Surface Coal Mining and Reclamation Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior (DOI) is amending its rules to provide for specific situations where a coal mine operator may not be required to renew a permit to conduct reclamation activities on a location where no coal extraction is taking place. This action is necessary to establish a consistent policy with respect to permit requirements for reclamation activities. The intended effect of this action is to remove requirements to renew a permit for which the permit term has expired when only reclamation activities must be performed.

EFFECTIVE DATE: May 5, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Block, Branch of Federal and Indian Programs, OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343–1864.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Final Rule and Response to Comments.
III. Procedural Matters.

I. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), establishes a regulatory framework under which persons may obtain the right to surface mine coal. However, the right to mine carries with it the obligation to restore the land after mining has ceased. The link between mining and reclamation is one of the basic underlying themes of the Act. In section 101, Congress finds that regulation of surface coal mining operations in accordance with the requirements of SMCRA is an appropriate and necessary measure to minimize the adverse effects of mining. SMCRA made it clear that mining must be followed by efforts to ameliorate the disturbances it causes. Section 102, which sets forth the basic purposes of the Act, again ties mining and reclamation together. Paragraph (c) provides that the Act will assure that mining will not take place where reclamation is not possible. Paragraph (e) indicates that the Act will assure that procedures to reclaim will be undertaken as contemporaneously as possible with mining operations.

Section 502 of SMCRA, which establishes the initial regulatory program, repeats the concept that surface coal mining operations can only take place when accompanied by reclamation. Paragraph (c) provides that all surface coal mining operations regulated by a State under the initial regulatory program conform to certain performance standards in section 515 of the Act, including the requirement for restoring the land affected to a condition capable of supporting premining or higher or better uses. Similarly, section 506, which establishes the permitting requirements for the permanent regulatory program, provides that no one may engage in "surface coal mining operations" in a State without first obtaining a permit issued pursuant to an approved State program or a Federal program. The State program requirements of sections 503 and 515(a) of SMCRA provide that the State must have a law that regulates mining in accordance with the requirements of SMCRA, one of which is, as noted above, the requirement to restore the land to a condition capable of supporting premining or higher or better uses. Thus, it is evident that SMCRA requires reclamation to accompany mining and that the regulatory framework can only allow mining if the obligation to reclaim is also assumed.

In its previous public positions, OSMRE has required that the permit to conduct surface coal mining operations be renewed for the duration of all mining *and reclamation* activities (emphasis added). The September 28, 1983, preamble to OSMRE's final rule at 30 CFR 773.19(d) addressed rights of renewal under an approved permit application (48 FR 44374). In discussing the relationship between the area covered by the permit and the area comprising the life-of-mine operation, a commenter expressed the belief that a permit cannot properly contain within its boundaries more area than can be mined and reclaimed during the permit term. Implicit in this statement is the belief that reclamation must be completed within the initial permit term of five years. OSMRE disagreed with the commenter, but affirmed the implied assumption that a permit is necessary for reclamation by stating, "A permit is required for reclamation activities until final bond release. Since bond release cannot occur until after the 5- or 10-year period for establishing revegetation, no permit could have only one 5-year term without renewal" (48 FR 44374). The 1983 preamble did not contain an explanation of the requirement nor did it provide any reference or citations where an explanation of the requirement could be found.

OSMRE has also argued before the Interior Board of Land Appeals that permanent program reclamation activities must be permitted. In a case concerning whether a permanent program permit is required for the reclamation of an operation that extracted coal only during the initial regulatory program (81 IBLA 209, June 5, 1984), OSMRE argued that "when surface coal mining occurs, it triggers the requirement of reclamation" and "reclamation activities which follow coal extraction which occurs during the permanent program must be permitted until they are completed and the bond release occurs."

However, at the same time that OSMRE argued that a permit was required for solely reclamation activity, OSMRE recognized specific circumstances where reclamation may be ordered in the absence of a permit. Both the initial program regulations and the permanent program regulations provide for the suspension or revocation of a permit without affecting the obligation to reclaim (30 CFR 722.16(d) and 843.13(c) respectively). During the revision of the permanent program regulations in 1982, OSMRE re-emphasized that the obligation to reclaim continues in cases where the permit has been suspended or revoked. In the preamble to the final Federal enforcement rules OSMRE stated, "[t]he permit issued under the Act is a permit to mine coal under specified conditions. Suspension of the right to mine does not suspend the obligation to reclaim under the Act." This statement in the 1982 preamble implicitly recognized that a distinction exists between the authority to conduct coal extraction activities, specified in section 701(28), and the obligation to reclaim. (47 FR 35631, August 16, 1982)

OSMRE recognizes that it is inconsistent to require on the one hand that an operator renew a permit for only reclamation activities and, on the other, to require reclamation even in the absence of a permit. OSMRE also recognizes that, whether or not a permit is renewed by a permittee for purposes of extracting coal or otherwise disturbing land for the purposes of coal extraction, the reclamation obligations as described in the permit's reclamation plan remain incumbent upon the permittee until final bond release. OSMRE is promulgating this final rule to

recognize that requiring permit renewal when only reclamation activities remain has been inconsistent with other instances where OSMRE required reclamation activities in the absence of a section 506 permit; and, to avoid needless consumption of resources for permit renewal where only reclamation activities remain.

A permit is sought and granted to authorize an activity of benefit to the permittee, i.e., the activities associated with the extraction of coal. The exercising of that authorization creates the obligation to reclaim any resulting disturbance. While the authorization (or permit) to extract coal may expire or be revoked or suspended, the obligation to reclaim in accordance with the approved plan cannot expire or be revoked or suspended but remains in full force until all reclamation work is completed. Therefore, there is no need to renew that which does not expire.

The proposed rule was published in the **Federal Register** on September 19, 1988 (53 FR 36404–8). A public hearing was scheduled for October 27, 1988, in Washington, DC. Since no one requested to testify at the hearing, it was not held. The period for public comment on the proposed rule closed on November 3, 1988. OSMRE received comments from five sources, the State regulatory authority for Ohio, two public interest groups, a coal company and a coal mining industry association. The public interest groups opposed the proposal. The other commenters generally supported it, although two suggested modifications.

II. Discussion of Final Rule and Response to Comments

The final rule adopted today establishes a consistent policy with respect to permit requirements when reclamation activities are conducted where no coal extraction or other activities described in the definition of "surface coal mining operations" at section 701(28) of SMCRA are taking place. Based on an analysis of the issues involved, the legislative history of SMCRA, the statutory language, applicable court decisions, and the administrative record of this rulemaking, including comments received, this final rule is a proper and reasonable interpretation of section 506 of SMCRA.

This final rule, while having an identical effect, clarifies the rule as proposed. As pointed out by some commenters, labeling a permit that had not been renewed when only reclamation remained, an "expired" permit, may cause uncertainties about the validity of the permit. In particular, some commenters questioned whether OSMRE could enforce conditions and reclamation requirements of an "expired" permit. Therefore, OSMRE is making clear in this final rule that the only thing which expires is the authorization to conduct surface coal mining operations, while the obligation to complete reclamation in accordance with the approved reclamation plan of the permit does not expire until completed and, therefore, need not be renewed. OSMRE in this final rule rightly recognizes that a permit need only be renewed for purposes of coal extraction or other activities specified in the definition of "surface coal mining operations" at section 701(28) of SMCRA. Although a permittee may choose not to renew the permit for these activities, the permit and all reclamation obligations under the regulatory program remain in full force and effect for all reclamation requirements until final bond release.

OSMRE is amending its rules at 30 CFR 701.11, 740.13, 750.11, 773.11, 800.60 and 843.11 to implement a consistent policy with respect to permit requirements when reclamation activities would be conducted where no coal extraction or other surface coal mining operations specified in SMCRA section 701(28) would be taking place.

In accordance with OSMRE's determination that a permit is required to conduct "surface coal mining operations" and that reclamation is an obligation that must follow *any* surface coal mining operations, 30 CFR 701.11 (a), (b), (c) and (d); 740.13(a) (1) and (3); 750.11 (a) and (c); 773.11(a) and 843.11(a)(2) are revised by replacing the term "surface coal mining and reclamation operations" with the term "surface coal mining operations." OSMRE is adding language to 30 CFR 773.11(a) to clarify that a permit need not be renewed if solely reclamation obligations exist under the permit and that the obligations under a permit continue regardless of whether the permit has been renewed or the permit has been terminated, revoked or suspended. OSMRE is modifying 30 CFR 774.10 to reflect the reduced information collection requirements attendant to this final rule. Also, OSMRE is modifying 30 CFR 800.60(b) to clarify that liability insurance must be maintained through the completion of the surface coal mining and reclamation operation even though the permit which authorizes the coal extraction activities may not have been renewed.

General Comments

Three commenters expressed support for the proposal. Two commenters felt that the proposal would remove burdensome and unnecessary requirements to obtain a permit where only reclamation activities are being conducted. One said the proposal would not sacrifice protection of the environment. One said that the requirement to renew a permit after coal extraction is completed and only reclamation remains is wasteful of the manpower and resources of the regulatory authority and the permittee. Another commenter strongly supported the proposal because it would clarify that reclamation is required even in the absence of a permit. In the commenter's view, the reclamation obligation is derived from disturbances to the land surface resulting from mining. Another commenter shared this view because "[w]hile reclamation obligations attend the mining which occurs pursuant to a permit, the requirements to obtain and renew a permit attach only to the removal of coal."

One commenter stated that based on sections 509 and 511 of the Act, the regulatory authority's ability to enforce the provisions of the permit are in no way tied to the permit term; enforcement authority exists until the time at which the bond is fully released. Another commenter referred to sections 506, 507, and 508 of SMCRA to support the view that the determination of a reclamation plan's compliance with the Act is not affected by the expiration of the permit term.

Two commenters characterized the proposal as "unnecessary, ill-considered and illegal" in providing that the permit need not be renewed for completion of reclamation. The commenters said that the proposal would "illegally, irrationally and unnecessarily delete the term 'reclamation' from the phrase 'surface coal mining and reclamation operations.' " One commenter said that the proposal would violate SMCRA by dividing the link between mining and reclamation and conveying the notion that the latter does not necessarily follow the former. The commenter said the proposal would cause confusion and have deleterious and illegal side effects. The commenter also suggested that the proposal was "at least partially motivated by a hidden agenda" and said the motivations for the proposal should be fully discussed. The other commenter charged OSMRE with "sophistry unparalleled in recent rulemakings" and with "tinkering unnecessarily and dangerously with the rules" while being "oblivious to the legal constraints in which it must operate and the practical ramifications of its actions."

This rulemaking has discussed the factors leading to the proposal to adopt

a consistent policy concerning permit requirements where only reclamation activities remain to be completed. The rulemaking is based on the priniciple that the right to mine coal conveyed by the approval of a permit application is firmly and unalterably joined to the obligation to reclaim the disturbed land. All of the commenters indicated agreement with this principle. The desagreement concerns whether the permit must be renewed for the reclamation obligation to be fulfilled. OSMRE's view is that the reclamation obligation persists regardless of whether the permit is renewed to authorize SMCRA section 701(28) activities. This final rule is intended to implement this view in all its facets and ramifications.

The Act's requirement to obtain a permit in section 506 specifies the permit requirement for surface coal mining operations, which is defined in section 701(28), not the additional reclamation activities specified in the definition of surface coal mining and reclamation operations defined in section 701(27). Section 506(a) provides that: "no person shall engage in or carry out on lands within a State any *surface coal mining operations* unless such person has first obtained a permit issued by such State pursuant to an approved State program or by the Secretary pursuant to a Federal program." (emphasis added) A permit under SMCRA authorizes the mining of coal and other attendant operations specified in section 701(28) and sets forth the planned and required reclamation. Section 506(d) specifies that any valid permit carries with it the right to successive renewal and that the permit holder may apply for renewal.

It does not require the permit holder to apply for renewal. To require renewal of the authorization to mine coal, solely to reclaim the land, make little sense. Indeed, the last 5 or 10 years of many surface coal mining and reclamation operations entail a period of inactivity while growth of vegetation is monitored.

A permittee who has finished mining coal, or other section 701(28) activities, and who has only reclamation obligations remaining to complete operations need not obtain a renewal of the 5-year permit term to conduct "surface coal mining operations," because section 506 does not require such an authorization. Whether a permit is renewed affects a person's authority to conduct surface coal mining operations, but has no bearing on the person's responsibility to complete reclamation which continues until satisfied. The 5-year limit on permit terms specified in section 506(b) is not intended to curtail reclamation activities required under the permit. In other words, the permit requirements, including the reclamation plan, continue in force after the authorization to conduct section 701(28) activities lapses.

One commenter said that SMCRA mandates that the permit for a mining operation be maintained in active status through the mining and reclamation activity and until final bond release for the permitted operation. The commenter cited a number of provisions of SMCRA that the commenter believed support this view. The commenter pointed out the following statement in paragraph (a) of section 507 of SMCRA, which describes permit application requirements: "[E]ach application for a surface coal mining *and reclamation* permit * * *." (Emphasis added by the commenter.) The commenter also noted that the bonding provisions of the Act in section 509 describe the permit as a surface coal mining and reclamation permit. In the commenter's opinion, by identifying the permit as one for surface coal mining and reclamation, Congress envisioned a "live" permit authorizing both active mining and subsequent reclamation.

OSMRE does not agree with the commenter's narrow assessment of the language of section 507(a) and 509 of the Act. OSMRE fully recognizes that the permit which authorizes the extraction of coal also specifies the nature of the reclamation obligation that goes with exercising that authorization. Therefore, the use of "surface coal mining and reclamation permit" in these provisions is simply intended to recognize and emphasize that the permit must contain information related to both the mining and reclamation phases of the operation. These sections do not directly pertain to the requirement to obtain a permit. In the section of SMCRA addressing the need to obtain a permit, section 506(a), the activity is described as "surface coal mining operations," in other words those activities defined in section 701(28), not the reclamation component contained in section 701(27). OSMRE interprets this usage to mean that the mining operation is required to be permitted, but the reclamation obligation described in the permit exists and must be fulfilled independently of the renewed authorization to conduct section 701(28) activities. OSMRE notes that the Act uses the term "surface coal mining operations" in section 515(a) when referring to a permit to conduct operations and requires that such operations comply with all applicable performance standards, which includes those for reclamation. This again supports the view that the permit is for section 701(28) activities and that reclamation is an obligation assumed by exercising that authorization.

The commenter also said the following provision of section 507(f) of the Act, which creates the obligation on the part of the permittee to obtain liability insurance for the operation, demonstrates that the permit term includes relcamation activities: "Such [insurance] policy shall be maintained in full force and effect during the term of the permit or any renewal, *including the length of all reclamation operations.*" (Emphasis added by the commenter.)

OSMRE interprets the cited provision to require that liability insurance shall remain in effect throughout the duration of all mining and any reclamation operations irrespective of whether or not a permit is renewed, and has clarified this point in the final rule. However, OSMRE contends that if Congress meant the permit term renewals to include reclamation periods, the last clause of the cited provision would have been redundant and unnecessary.

Accordingly, OSMRE is also amending 30 CFR 800.60(b) of the permanent program regulations to state that the liability insurance policy shall be maintained in full force during the life of the permit or any renewal thereof *and* the liability period necessary to complete all reclamation operations (emphasis added). This change clarifies that the liability period extends through the completion of reclamation regardless of whether the permit was renewed for authorization to conduct section 701(28) activities.

The commenter also cites section 515(c)(6) of SMCRA, which requires a permit review not more than three years from issuance of the permit unless the applicant demonstrates that the proposed development is proceeding in accordance with the approved schedule and reclamation plan. In the commenter's view, this provision demonstrates the intent of Congress that the permit remain active and be reviewed throughout implementation of the reclamation plan.

As stated above, guidance on the requirement for a permit and any renewals is found in section 506(a) of SMCRA. The cited provision merely recognizes Congress' concern about closely monitoring certain 701(28) activities as they develop. However, development will be occurring only in connection with surface coal mining operations. Once development has ceased only reclamation work remains. Therefore, this section does not support the commenter's assertion.

The commenter also argued that the statement in section 511(a)(1) of SMCRA, that "[d]uring the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the regulatory authority," indicates that revisions to permits can only occur during the term of the permit. The commenter further argued that SMCRA contains no provision for revising the reclamation plan portion of an expired permit.

OSMRE believes that this final rule is consistent with section 511. Section 511(a)(1) is a permissive provision, that is, use of the term "may submit" indicates that revision is allowed during the life of the permit. Such language does not necessarily exclude revision at other times. Since obligations under the reclamation plan do not expire at the end of the permit term but remain in effect until completed, it is consistent with the intent of section 511 to allow for these revisions. Any revisions to the reclamation plan following expiration of the permit term must comply with the requirements of 30 CFR 774.11 and 774.13 or the State program counterparts thereof.

The commenter also said that the reporting, recordkeeping and monitoring requirements of section 517(b)(1), as well as many other obligations under Title V of the Act, apply to the "permittee," i.e., one holding a permit, not to one who once held a now-expired permit.

OSMRE agrees that section 517(b)(1) applies to surface coal mining and reclamation operations and that such obligations assumed by a permittee when he initiates mining remain in effect until completed. However, this is irrespective of whether or not the permittee renewed his authorization to extract coal. The rule language has been modified to make this point clear.

Finally, the commenter cited a portion of the legislative history of SMCRA that, in the commenter's opinion, supported the proposition that the permit must remain active through reclamation. Specifically, the commenter cited portions of House Report No. 95–218, 95th Congress, 1st Session (1977), that (1) described the permitting program as a permit system for surface mining and reclamation operations, (2) indicated the reclamation plan is a portion of the permit application, (3) identified the reclamation plan as the basis by which the regulatory authority determines the feasibility and adequacy of the proposed reclamation, (4) described a permit as a permit for surface mining and reclamation operations, and (5) indicated that liability insurance must be maintained during the term of the permit and all renewals until reclamation is complete.

OSMRE agrees that the permit describes the reclamation obligation that will be assumed by exercising the authorization granted under the permit. OSMRE does not agree that these statements all support the idea that the permit must be renewed until the completion of those reclamation activities. The commenter may have failed to grasp the concept that the reclamation obligation is assumed when the surface is disturbed and does not expire should the permit authorizing section 701(28) activities not be renewed. When SMCRA or the legislative history describe a permit or its components, they refer to both mining and reclamation because they are both described in the permit. However, when SMCRA specifies the *need* to obtain a permit, in section 506(a) and 515(a) for example, the term surface coal mining operations is used.

The reclamation plan does not expire because it is an obligation assumed by the "permittee" when the permit to mine is approved. The reclamation and other obligations remain in full force and effect until regulatory jurisdiction over the site of a completed surface coal mining and reclamation operations is terminated according to 30 CFR 700.11(d). See 53 FR 44356–63, November 2, 1988.

One commenter suggested that alternative approaches, such as streamlining or expediting the permitting process in a manner tailored to the specific areas of concern, could be a better method to achieve the desired benefits. One said that SMCRA provided for an expedited renewal process so that the permit would remain active through completion of the reclamation plan.

OSMRE considered, but did not adopt, the approach of modifying permitting procedures because such an approach would not be consistent with its interpretation of SMCRA. Since section 506 of SMCRA requires a permit only for the mining portion of a mining and reclamation operation, to continue to require that a permit be renewed, regardless of how streamlined the process, only to explicitly authorize the completion of an already defined and existing reclamation obligation would be unnecessary and unjustified and would not achieve an increased degree of environmental protection.

Two commenters challenged OSMRE's conclusion that it is inconsistent to argue on one hand that reclamation activities must be permitted and on the other hand that reclamation may be required in the absence of a permit. One commenter argued that there is no inconsistency between SMCRA's permitting and enforcement provisions and that although ordering reclamation to abate a violation is not contingent on an area being permitted, it does not follow that areas once permitted may be allowed to be reclaimed under a lapsed permit. One said if the rule was to resolve a perceived inconsistency it should be clarified to a much greater degree.

OSMRE has a responsibility to provide clear and coherent guidelines for the effective implementation of SMCRA. A significant amount of confusion exists concerning whether a permit is required to perform reclamation activities. OSMRE is concerned above all that successful reclamation be performed and thus is modifying its regulations to reflect the paramount importance of fulfillment of the reclamation obligation. OSMRE believes that this final rule clarifies the objectives of the Act; that is, to recognize that a permit is required to authorize surface coal mining operations as defined in section 701(28) of SMCRA, but that the absence or expiration of such authorization does not affect the obligation to reclaim in accordance with the applicable program and a non-renewed permit.

One commenter was concerned about a possible adverse effect of the proposal on the Applicant/Violator System. The commenter suggested that in the absence of a permit, "the source of information for updating the necessary ownership and control information would be cut off."

The Applicant/Violator System contains information about certain violators, those who own or control such violators and those owned or controlled by such violators to be used by regulatory authorities in the process of approving or denying permit applications. The collection of updated information on permittees is addressed in the permit rules. The absence or non-renewal of a permit does not preclude the inclusion of violation information in the system.

The commenter asserted that all the implications of the proposal have not been addressed by OSMRE, and thus all possible side effects are not clear. Another commenter was concerned that a lack of discussion of the proposal's relationship to existing relevant provisions of the Act and the regulations creates confusion. This final rule preamble sets forth the policy being adopted, explains its statutory basis, and sets forth the responsibilities and

obligations incumbent on operators to comply with the Act's provisions. All reclamation and permit obligations continue as before under the permanent program regulations. All enforcement policies continue as before. The only change is that a careful reading of section 506 reveals that a permit need not be renewed when all surface coal mining operations have been completed and solely reclamation obligations remain.

Section 701.11 Applicability

Section 701.11 describes the applicability of the permanent regulatory program. Final paragraphs (a), (b), and (c) are identical to the proposal and require that persons conducting surface coal mining operations on or after 8 months from approval of a State program or implementation of a Federal program, shall have a permit issued pursuant to the applicable program. The final rule substitutes "surface coal mining operations" where "surface coal mining and reclamation operations" appeared previously. Final paragraph (d) has been changed to clarify the proposal. It applies the requirements of Subchapter K to "each surface coal mining and reclamation operation for which the surface coal mining operation is required to obtain a permit under the Act," rather than to "each surface coal mining and reclamation operation which is required to obtain a permit under the Act."

Section 740.13 Permits

Section 740.13(a) contains the general requirements for permits on Federal lands. Final paragraph (a)(1) is identical to the proposal and provides that no person shall conduct surface coal mining operations on lands subject to Part 740 unless that person has first obtained a permit issued pursuant to the regulatory program and Part 740. Final paragraph (a)(3) is identical to the proposal and provides that surface coal mining operations authorized under the initial regulatory program or 43 CFR Parts 3480–3487 may be conducted beyond the eight-month period prescribed in the applicable regulatory program under certain conditions. The previous language included the words "and reclamation".

Section 750.11 Permits

Section 750.11 contains permit requirements under the Federal program for Indian lands. Final paragraph (a) is identical to the proposal and provides that no person shall conduct surface coal mining operations on Indian lands after eight months following the effective date of Subchapter E (Indian Lands Program) unless that person has first obtained a permit pursuant to Part 750. Final paragraph (c) is identical to the proposal and provides that surface coal mining operations authorized prior to the effective date of Subchapter E may be conducted beyond the specified eight month period under certain conditions. The previous language included the words "and reclamation."

Section 773.11 Requirements to Obtain Permits

Final § 773.11(a) in the first sentence states that "* * * no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit * * *." Previously § 773.11(a) stated that "* * * no person shall engage in or carry out any surface coal mining and reclamation operations, unless such person has first obtained a permit * * *." This sentence is adopted as proposed.

The second sentence of proposed § 773.11(a) stated that, "Obligations established under a permit continue until satisfied, regardless of whether the permit has expired or has been terminated, revoked or rescinded." In the final rule this is the third sentence of the paragraph and it states that obligations established under a permit continue until completion of surface coal mining and reclamation operations pursuant to 30 CFR 700.11(d), regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

In response to a commenter who indicated that section 521(a)(4) of the Act authorizes suspension or revocation of a permit, but not rescission, OSMRE deleted the word "rescinded" and substituted "suspended" in its place in the final rule. The same commenter suggested a change to the proposal to read, "Obligations established under a permit continue until bond release * * *." The commenter argued that bond release reflects the regulatory authority's decision that the permittee has satisfied the requirements under the Act. In response to the comment, OSMRE inserted the phrase "completion of surface coal mining and reclamation operations" in place of the word "satisfied" in the proposal. The final rule adopted today establishes a consistent policy with regard to the permit requirements for reclamation activities, and does not address the issue of when a permittee's liability for a reclaimed site terminates. And finally, the last part of the sentence was revised to clarify that it is the authorization to conduct surface coal mining operations that may expire.

The third sentence of proposed § 773.11(a) stated that any person conducting reclamation activities pursuant to the requirements of a permit, even if the permit is no longer extant, must comply with all applicable provisions as a permittee. This sentence is not adopted. OSMRE has recognized in this final rule that the reclamation obligations of the permit do not expire, even though the permit is not renewed, therefore, it is not necessary to reiterate that the person conducting reclamation must comply with all applicable provisions as a permittee. One new sentence has been added to make more explicit that a permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done.

Section 774.10 Information Collection

Final § 774.10 states that the collections of information contained in §§ 774.11, 774.13, 774.15 and 774.17 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0088. The information will be used to determine if the applicant meets the requirement for revision, renewal, transfer, sale, or assignment of permit rights. Response is mandatory in accordance with sections 102, 511, 506, and 507 of the Act. This section is modified by the final rule adopted today to reflect the anticipated reduction in information collection burden imposed by Part 774 due to elimination of the requirement to renew a permit where only reclamation activities remain to be completed. This final provision was not included in the proposal, but was added to the final rule at the suggestion of the Office of Management and Budget.

Section 800.60 Terms and Conditions for Liability Insurance

Final § 800.60(b) provides that a liability insurance policy shall be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all required reclamation operations. The previous language stated that the policy was to be maintained during the life of the permit or any renewal, *including* the liability period for completing reclamation (emphasis added.) The word "including" is replaced by "and" in this final rule; no other change is made. OSMRE made this change, which was not included in the proposal, in response to a comment, to clarify and make explicit that the

insurance policy must be maintained through the period necessary to complete reclamation even if the permit is not renewed. The final rule adopted today, recognizes that reclamation must be completed irrespective of whether or not the permit is renewed. OSMRE does not intend any substantive change to the liability insurance provisions.

Section 843.11 Cessation Orders

Final § 843.11(a)(2) is identical to the proposal and states that "surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a * * * significant imminent environmental harm * * *." Previously, § 843.11(a)(2) stated that "surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a * * * significant imminent environmental harm * * *."

No new substantive requirements are contained in this rulemaking action. Rather, the final rule clarifies and makes consistent OSMRE's interpretation of SMCRA requirements concerning a permit to conduct reclamation operations where no coal extraction is taking place, and removes the requirement to renew a permit solely to conduct reclamation activities.

Effect of Final Rule

In keeping with OSMRE's determination that the obligation to reclaim continues in the absence of a permit, the final rule makes it unnecessary for a person to renew a permit where only reclamation activity is required. A permit is required for surface coal mining operations, i.e., the extraction of coal, an activity of benefit to the permittee, but the reclamation obligations associated with that mining are assumed by the permittee irrespective of whether a permit was issued or the permit is renewed or expired. Thus, the permit, including any conditions, defines the nature of the reclamation obligation that will be assumed by the permittee should he conduct any mining activities under the permit. Those obligations are unaffected by suspension, revocation or expiration of the authorization for further coal extraction or other section 701(28) activities under the permit. The person conducting reclamation activities alone, i.e., in the absence of coal extraction or other section 701(28) activities, is a "permittee," even though he no longer has the authority to conduct the 701(28) activities under a permit.

One commenter was concerned that the proposal would allow excess spoil to be dumped on an unpermitted site under the pretext of reclaiming the site. The commenter interpreted the statement in the proposal that, "it would not be necessary for an operator to obtain a permit where only reclamation activity is required," as legalizing unregulated dumping in the name of reclamation.

This final rule does not affect the requirements contained in 30 CFR 780.35 to provide permit information and receive approval for proposed excess spoil disposal sites and designs of spoil disposal structures. Neither does this rulemaking affect the recently proposed changes to 30 CFR 816.74 governing the disposal of excess spoil on pre-existing benches (53 FR 43970, October 31, 1988). These sites used to dispose of excess spoil must be permitted.

The final rule also provides an economic benefit insofar as permittees and regulatory authorities will realize reductions in time and cost expenditures on permit renewals no longer necessary. Because this final rule will affect the number of permit renewal applications required to be submitted by permittees in accordance with section 506(d) of the Act and 30 CFR Part 774, the information collection burden imposed by Part 774 will be reduced. To document the reduction, OSMRE has included in this final rule a modification to § 774.10, which describes the information collection requirements of Part 774.

Permit Renewal—In cases where coal extraction, processing and handling have been completed under a valid permit, the final rule provides that the permit need not be renewed simply for the completion of reclamation since there are no longer any SMCRA section 701(28) activities the permittee wishes to perform and the only remaining activities are those associated with reclamation obligations assumed with the prior mining activities. The permittee assumed the obligation to complete reclamation when mining occurred. The ongoing obligation to reclaim in accordance with the permit and any permit conditions exists whether or not the permit is renewed. Regardless of whether a permit is in existence or has been renewed, section 509(b) of SMCRA provides that liability under the performance bond posted to guarantee faithful performance of all requirements of SMCRA and the permit, shall extend for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for the revegetation requirements of section 515 of SMCRA, a period that is independent of permit renewals. In addition, section 506(d) of the Act does not mandate permit renewal. It provides that permit holders *may* apply for renewal.

Reclamation must be achieved according to the approved reclamation plan, and that obligation is unaffected by the renewal or non-renewal under section 506, of the permit. The reclamation obligations under the applicable State or Federal program, the permit, and the performance bond remain in effect and are enforceable regardless of whether the 5-year permit term has lapsed. In cases where mining or other section 701(28) activities have been completed under a valid permit and reclamation work remains to be completed or the period of extended liability has not expired, permit renewal is not a prerequisite for completion of the reclamation phase of the operation according to the approved permit. The permittee whose authorization to conduct surface coal mining operations has expired but who still has reclamation obligations to complete according to the permit must conduct those reclamation activities as the "permittee." Any revisions to the reclamation plan following expiration of the permit must comply with the requirements of 30 CFR 774.11 and 774.13 or the State or Federal program counterparts thereof.

One commenter said that OSMRE's stated assurances in the proposed rule preamble that reclamation and performance bond liability would extend until successful completion of reclamation, and that any obligation for reclamation is unaffected by expiration of the permit, "* * * appear to be limited to situations where the operator received a permit and the reclamation work is confined to the area permitted to the particular operator performing the work." The commenter said the rule language changes however, "are not limited to these situations, nor does the preamble indicate that they are so limited * * *" OSMRE does not agree that the rule language changes are in any way limited with respect to reclamation and bonding requirements. A permittee is required to complete reclamation without the need to renew the permit when a permit term lapses. The permittee is not released from his responsibilities until reclamation has been successfully completed.

One commenter suggested that OSMRE clarify the proposal in three aspects: First, permits need not be renewed when only reclamation activities remain to be completed or the extended period of liability has not ended. Second, renewal of a permit within its term, even if reclamation is the only remaining activity, remains an option for the permittee. And, third,

revision of the reclamation plan is not authorized following permit expiration.

OSMRE agrees with the first two statements, but disagrees with the third. The first statement expresses a concept that is basic to this rulemaking. Since section 506(a) of SMCRA requires a permit only for "surface coal mining operations," there is no need to renew a permit after mining has ceased simply to cover the completion of reclamation. The second statement correctly interprets section 506(d) of SMCRA, which requires submittal of an application for permit renewal prior to the expiration of the permit term. Permittees should be aware that not renewing a permit after mining has ceased, but before reclamation has been completed is an option, not a requirement. The third statement is an unnecessarily strict interpretation of section 511(a)(1) of the Act. As discussed earlier in this preamble in response to another comment, section 511(a)(1) allows submittal of a permit revision application during the term of the permit, but does not preclude such submittal at another time, e.g., after the term of the permit for section 701(28) activities. Since the reclamation obligation specified in the permit does not expire until reclamation is completed, revisions to that reclamation plan may be appropriate even if the authorization to extract coal was not renewed.

One commenter suggested an alternate way of addressing the issue of permit renewals. This commenter advocated making a distinction between "permit term" and "permit" to the effect that the "permit term" would expire, but the "permit" carrying the reclamation and other ongoing obligations would continue to be in effect until bond release.

OSMRE considered, and partially agrees with the concept of this suggestion. The commenter's suggested distinction between the permit term and the permit is, in effect, the same distinction (although with a different characterization) between the section 506 permit and renewal requirements, for section 701(28) activities and areas, and the non-renewed permit, for reclamation only activities. The distinction exists in the statutory language of sections 506 and 701, regardless of how the distinctions are characterized.

Surface Disturbance Off the Permit Area—Surface disturbances off the permit can occur either (1) from mining activities conducted within the permit or (2) from extension of mining operations beyond the permitted boundaries. In the first case, off-permit disturbances such as those caused by flyrock, landslides, subsidence, or sedimentation typically result from a violation of a performance standard and are usually confined to small areas. Under this final rule, it is not necessary to require a permit since only reclamation activities will be conducted to correct these disturbances, because the permittee is required to return the land to its previous condition through abatement measures described and ordered in an enforcement action issued by the regulatory authority.

In the second case, the permittee will be ordered to cease surface coal mining operations on the unauthorized areas and to take necessary measures to prevent any short term environmental damage. The regulatory authority may require either immediate full reclamation of the area or submission and diligent pursual of approval of a new permit or permit revision if the permittee desires to continue surface coal mining operations and the regulatory authority agrees that immediate full reclamation would interfere with the resumption of mining upon issuance of the permit.

This final rule does not affect the requirements contained in 30 CFR 780.35 to provide permit information and receive approval for proposed excess spoil disposal sites and designs of spoil disposal structures. Neither does this rulemaking affect the recently proposed changes to 30 CFR 816.74 governing the disposal of excess spoil or preexisting benches (53 FR 43970, October 31, 1988). Those sites used to dispose of excess spoil must be permitted.

One commenter said that when an off-permit disturbance occurs, the regulatory authority's only appropriate response is "immediate issuance of appropriate enforcement action" requiring immediate action necessary to abate the adverse environmental effects of the disturbance. The commenter agreed that abatement measures need not be permitted depending on the circumstances involved. However, the commenter argued that when mining "or other more substantial land damage" occurs the requirement to permit the disturbed area should be one of the remedial measures. In the commenter's opinion, permitting should not be optional in these cases. The commenter believed that the structure of SMCRA's environmental standards presupposes disturbances will be permitted and bonded to "assure that the area is reclaimed, revegetated and restored to the standards of the Act."

OSMRE agrees that when an off-permit disturbance occurs, the regulatory authority should initiate enforcement action requiring immediate abatement of the disturbance. However, OSMRE does not agree that permitting the disturbance is a panacea or the only way to handle such a situation. In many cases, by requiring abatement to specified standards, such as those found in Subchapter K of this chapter or in the State program counterparts thereto with such details as necessary specified in the required abatement measures, rather than requiring the area be permitted, the ability to require and achieve reclamation is expedited. The reclamation burden on the permittee is not lessened by requiring reclamation without requiring the area to be permitted under section 506. Also, there may be circumstances under which the disturbed area cannot be permitted, such as areas protected under section 522(e) of SMCRA or where the operator is unable to obtain bond. This does not release the obligation to reclaim disturbances which have already occurred.

Further, the ability of the regulatory authority to require an approved reclamation plan through the permitting process for the disturbed area is not precluded by the adoption of this final rule. The regulatory authority may require an approved reclamation plan and additional bond if the facts and circumstances of a particular off-permit disturbance warrant one. Since 1979, OSMRE has publicly recognized that permitting of off-permit disturbances is not always warranted. In the preamble to its initial bonding regulations, OSMRE stated, "It is the intent of [OSMRE] that the initial bond amount, the amount retained after partial releases * * * and amounts forfeited * * * be adequate to not only allow the regulatory authority to complete the backfilling, grading, topsoiling and revegetation program contained in the approved reclamation plan, but also to restore any property damaged outside the permit area * * *. In addition, the amount must be adequate to abate any pollution or hazards to life or property which exist within or outside the permit area * * *." (44 FR 15111, March 13, 1979) It is clear that the 1979 rules anticipated abatement of *off-permit* pollution and property damage (emphasis added). The final rule adopted today codifies this policy in a consistent manner.

The commenter also argued that the proposal would create a "free-bite mentality" and a strong incentive for "straying" off the permit area "since such areas could be mined without bonding and extended reclamation obligations."

OSMRE does not agree. The operation is still subject to the same enforcement actions and interruption of operations. The regulatory authority is also free to require additional bond to be posted for the additional cost of compliance with pertinent performance standards. The policy simply recognizes that permitting is not always necessary or appropriate.

The commenter also raised four specific concerns related to off-permit disturbances required to be reclaimed, but not permitted: First, when a permit is transferred, would the transferee assume liability for a nonpermitted, off-permit disturbance? Second, would the requirement to minimize additional contributions of suspended solids apply to such areas? Third, if such an area is prime farmland, how will success of revegetation and soil handling be mandated and monitored? And, fourth, would any violations occurring in such areas be counted for a pattern of violations finding under section 521(a)(4) of the Act?

Concerning permit transfers, all obligations associated with a permitted surface coal mining operation including required reclamation of any off-permit impacts, accrue to the transferee. Indeed, 30 CFR 774.17 (d) and (f) and State program counterparts to them allow the regulatory authority not to transfer a permit under the circumstances described in the first concern. In regard to the second and third concerns, which relate to performance standards, again the reclamation standards contained in Subchapter K of this chapter or the State program counterparts thereof apply to all surface coal mining and reclamation operations irrespective of whether or not they occur within a permit area. Finally, any enforcement actions related to an off-permit disturbance must be considered when determining whether a pattern of violations exists under 30 CFR 843.13.

Unauthorized (Illegal) Mining—When mining is conducted without the required permit (wildcat mining), the wildcatter nevertheless incurs the obligation to reclaim. However, there are difficulties with requiring wildcatters to obtain a permit for reclamation only. They are often reluctant to cooperate, unable to obtain the financing necessary to conduct the required studies, or unable to obtain a performance bond or liability insurance. Also, environmental harm may result during the time (six to nine months) required to prepare and process a permit application.

Therefore, in lieu of always requiring a permit in cases of mining without a permit, it has been OSMRE's policy to order the immediate cessation of mining and direct the person to backfill, grade and revegetate in accordance with applicable regulations. This final rule continues that policy by requiring immediate reclamation pursuant to the applicable standards of Subchapter K, 30 CFR Chapter VII, or the State or Federal program counterpart, in the absence of an approved reclamation plan, in accordance with any enforcement action citing performance standard violations. The cessation order or a notice of violation written for each performance standard violation would specify the standards and remedial measures necessary to assure proper reclamation. These could include a requirement to prepare a reclamation plan or do monitoring or analysis, if appropriate, and posting a bond.

One commenter said that a requirement to permit all wildcat operations for reclamation may not be feasible, and that such permitting should be on a case-by-case basis, depending on the nature of the disturbance. Another commenter said that while immediate reclamation of the wildcat operation is actively pursued, the area should also be brought under permit.

This final rule does not restrict regulatory authorities from requiring that wildcat operators obtain an approved reclamation plan through the permitting process including posting a bond and obtaining liability insurance. However, reclamation as contemporaneously as practicable of any illegally mined areas must be required upon discovery of such areas. OSMRE does not anticipate that requiring an approved reclamation plan through the permitting process will be necessary to ensure compliance with applicable reclamation standards under the applicable regulatory program prior to ordering reclamation work to proceed in many, if not most, cases.

Applicable Regulatory Programs

In accordance with the interpretation of the requirements for permits for surface coal mining operations provided in this rulemaking and the obligations associated with such permits, this final rule is primarily applicable to mining operations conducted pursuant to a Federal program for a State (30 CFR Part 736), the Federal lands program (30 CFR Part 740), and the Indian lands program (30 CFR Part 750). Under the rule adopted today, a State could amend its program not to require renewal of a permit on which coal extraction, processing, and handling have been completed but where reclamation work remains or the period of extended liability has not expired. In such circumstances, the State program would be considered no less effective than Federal requirements if the reclamation plan, permit conditions, and related permit provisions remain in effect until the operation has met all applicable performance standards and the appropriate operator liability period has expired. Any revisions to the reclamation plan following expiration of the permit term would have to comply with the requirements of the State program counterparts to 30 CFR 774.11 and 774.13. With respect to the other situations discussed in the preamble to the final rule, State performance will be evaluated in terms of the policy set forth herein unless the approved State program contains specific differing requirements.

Effect in Federal Program States and on Indian Lands

The final rule applies through cross-referencing in those States with Federal programs and on Indian lands. The States with Federal programs include California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule will also apply through cross-referencing in 30 CFR Part 750 to surface mining and reclamation operations on Indian lands.

Effect of the Rule on State Programs

Following promulgation of this rule, OSMRE will evaluate State programs to determine whether any changes in these programs will be necessary. If the Director determines that any State program provisions should be amended to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

III. Procedural Matters

Federal Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB. Public reporting burden for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send

comments regarding this burden estimate or other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSMRE, Washington, DC 20240; and to OMB, Paperwork Reduction Project (1029–0088), Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The final rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of this rule.

National Environmental Policy Act

The DOI has also determined that the final rule does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Authors

The authors of this rule are Dr. Fred Block and Patrick W. Boyd, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–1864.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 740

Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 750

Indians-lands, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 773

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 774

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 800

Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, Title 30, Chapter VII, Parts 701, 740, 750, 773, 774, 800 and 843 are amended as set forth below.

Dated: January 19, 1989.

James E. Cason,

Deputy Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, and Pub. L. 100–34.

2. Section 701.11 is amended by revising the first sentence of paragraphs (a) and (b), paragraph (c) introductory text and paragraph (d) to read as follows:

§ 701.11 Applicability.

(a) Any person who conducts surface coal mining operations on non-Indian or non-Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. * * *

(b) Any person who conducts surface coal mining operations on Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program for the State in which the Federal lands are located shall have a permit issued pursuant to Part 740 of this chapter. * * *

(c) Any person who conducts surface coal mining operations on Indian lands on or after eight months from the effective date of the Federal program for Indian lands shall have a permit issued pursuant to Part 750 of this chapter. However, a person who is authorized to conduct surface coal mining operations may continue to conduct those operations beyond eight months from the effective date of the Federal program for Indian lands if the following conditions are met: * * *

(d) The requirements of Subchapter K of this chapter shall be effective and shall apply to each surface coal mining and reclamation operation for which the surface coal mining operation is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in paragraph (e) of this section.

* * * * *

PART 740—GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

3. The authority citation for Part 740 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 30 U.S.C. 181 *et seq.*; and Pub. L. 100–34.

4. Section 740.13 is amended by revising paragraph (a)(1) and paragraph (a)(3) introductory text to read as follows:

§ 740.13 Permits.

(a) *General requirements.* (1) No person shall conduct surface coal mining operations on lands subject to this Part unless that person has first obtained a permit issued pursuant to the regulatory program and this Part.

* * * * *

(3) Surface coal mining operations authorized under the initial regulatory program or 43 CFR Parts 3480–3487, as applicable, may be conducted beyond the eight-month period prescribed in the applicable regulatory program if all of the following conditions are present:

* * * * *

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

5. The authority citation for Part 750 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 5 U.S.C. 301; and Pub. L. 100–34.

6. Section 750.11 is amended by revising paragraph (a) and paragraph (c) introductory text to read as follows:

§ 750.11 Permits.

(a) No person shall conduct surface coal mining operations on Indian lands after eight months following the effective date of this Subchapter unless that person has first obtained a permit pursuant to this Part.

* * * * *

(c) Surface coal mining operations authorized prior to the effective date of this subchapter may be conducted

beyond the eight-month period specified in paragraph (a) of this section if the following conditions are present:

* * * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

7. The authority citation for Part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 470 *et seq.;* 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 661 *et seq.;* 16 U.S.C. 703 *et seq.;* 16 U.S.C. 668a; 16 U.S.C. 469 *et seq.;* 16 U.S.C. 470aa *et seq.;* and Pub. L. 100–34.

8. Section 773.11 is amended by revising paragraph (a) to read as follows:

§ 773.11 Requirements to obtain permits.

(a) *All operations.* On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit issued by the regulatory authority except as provided for in paragraph (b) of this section. A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

* * * * *

PART 774—REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

9. The authority citation for Part 774 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

10. Section 774.10 is revised to read as follows:

§ 774.10 Information collection.

The collections of information contained in §§ 774.11, 774.13, 774.15 and 774.17 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0088. The information will be used to determine if the applicant meets the requirement for revision, renewal, transfer, sale, or assignment of permit rights. Response is mandatory in accordance with sections 102, 511, 506, and 507 of the Act.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

11. The authority citation for Part 800 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

12. Section 800.60 is amended by revising paragraph (b) to read as follows:

§ 800.60 Terms and conditions for liability insurance.

* * * * *

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations under this Chapter.

* * * * *

PART 843—FEDERAL ENFORCEMENT

13. The authority citation for Part 843 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

14. Section 843.11 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 843.11 Cessation orders.

(a) * * *

(2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations:

* * * * *

[FR Doc. 89–8018 Filed 4–4–89; 8:45 am]
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federal register

Wednesday
April 5, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 878

General and Plastic Surgery Devices; Exemptions From Premarket Notification; Final Rule

21 CFR Parts 878 and 892

Dental and Radiology Devices; Exemptions From Premarket Notification; Final Rule and Withdrawal of Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 86N-0011]

General and Plastic Surgery Devices; Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, eight generic types of class I general and plastic surgery devices. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that review of such notifications by the agency will not advance FDA's public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public.

EFFECTIVE DATE: May 5, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7238.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of safety and effectiveness: class I (general controls), class II (performance standards), and class III (premarket approval).

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels specifically included them in recommendations made to the agency. Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification to reduce the number of unnecessary permarket notifications, thereby freeing agency resources for the review of more important notifications.

FDA believes that exempting certain devices from premarket notification will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting devices from the premarket notification program of section 510(k) of the act (21 U.S.C. 360(k)), where premarket notification will not advance FDA's public health mission, will free additional resources to address pressing regulatory concerns and will make the agency more efficient. The development of exemption criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal in FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On June 24, 1988 (53 FR 23856), FDA published a final regulation classifying general and plastic surgery devices. Also on June 24, 1988 (53 FR 23880), FDA proposed to exempt from the requirement of premarket notification, with limitations, eight of those class I general and plastic surgery devices. Interested persons were given until August 23, 1988, to comment. One comment was received, and the comment supported FDA's proposal. Accordingly, FDA is adopting the regulation as proposed. The final classification regulation exempted one of the eight devices, the noninflatable extremity splint (§ 878.7910), from certain current good manufacturing practice regulations (53 FR 23856). The amendment to § 878.7910(b) reflects that exemption.

Criteria for 510(k) Exemptions

FDA is exempting a generic type of class I device from the requirement of premarket notification, with the limitations described below, if the agency determines that premarket notification is unnecessary for the protection of the public health. FDA is granting an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (i) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) ensure that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use

of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care prefessionals only; or

(2) The modified device operates using a different fundamental scientific technology than that in use for the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Reference

The following information has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase II," Public Health Service, Department of Health and Human Services, May 1987, p. 19.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analysed the economic effects of this final rule and has determined that the final rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this final rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR Part 878 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. New § 878.9 is added to Subpart A to read as follows:

§ 878.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it has been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in virto diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than calture or immunoassay technology.

3. Section 878.1800 is amended by revising paragraph (b) to read as follows:

§ 878.1800 Speculum and accessories.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

4. Section 878.3250 is amended by revising paragraph (b) to read as follows:

§ 878.3250 External facial fracture fixation appliance.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

5. Section 878.3910 is amended by revising paragraph (b) to read as follows:

§ 878.3910 Noninflatable extremity splint.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to the general requirements concerning records, and § 820.198, with respect to complaint files.

6. Section 878.3925 is amended by revising paragraph (b) to read as follows:

§ 878.3925 Plastic surgery kit and accessories.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

7. Section 878.4160 is amended by revising paragraph (b) to read as follows:

§ 878.4160 Surgical camera and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

8. Section 878.4800 is amended by revising paragraph (b) to read as follows:

§ 878.4800 Manual surgical instrument for general use.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

9. Section 878.4950 is amended by revising paragraph (b) to read as follows:

§ 878.4950 Manual operating table and accessories and manual operating chair and accessories.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

10. Section 878.5900 is amended by revising paragraph (b) to read as follows:

§ 878.5900 Nonpneumatic tourniquet.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

Dated: February 22, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-8052 Filed 4-4-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 872 and 892

[Docket Nos. 86N-0007 and 86N-0014]

Dental and Radiology Devices; Exemptions From Premarket Notification

AGENCY: Food and Drug Adminsitration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, 22 generic types of class I dental devices and 4 generic types of class I radiology devices. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that review of such notifications by the agency will not advance FDA's public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public. Elsewhere in this issue of the Federal Register, FDA is withdrawing its proposed rules to exempt one dental device and one radiology device.

EFFECTIVE DATE: May 5, 1989.

FOR FURTHER INFORMATION CONTACT

For dental devices: Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7555

For radiology devices: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance and safety and effectiveness: class I (general controls), class II (performance standards), and class III (premarket approval).

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels specifically included them in recommendations made to the agency. Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of unnecessary premarket notifications, thereby freeing agency resources for the review of more important notifications.

FDA believes that exempting certain devices from premarket notification will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting devices from the premarket notification program of section 510(k) of the act (21 U.S.C. 360(k)), where premarket notification will not advance FDA's public health mission, will free additional resources to address pressing regulatory concerns and will make the agency more efficient. The development of exemption criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal in FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On August 12, 1987 (52 FR 30082), FDA published a final regulation classifying 110 dental devices. Also on August 12, 1987 (52 FR 30120), FDA proposed to exempt from the requirement of premarket notification, with limitations, 23 of those devices classified into class I. Interested persons were given until October 13, 1987, to submit comments on the proposal.

On January 20, 1988 (53 FR 1554), FDA published a final regulation classifying 59 radiology devices. Also on January 20, 1988 (52 FR 1588), FDA proposed to exempt from the requirement of premarket notification, with limitations, six of those devices. Interested persons were given until March 21, 1988, to submit comments on the proposal.

One comment was received on the dental proposal and one comment was received on the radiology proposal. Both comments supported the agency's policy of exempting certain class I devices from the requirement of premarket notification. Accordingly, FDA is adopting the regulations as proposed for 22 dental devices and 4 radiology devices.

Elsewhere in this issue of the Federal Register, FDA is publishing a notice withdrawing the proposed rules to exempt from the requirement of premarket notification one dental device, rubber dam and accessories (§ 872.6300), and one radiology device, wall-mounted radiographic cassette holder (§ 892.1880). After publishing the dental proposal of August 12, 1988, FDA determined that the rubber dam and accessories did not meet its criteria justifying the agency's proposal to exempt the device from premarket notification.

After publishing the radiology proposal, FDA found that it had inadvertently proposed to exempt the wall-mounted radiographic cassette holder, a class II device. Thus, FDA is

withdrawing the proposal to exempt this device.

Further, FDA is postponing publication of a final rule exempting one radiology device, personnel protective shield (§ 892.6500), until the agency has prepared and issued supplementary information to users of the device, such as guidance for improving its labeling.

Criteria for 510(K) Exemptions

FDA is exempting a generic type of class I device from the requirement of premarket notification with the limitations described below, if the agency determines that premarket notification is not necessary for the protection of the public health. FDA may grant an exemption if both of the following creteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (i) be readily detectable by users by visual examination or other means, such as routine testing; e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment, and (c) many changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution of the device when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than that is use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Reference

The following information has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase II," Public Health Service, Department of Health and Human Services, May 1987, p. 19.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this final rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions.

List of Subjects

21 CFR Part 872

Medical devices.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 872 and 892 are amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR Part 872 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. New § 872.9 is added to Subpart A to read as follows:

§ 872.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it

had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. Section 872.1730 is amended by revising paragraph (b) to read as follows:

§ 872.1730 Electrode gel for pulp tester.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

4. Section 872.1905 is amended by revising paragraph (b) to read as follows:

§ 872.1905 Dental X-ray film holder.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

5. Section 872.3080 is amended by revising paragraph (b) to read as follows:

§ 872.3080 Mercury and alloy dispenser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

6. Section 872.3110 is amended by revising paragraph (b) to read as follows:

§ 872.3110 Dental amalgam capsule.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

7. Section 872.3140 is amended by revising paragraph (b) to read as follows:

§ 872.3140 Resin applicator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

8. Section 872.3150 is amended by revising paragraph (b) to read as follows:

§ 872.3150 Articulator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

9. Section 872.3220 is amended by revising paragraph (b) to read as follows:

§ 872.3220 Facebow.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

10. Section 872.3830 is amended by revising paragraph (b) to read as follows:

§ 872.3830 Endodontic paper point.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

11. Section 872.3840 is amended by revising paragraph (b) to read as follows:

§ 872.3840 Endodontic silver point.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

12. Section 872.3850 is amended by revising paragraph (b) to read as follows:

§ 872.3850 Gutta percha.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

13. Section 872.4565 is amended by revising paragraph (b) to read as follows:

§ 872.4565 Dental hand instrument.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

14. Section 872.6010 is amended by revising paragraph (b) to read as follows:

§ 872.6010 Abrasive device and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

15. Section 872.6050 is amended by revising paragraph (b) to read as follows:

§ 872.6050 Saliva absorber.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

16. Section 872.6200 is amended by revising paragraph (b) to read as follows:

§ 872.6200 Base plate shellac.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

17. Section 872.6290 is amended by revising paragraph (b) to read as follows:

§ 872.6290 Prophylaxis cup.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise respresented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

18. Section 872.6390 is amended by revising paragraph (b) to read as follows:

§ 872.6390 Dental floss.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

19. Section 872.6570 is amended by revising paragraph (b) to read as follows:

§ 872.6570 Impression tube.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

20. Section 872.6650 is amended by revising paragraph (b) to read as follows:

§ 872.6650 Massaging pick or tip for oral hygiene.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

21. Section 872.6670 is amended by revising paragraph (b) to read as follows:

§ 872.6670 Silicate protector.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

22. Section 872.6855 is amended by revising paragraph (b) to read as follows:

§ 872.6855 Manual toothbrush.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

23. Section 872.6870 is amended by revising paragraph (b) to read as follows:

§ 872.6870 Disposable fluoride tray.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

24. Section 872.6880 is amended by revising paragraph (b) to read as follows:

§ 872.6880 Preformed impression tray.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exceptions of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 892—RADIOLOGY DEVICES

25. The authority citation for 21 CFR Part 892 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

26. New § 892.9 is added to Subpart A to read as follows:

§ 892.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal

blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

27. Section 892.1370 is amended by revising paragraph (b) to read as follows:

§ 892.1370 Nuclear anthropomorphic phantom.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

28. Section 892.1380 is amended by revising paragraph (b) to read as follows:

§ 892.1380 Nuclear flood course phantom.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

29. Section 892.1400 is amended by revising paragraph (b) to read as follows:

§ 892.1400 Nuclear sealed calibration source.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

30. Section 892.1420 is amended by revising paragraph (b) to read as follows:

§ 892.1420 Radionuclide test pattern phantom.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

Dated: February 22, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-8053 Filed 4-4-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 872 and 892

[Docket Nos. 86N-0007 and 86N-0014]

Dental and Radiology Devices; Exemptions From Premarket Notification; Withdrawal

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposals to exempt from the requirement of premarket notification a dental device (rubber dam and accessories) and a radiology device (wall-mounted radiographic cassette holder). Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to exempt from the requirement of premarket notification 22 other denial devices and 4 other radiology devices.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I (general controls), class II (performance standards), and class III (premarket approval).

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification.

On August 12, 1987 (52 FR 30120), FDA proposed to exempt 23 dental devices from premarket notification requirements. On January 20, 1988 (53 FR 1554), FDA proposed to exempt six radiology devices from premarket notification requirements. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to exempt from the requirement of premarket notification 22 of the 23 dental devices and 4 of the 6 radiology devices that were subjects of the two proposed regulations.

The agency is withdrawing its proposal of August 12, 1987, to exempt the rubber dam and accessories (§ 872.6300), and its proposal of January 20, 1988, to exempt the wall-mounted radiographic cassette holder (§ 892.1880) from the requirement of premarket notification. FDA's reasons for withdrawing these two proposed rules and postponing publication of a final rule exempting one radiology device, the personnel protective shield (§ 892.6500), are provided in the preamble to the final rule published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); and under 21 CFR 5.10, the proposed rules (Docket Nos. 86N-0007 and 86N-0014) to exempt the two devices identified above are withdrawn.

Dated: February 22, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-8054 Filed 4-4-89; 8:45 am]

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H.R. 1373/Pub. L. 101-9

To authorize the Agency for International Development to pay the expenses of an observer mission for the 1989 presidential elections in Panama. (Mar. 31, 1989; 103 Stat. 12; 1 page) Price: $1.00

S.J. Res. 50/Pub. L. 101-10

To designate the week beginning April 2, 1989, as "National Child Care Awareness Week". (Apr. 2, 1989; 103 Stat. 13; 2 pages) Price: $1.00